

Уголовное право

Практика применения штрафных санкций за экологические правонарушения, определенные в Гражданском кодексе КНР Study on the application of the system of punitive damages for ecological environmental infringement in Civil Code

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Аннотация. Статья 1232 Гражданского кодекса КНР формально устанавливает систему штрафных санкций за экологические правонарушения с целью содействия созданию экологической цивилизации и сдерживания экологических нарушений. В 2022 г. Верховный народный суд Китая издал Толкование о применении штрафных санкций в судебных разбирательствах по спорам об экологических правонарушениях, которое в определенной степени решило такие проблемы, как предмет требований о штрафных санкциях и сумма ущерба, но по-прежнему не ясно распределение штрафных санкций и существует несправедливое распределение бремени доказывания в судебной практике. Судебные издержки в связи с возмещением штрафных убытков слишком высоки, а альтернативные меры по выплате штрафных убытков отсутствуют. В целях совершенствования судебного применения системы возмещения штрафных убытков за экологические правонарушения следует рассмотреть возможность создания вертикальной системы управления компенсациями, разумно распределить бремя доказывания, создать единую систему для сокращения, отсрочки и освобождения от расходов по судебным искам о возмещении ущерба в связи с экологическими правонарушениями и гибко внедрять альтернативные меры оплаты, такие как компенсация за трудовые услуги.
Ключевые слова: Гражданский кодекс; экологический деликт; штрафные санкции; судебное применение.

Abstract. Article 1232 of the Civil Code formally establishes the punitive damages system for environmental tort with a view to promoting the construction of ecological civilization and deterring ecological violations. In 2022, the Supreme People's Court issued the Interpretation on the Application

of Punitive Damages in the Trial of Ecological and Environmental Infringement Disputes to a certain extent, which solved the problems such as the subject of punitive damages claims and the amount of damages, but the system still has unclear attribution of punitive damages and unfair distribution of burden of proof in judicial practice. The litigation cost of punitive damages is too high, and the alternative payment measures of punitive damages are absent. In order to improve the judicial application of the punitive damages system for ecological and environmental torts, we should consider establishing a vertical compensation management system, reasonably allocate the burden of proof, establishing a unified system for reducing, postponing and exempting the costs of punitive damages lawsuits for environmental torts, and flexibly implementing alternative payment measures such as compensation for labor services.

Keywords: Civil code, Environmental tort, Punitive damages, Judicial application.

Introductory

It is necessary to introduce punitive compensation system into the field of environmental infringement. This principle can effectively solve the problem of insufficient deterrent of damage compensation on the basis of fully protecting the rights and interests of the victims. After the reform and opening up, the rapid economic development, ecological crisis gradually appeared, the ecological environment at the expense of economic benefits has become a code for getting rich. After the 18th CPC National Congress, the construction of ecological civilization has entered a new stage. Since the Third Plenary Session of the 18th CPC Central Committee put forward the «strict implementation of the compensation system for those responsible for causing damage to the ecological environment» to Article 1232 of the Civil Code to formally establish the punitive damages for environmental infringement, undoubtedly for the protection of the ecological environment to provide a strong legal guarantee.

The principle of compensation for damages in the field of environmental infringement has changed from homogenous compensation to punitive compensation, guaranteeing that the environmental rights and interests of the victims are adequately remedied by making the perpetrator of the unlawful environmental infringement liable for additional compensation in excess of the actual amount of damage. The application of this system not only timely response to the environmental problems brought about by social development, but also fully meet the public's expectations for a better living environment. However, the application of punitive damages system in the field of environmental infringement belongs to the system innovation, from the implementation of the law to the practical application of the time span is relatively short, at the same time, as a special type of infringement, the application of its strict conditions of restric-

tion, In addition, Article 1232 of the Civil Code has vague provisions on the punitive damages system for ecological environmental infringement, and there are many problems in judicial application. the academic community for the application of the system is mainly concentrated in the study of the scope of application of punitive damages for environmental infringement, and the analysis of the constituent elements of the system, for the application of the problems existing in the academic community is less concerned. After the promulgation of the Interpretation on the Application of Punitive Damages in the Trial of Ecological and Environmental Infringement Disputes, some loopholes in the judicial application of the punitive damages system have been filled through practice and exploration, but there are still many problems that have not been solved. Therefore, from the typical case analysis of punitive damages in the field of ecological and environmental infringement of the application of the system and the corresponding solution measures can provide reference materials for the development of judicial application of punitive damages for environmental infringement theory and practical application.

1. The History of punitive damages system

Punitive damages system as a special form of compensation, its emergence and development has its profound theoretical foundation and historical background. Studying of the development of the punitive damages system is helpful to better understand and apply the system in judicial practice.

There have been many different views among scholars on the origin of the punitive damages system. For example, some scholars believe that the punitive damages system originated in the damages provisions of the ancient Babylonian Code of Hammurabi.¹ Some scholars also put forward that a large number of damages provisions in ancient Roman law

¹ See: *Punitive Damages and the Recognition of Judgements*, by Ronald A. Brand, 43 *Northerland international law review* (1996). P. 145 // Quoted from Cui Ming-feng, Ou Shan. *Research on the Punitive Damages System in Common Law*[J] // *Hebei Law*. 2000 (3). P. 124.

belong to punitive damages.² Some scholars also proposed that the Tang and Song dynasties in China, the formation of the «Double penalty» system, belongs to the early simple punitive compensation system.³ However, since punitive damages have been a form of tort liability widely adopted in common law countries in modern times, most scholars believe that the punitive damages system originated in the common law jurisdictions.⁴ Subsequently was gradually introduced by civil law countries. China as a traditional civil law countries, uphold the civil law system of punitive damages system of prudent application of the attitude. It was not until 1994 that the «Protection of Consumer Rights and Interests» was issued to deal with the problems of the market economy that the punitive damages system began to be applied in our laws. According to the development course of the punitive compensation system in our country, the development of the punitive compensation system is divided into the following stages.

1.1. The absence of a punitive damages system before 1994

Prior to the introduction of the Consumer Rights and Interests Protection Law in 1994, the system of punitive damages was not introduced into the relevant laws of China. In contrast, punitive damages began to be applied in some cases as early as the 17th and 18th centuries in England and the United States, and punitive damages were generally applied and adopted by the courts in the mid-19th century.⁵

Punitive damages in England originally originated from the judgment in the case of *Huckle v. Money* in 1763. After that case, the punitive damages system was applied, but in its subsequent application, a lot of opposition emerged. Punitive damages actions are

strictly controlled within a specific scope, and the law imposes strict limitations on them.⁶ The United States first confirmed the punitive damages system in the case of *Genay v. Norris* in 1784.⁷

Early punitive damages jurisprudence focused on the punishment of insulting and humiliating behavior, an early application in the United States following the English punitive damages system. In contrast to the strict limitation of punitive damages in England, the punitive damages system in the United States was generally recognized. The punitive damages system has been gradually applied to abuse of economic power in commercial transaction litigation, business torts, and product liability. Punitive damages in the United States have realized the expansion of the development from the traditional tort with fault as the principle of attribution to the tort form based on strict liability.⁸

Compared with common law countries, civil law countries rarely adopt the punitive damages system and take a cautious attitude towards the application of punitive damages. The main reason is that most civil law countries adopt «fill the damage» as the basic principle of damages, the purpose is to make up for the loss suffered by the victim, but does not support the compensation higher than the loss of damage, to avoid the appearance of unjust enrichment.⁹ On the other hand, it is because punitive damages have the function of punishment, and civil law countries believe that it will lead to the confusion of public law and private law, break the boundary between the two, and is not conducive to the protection of private rights. Therefore, civil law countries generally do not adopt this system.¹⁰ However, as the ecological and environmental problems become more and more prominent, the call for the introduction of punitive damages in civil law countries is growing.

² *Norman T. Braslow*. The Recognition and Enforcement of Common Law Punitive Damages in Civil Law System: Some Reflections on the Japanese Experience, 16 *Ariz. J. Int'l & Comp. Law*. 285, 294 (1999) // Quoted from Xu Hai-yan. On the Improvement of the Punitive Damages System in the Revision of China's Consumer Protection Law [J] // *Western Law Review*. 2013 (2). P. 8.

³ *Yang Li-xin*. The Success and Inadequacy of the Provision of Punitive Damages Liability in the Consumer Protection Law and Improvement Measures [J] // *Tsinghua University Law Journal*. 2010 (3). P. 8.

⁴ *Wils K. B.* 205 95Eng. Rep. 768 (C. P. 1763). Quoted from Wang Li-min. A Study of Punitive Damage [J] // *Social Sciences in China*. 2000 (4). P. 113.

⁵ *David Owen*. Punative Damage in Products Liability Litigation. 74 *Mich. L. Rev.* 1257(1976) // Quoted from Wang Li-min. A Study of Punitive Damage [J] // *Social Sciences in China*. 2000 (4). P. 113.

⁶ *Zhang Xin-bao, Li Qian*. The Legislative Choice of Punitive Damages [J] // *Tsinghua University Law Journal*. 2009 (4). P. 7.

⁷ *Li Yan-fang*. Proposals on the Legislation of Tort Law in China: Changing from Punitive Damages to Tort Law's Functions [J] // *Journal of Hohai University (Philosophy and Social Sciences)*. 2009 (1). P. 43.

⁸ *Zhu Guang-xin*. Punitive Damages in the United States [J] // *Comparative Law Studies*. 2022 (3). P. 153—154.

⁹ *Liu Jun-hai, Xu Hai-yan*. The Interpretation and Innovation of China's Punitive Damages System [J] // *Journal of Law Application*. 2013 (10). P. 27.

¹⁰ *Zhang Bao-hong*. On the Integration of the Punitive Damages System and China's continental tort law [J] // *Science of Law*. 2015 (2). P. 134.

1.2. The emergence of the punitive damages system, 1994—2010

Around 1994, in order to solve the problem of counterfeit and shoddy goods, China began to try to introduce punitive damages, and Article 49 of the Consumer Rights and Interests Protection Law explicitly stipulated that consumers who had been subjected to fraud could demand double damages,¹¹ thus historically introducing the system of punitive damages into the contractual field of China's civil law. Although the concept of punitive damages is not explicitly mentioned, but this is China's first attempt to provide for punitive damages through the form of legal provisions.

Subsequent period of time, in order to adapt to the economic changes brought about by the reality of the problem, China's laws such as article 113 of the contract law,¹² articles 8 and 9 of the supreme people's court on the trial of cases of disputes over the sale of commodities and real estate contracts on the application of the law of the interpretations,¹³ article 96 of the food safety law, and other legal provisions to the protection of consumer rights and interests of article 49 as a blueprint for the development of a series of doubling of compensation Provisions have made it possible for China's punitive damages system to be applied in other areas.

1.3. Formalization of the punitive damages system, 2010—2021

The year 2010 was a new starting point for the application of the punitive damages system in China. «Punitive damages» has been applied in many fields before 2010, but still did not appear clearly in China's legal provisions, until 2010, Article 47 of the Tort Liability Law stipulates: «knowing that the product is defective, but still production, sales, resulting in the death of another person or serious damage to health The infringer has the right to request corresponding punitive damages».¹⁴

The concept of punitive damages as a legal term can be clearly applied. Although the article only limited to punitive damages in the field of product liability, but it marks the punitive damages into the civil code of the dawn. Subsequently, whether it is the newly amended Article 55 of the Consumer Rights and Interests Protection Law in 2013, which states that «if

an operator knows that a defect exists in a commodity or service and still provides it to a consumer, causing the death of the consumer or other victim or serious damage to his or her health, the victim shall have the right to request the operator to compensate for the loss in accordance with the provisions of Article 49 and Article 51 of the Law and shall have the right to request a compensation of not more than two times the amount of the loss suffered. demand punitive damages of up to two times the loss suffered.»¹⁵

Article 70 of the Tourism Law of the People's Republic of China stipulates that «If a travel agent causes personal injury to a tourist, the tourist may demand the travel agent to pay compensation of not less than double and not more than triple the amount of the travel expenses.»¹⁶ The introduction of these laws has undoubtedly further expanded the scope of application of the punitive damages system.

1.4. Since the promulgation of the Civil Code in 2021, the scope of application of the punitive damages system has been further expanded

After more than twenty years of development, the scope of application of the punitive damages system has been expanding, from the protection of consumer rights and interests to food safety, intellectual property rights protection, tourism services and other fields, but the application of punitive damages system in the field of environmental infringement has been controversial. With the frequent occurrence of ecological and environmental problems, the call for the introduction of a punitive damages system in the field of environmental infringement has been increasing.

Shandong Dezhou Jinghua Group Zhenhua Co., Ltd. air pollution case¹⁷ in the court to punitive damages in environmental civil public interest litigation has no legislative basis for the reason that did not support the plaintiffs proposed to require the defendant to compensate for the losses caused by the excessive emission of pollutants, triggering the academic community on the introduction of punitive damages in the field of environmental infringement of the heated debate. 2021 the implementation of the Civil Code, Article 1232 explicitly stipulates that: «the infringed has the right to request the corresponding punitive damages after suffering from environmental infringement»,¹⁸ not only responded to the controversy of whether to apply the punitive damages system,

¹¹ Refer to Article 49 of the Law of the People's Republic of China on Protection of Consumer Rights and Interests.

¹² Refer to Article 113 of the contract law of the People's Republic of China.

¹³ Refer to Articles 8 and 9 of the supreme people's court on the trial of cases of disputes over the sale of commodities and real estate contracts on the application of the law of the interpretations of the People's Republic of China.

¹⁴ Refer to Article 47 of the Tort Liability Law of the People's Republic of China.

¹⁵ Refer to Article 55 of the Consumer Rights and Interests Protection Law of the People's Republic of China.

¹⁶ Refer to Article 70 of the Tourism Law of the People's Republic of China.

¹⁷ See: *Civil Judgment in the Air Pollution Civil Public Interest Litigation of Shandong Dezhou Jinghua Group Zhenhua Co. Ltd.* // URL: <https://wenshu.court.gov.cn/> Accessed August 31, 2023.

¹⁸ Refer to Article 1232 of the Civil Code of the People's Republic of China.

but also marks the punitive damages system in the field of environmental infringement formally recognized by the legislation.

Visible, punitive damages in China's law in the scope of application continues to expand,

the content gradually perfect, in a sense, this is China's punitive damages system development path continues to deepen and development of an important symbol, the specific development process is shown in table below.

Legislative Provisions of China's Punitive Damages System¹⁹

Legal Provisions	Specify
Article 49 of the Consumer Rights Protection Act (1994)	Business operators engaged in fraudulent activities in supplying commodities or services shall, on the demand of the consumers, increase the compensations for victims' losses; the increased amount of the compensations shall be two times the costs that the consumers paid for the commodities purchased or services received.
Article 113 of the Contracts Act (1999)	Operators of goods or services to consumers with fraudulent behavior, in accordance with the provisions of the «Law of the People's Republic of China on the Protection of Consumer Rights and Interests» to assume responsibility for damages.
Articles 8 and 9 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Contracts for the Sale and Purchase of Commercial Properties (2003)	The transfer of possession of a house is deemed to be the delivery of the house for use, unless otherwise agreed by the parties. The risk of damage to or loss of the housing shall be borne by the seller before delivery for use and by the buyer after delivery for use; if the buyer receives a written notice of delivery from the seller and refuses to accept it without a valid reason, the risk of damage to or loss of the housing shall be borne by the buyer from the date of delivery for use as determined by the written notice of delivery for use, unless otherwise provided by the law or otherwise agreed by the parties. Because the main structure of the housing quality is unqualified can not be delivered for use, or after the delivery of housing, the main structure of the housing quality of the verification is indeed unqualified, the buyer's request for the termination of the contract and compensation for damages, shall be supported.
Article 96 of the Food Safety Act (2010)	If a consumer produces food that does not comply with food safety standards or sells food that he or she knows does not comply with food safety standards, the consumer may, in addition to claiming compensation for damages, demand from the producer or seller 10 times the price of the food.
Article 47 of the Tort Liability Act (2010)	If the infringer knows that the product is defective and still produces or sells it, causing death or serious damage to the health of others, the infringer has the right to request appropriate punitive damages.
Article 63 of the Trademarks Act (2013)	Where the infringement of the exclusive right to use a trademark is committed in bad faith and the circumstances are serious, the amount of compensation may be determined at not less than double and not more than triple the amount determined in accordance with the above method. The amount of compensation shall include the reasonable expenses paid by the right holder to stop the infringement.
Article 55 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013)	If the operator knows that the goods or services are defective and still provides them to the consumer, causing the death or serious damage to the health of the consumer or other victim, the victim shall have the right to demand that the operator pay compensation for the loss in accordance with the provisions of the law such as article 49 and article 51 of this Law, and shall also have the right to demand punitive damages of not more than twice the amount of the loss suffered.
Article 70 of the Tourism Law of the People's Republic of China (2013)	If the travel agency fails to perform its obligations agreed in the package tourism contract or perform its contracted obligations in a way that does not conform to the agreement, it shall take the responsibility for breach of contract like continuing to fulfill the contract, adopting remedy

¹⁹ For specific legal provisions: China Court of Justice // URL: <https://www.chinacourt.org/law.shtml/> [accessed: August 31, 2023].

	measures, making compensation, etc.; in case it causes personal damage or property loss to the tourists, the travel agency shall honor its liability. In the event that the travel agency is competent to fulfill its contracted obligations, yet refuses to do so even upon the request of the tourists, which then causes such serious consequences like harming the tourists' personal health or retaining the tourists, the tourists may also request the travel agency to pay a sum of compensation between one time and three times the amount of the travel costs.
Article 1232 of the Civil Code (2021)	Where a tortfeasor intentionally pollutes the environment or harms the ecological system in violation of the provisions of law, resulting in serious consequences, the infringed person has the right to request for the corresponding punitive damages

In summary, it can be seen that the field of application of punitive damages system at home and abroad are expanding, punitive damages legislation is gradually improved, the system is expanding, the understanding of punitive damages is also gradually deepened, and its connotation is also constantly enriched.

2. Obstacles to the application of the current punitive compensation system for ecological and environmental infringements in China

The Civil Code of the People's Republic of China and the Interpretation of the Supreme People's Court on the Application of Punitive Damages in Trial Cases of Ecological and Environmental Tort Disputes²⁰ have detailed the application of the punitive damages system in the field of environmental infringement, mainly in terms of the scope of application of punitive damages, components, calculation of punitive damages, liability competition and other aspects. In order to promote the accurate application of punitive damages system in practice. However, in general, China's punitive damages system has a short time span since its establishment in the field of environmental infringement. In addition, the Civil Code and relevant judicial interpretations cannot fully interpret some problems existing in the application of punitive damages, and there are still problems in judicial application such as unclear attribution of punitive damages and high litigation costs of environmental infringement.

2.1. Uncertainty about the attribution of punitive damages

Scientific and reasonable allocation and management of punitive damages is a key factor to ensure that it plays a system function. At present, the punitive damages collected in environmental public interest litigation infringement cases in the field of environmental infringement are generally incorporated into the State Treasury, and are centrally paid by the State Treasury in accordance with the budget for the maintenance of public utilities.²¹ The unified use and management of environmental public welfare litigation damages by government departments is conducive to ensuring the public nature of the use of funds, but a problem exists in practice is that if the punitive damages are generally placed at the disposal of the administrative or judicial authorities, there is no way to ensure that environmental damages will be used for ecological restoration, and that the same department's management of the funds while deciding on the use of the funds is tantamount to acting as a «referee» as well as an «athlete,» which is prone to lead to the misuse of the funds.²² In the field of environmental infringement private litigation, the specific attribution of punitive damages legislation is not yet clear, the current academic point of view there are two main, one is that punitive damages should be fully attributed to the infringer,²³ another is that a part of punitive damages need to be handed over to the environmental protection department for environmental remediation, emphasizing that the funds are earmarked for specific purposes.²⁴ However, in practice, punitive damages are still in a state of uncertainty, through the China Judicial Instruments Network set «environmental infringement» «punitive

²⁰ China Court of Justice. URL: <https://www.chinacourt.org/> [accessed: August 31, 2023].

²¹ Wang Shu-yi, Gong Xiong-yan. Research on the Issue of Punitive Damages for Environmental Tort [J] // Hebei Law Science. 2021 (10). P. 80.

²² Zhu Xiao, Meng Yu-nuo. Study on Trust Model of Managing Environmental Damages: In the View of Protecting Environmental Public Interests [J] // Jinan Journal (Philosophy & Social Sciences) 2018 (5). P. 85.

²³ Wang Shu-yi, Gong Xiong-yan. Research on the Issue of Punitive Damages for Environmental Tort [J] // Hebei Law Science. 2021 (10). P. 77.

²⁴ Liu Shi-guo. Commentary on «Liability for Environmental Pollution and Ecological Damage» in the Civil Code [J] // Oriental Law. 2020 (4). P. 201.

damages» and other keywords to find 31 judgment documents,²⁵ comparative analysis found that there is almost no judgment documents mentioning The attribution of punitive damages. How to scientifically allocate punitive damages to ensure that it can make up for the losses of the infringer and to a certain extent to promote the environmental restoration is the current judicial application of the urgent need to solve the matter.

2.2. Unfair allocation of the burden of proof

In traditional environmental tort cases, no-fault liability is generally adopted to investigate environmental violations, mainly considering the evidential ability of both parties. The defendant, as the infringer, has a stronger evidential ability than the plaintiff, and bears the burden of proof that there is no causal relationship between the tort and the damage result, which is more conducive to balancing the liability and obligation of both parties. However, the «Interpretation on the Application of Punitive Damages in the Trial of Ecological Environmental Tort Disputes» takes the opposite direction, adopts a series of proof burden borne by the plaintiff, namely the infringed person, and changes the «inversion of proof burden» applied before to «whoever claims, who proves». The purpose of the legislation is to prevent the abuse of litigation. It is reasonable to transfer the burden of proof to the infringed in a disadvantaged position in public interest litigation. The plaintiffs in public interest litigation of environmental infringement are mostly procuratorates, which have strong ability to provide evidence and have no obvious disadvantage, so it is relatively fair for them to bear the burden of proof. However, for some cases of punitive compensation for environmental infringement filed by natural persons, although the infringed does not need to bear the burden of proof that there is a causal relationship between the tort and the damage consequences, local courts still require the infringed to provide evidence with a high degree of probability in litigation practice, which undoubtedly increases the difficulty of litigation for some plaintiffs with weak economic ability to provide evidence. It is not conducive to the real realization of equity and justice.

2.3. Excessive litigation costs for punitive damages

Whether it is reasonable to charge high litigation fees in environmental litigation cases has triggered a large controversy in legal work, typical examples are the case of environmental pollution liability dispute between Friends of Nature Environmental Research

Institute and Jiangsu Changlong Chemical Co.²⁶ The plaintiff in the case of the plaintiff's request for compensation amount is relatively large, but the compensation actually contains in order to prove the environmental damage to the fact that the expenditure of environmental damage appraisal fee, investigation and evidence collection costs, more than one led to a huge amount of litigation. At the same time, China's courts charge litigation costs mainly through the amount of litigation to determine the subject matter, but environmental infringement litigation has a certain specificity, most of the cases have a wide range of damages, involving a large number of infringed characteristics. Therefore, the amount of litigation is high, if the plaintiff party loses the case, then need to bear high litigation costs.

The above typical case of the plaintiff side after losing the lawsuit to bear up to 1891800 yuan of litigation costs, caused widespread concern in the community, the court responded that according to China's «payment of litigation costs» provisions, the payment of litigation costs in this case does not have a problem, the case on behalf of the plaintiff must bear the litigation risk once the loss of high litigation costs out-of-pocket. Have the economic strength of the public interest organizations have the ability to bear the costs, other infringers if there is no strong economic strength of the infringer how to pay the upfront costs. Differences in economic strength coupled with the risk of incurring high litigation costs will most likely result in the infringed party not being able to obtain effective remedies, triggering unfairness in litigation.²⁷

2.4. Fewer alternatives to payment of punitive damages

Punitive damages as a punitive deterrent to the infringer's initiative, the infringer to bear the damage caused by the damage caused by the ecological restoration costs and other losses, the «Interpretation on the Application of Punitive Damages in the Trial of Ecological Environmental Tort Disputes» clearly stipulates that punitive damages shall not exceed the amount of compensation for personal injury, property damage, two times, but in practice there are infringers to implement the environmental violations, although the environment caused by the greater damage, but the actual profit is less, part of the infringer may be in the Some infringers may not be able to pay punitive damages when their family suddenly suffered a major change or deterioration of economic situation. In this case, because the infringer's economic capacity is weak, the procuratorate will

²⁵ URL: <https://wenshu.court.gov.cn/> (accessed: August 31, 2023).

²⁶ See: *Civil Judgment in the case of Environmental Pollution Liability Dispute between Friends of Nature Environmental Research Institute and Jiangsu Changlong Chemical Co.* URL: <https://wenshu.court.gov.cn/> (accessed: August 31, 2023).

²⁷ Han Yin. Punitive Damages for Environmental Tort: Application of Norms and Perfection of System [J] // Jingchu Academic Journal. 2022 (1) 1. P. 79.

face the «implementation of the costs of ecological restoration and punitive damages», and the damaged social public welfare will not be repaired in a timely manner.²⁸ In this case, monetary compensation may not be the optimal or the only method of environmental restoration, and the application of alternative restoration methods in lieu of compensation for labor, while practicing the concept of restorative justice and embodying humanistic care, is able to spread the ecological civilization trend with environmental public welfare labor, and guide the masses to enhance their awareness of ecological environment and resource protection. Typical case of Qingdao City, an art center illegal acquisition of wild animals²⁹ in the case of the judge combined with the economic situation of the defendant ruled that the defendant in lieu of labor to repay a certain amount of punitive damages, in order to achieve the purpose of environmental restoration at the same time profoundly embodies the environmental infringement of punitive damages of punitive and curbing the function of the function.

3. Optimization path of the application of punitive damages for ecological and environmental infringement

The Civil Code and relevant judicial interpretations have made general provisions on the application of the punitive damages system, but due to the fact that the legal provisions are too general and the relevant legal interpretation provisions are few and other reasons, the punitive damages system is applied more frequently in complex environmental tort lawsuits, but there are still disputes, and judges may make different judgments in the same case at their discretion. This paper puts forward some countermeasures based on the problems in judicial cases, hoping to provide reference for the judicial application of punitive damages system.

3.1. Clarifying the attribution of punitive damages

The Measures for the Administration of Funds for Compensation for Damages to the Ecological Environment (for Trial Implementation)³⁰ stipulates that the funds for compensation for damages in environmental civil public welfare litigation shall be uniformly collected in the national treasury and incorporated into the management of the general public budget.

However, once the damages funds are included in the public budget management, the administrative attributes tend to dominate the mainstream, can not effectively ensure that the environmental damage compensation for public purposes, in this case, the author believes that the United States model can be borrowed from the establishment of a «discrete compensation management system».³¹

First, part of the compensation will be invested in ecological restoration and environmental protection work, and the funds will be coordinated and allocated by the state administrative organs for the treatment of environmental damage, ecological restoration and other work, so as to improve the efficiency of the use of funds. Secondly, a certain proportion of the compensation is deposited into the environmental litigation fund for the maintenance of public interests, a move that effectively compensates for the lack of resource efficiency of rights organizations. Finally, a part of the compensation is attributed to the infringer, used to make up for the loss, this discrete compensation model is more conducive to focus on ecological restoration at the same time to maintain the interests of the infringer.

3.2. Rational allocation of the burden of proof

For the distribution of the burden of proof in environmental tort, the inversion of the burden of proof is generally adopted, mainly to make up for the lack of the ability of the infringed party to prove. However, considering that the punitive damages increase the burden of the infringer, it is obviously unfair for the infringer to bear the burden of proof. The newly issued «Interpretation on the application of Punitive Damages in the trial of ecological environmental infringement Disputes» returns the burden of proof of environmental infringement to the traditional civil litigation «who claims, who provides evidence», its purpose is to reduce excessive litigation and prevent repeated compensation. However, the infringed is in a weak position, with its evidence gathering ability and economic strength. Although the judicial interpretation stipulates that the infringed does not need to prove the causal relationship between the infringement and the result of damage, the burden of the infringed is ostensibly reduced. However, the court's trial results in most judgements show that to file punitive damages for environmental infringement, the infringed still needs to prove that the causality between the infringed's behavior and its own damage

²⁸ Xiao Nan. The Application of Labor Repayment in Civil Prosecution Public Interest Litigation — Taking the Case of Illegal Fishing of Aquatic Products as an Example [J] // The Chinese Procurators. 2021 (22). P. 57.

²⁹ See: *Civil Judgment on the Case of Illegal Acquisition of Wild Animals by a Center in a District of Qingdao City*/URL: <https://wenshu.court.gov.cn/> (accessed: August 31, 2023).

³⁰ For specific legal provisions // URL: www.gov.cn/gongbao/content/2020/content_5519954.htm. / (accessed: August 31, 2023).

³¹ Wang Shu-yi, Gong Xiong-yan. Study on the Disputed Issues of Punitive Damages for Environmental Torts [J] // Hebei Law Science. 2021 (10). P. 81.

is highly probable, which undoubtedly increases the burden of proof of the infringer from another perspective. Therefore, the punitive damages system needs to reasonably distribute the burden of proof. The party with strong burden of proof should bear the corresponding burden of proof, which accords with the principle of legal fairness.

3.3. Establishment of a unified system for the reduction, exemption and deferral of litigation costs for environmental infringements

For the environmental tort litigation costs reduction, delay, exemption system provisions in addition to the Supreme People's Court on the Trial of environmental civil public interest Litigation Cases, Article 33: In addition to «civil public interest litigation cases that meet the relevant circumstances can apply for suspension in accordance with the law»,³² other relevant provisions involving the payment of litigation costs, such as the «Litigation Costs Payment Measures»³³ and the «People's Court Litigation costs Management Measures»,³⁴ do not involve the reduction and suspension of environmental litigation costs. At present, environmental problems occur frequently in our country, and the progress of environmental protection work is slow. In order to effectively improve the ecological protection efforts, the possibility of reducing and postponing environmental tort lawsuits should be considered reasonably in judicial practice to avoid high litigation costs becoming a stumbling block in the application of the punitive compensation system in the environmental field. To the greatest extent, the injured parties with different economic strength have the ability to bring punitive damages.

3.4. Flexibility to promote alternative payment systems, such as payment in lieu of labor

After the implementation of the Civil Code, in the case of Qingdao Municipal People's Procuratorate of Shandong Province v. Qingdao Laoshan District Art Appreciation Centre,³⁵ the Qingdao Intermediate People's Court sentenced the defendant to partial punitive damages for participation in ecological and environmental public welfare work, which reflects China's exploration of the restorative justice method of punitive damages in lieu of work, and attempts to do so in practice. This way can reduce the economic burden of offenders at the same time, let offenders personally feel the importance of ecological

environmental protection, to achieve the purpose of punishment and education. But the establishment of labor compensation system needs strict and feasible system support, first of all, should develop a scientific and feasible labor compensation program, labor compensation program in the content of labor compensation should be easy to implement, can not additionally increase the infringer's other burdens.³⁶ At the same time, the content of labor needs to be related to the infringer damage to the ecological environment, through labor can repair the damaged environment. Secondly, to establish and improve the labor compensation related work mechanism.³⁷

On the one hand, a collaborative mechanism has been established with the administrative authorities for determining labor compensation programs and modalities. Relying on the case-handling systems and professional experience of administrative authorities in various fields, they have explored the specific content of labor compensation programs and determined the best labor compensation methods and programs. On the other hand, the establishment of environmental litigation labor compensation repair method applicable and ecological environment management convergence mechanism.

For the existence of repair situation is more urgent or repair difficult cases, in the application of labor compensation alternative repair mode at the same time, the procuratorial organs should be timely transfer of case clues to the relevant administrative organs, supervise the implementation of ecological environment damage repair responsibilities, so that the damaged public welfare can be repaired in a timely manner. Finally, to strengthen the labor compensation program implementation supervision, for labor compensation program implementation effect can be based on the «territorial jurisdiction principle». Entrusting the infringer's place of domicile or the community correctional institution where the environmental damage occurred to be responsible for recording and supervising, not only to safeguard the effect of environmental restoration, but also to make the infringer physically maintain the ecological environment and the environment.

Conclusion

The high quality development of ecological environment determines the degree of civilization of society.

³² Refer to Article 33 of the Interpretation of the Supreme People's Court on several issues concerning the application of law to environmental civil public interest litigation cases.

³³ For specific legal provisions // URL: www.gov.cn/gongbao/content/2020/content_5519954.htm [accessed: August 31, 2023].

³⁴ For specific legal provisions // URL: <http://www.mof.gov.cn/gp/xgkml/xzzfs/> [accessed: August 30, 2023].

³⁵ Same as [28] above.

³⁶ Lu Zhong-mei. Public Interest Litigation to Guard the Biodiversity of the Yangtze River — The Case of Wang Xiao-peng and 59 Others for Illegal Fishing, Trafficking, and Acquisition of Eels [J] // Journal of Law Application. 2022 (9). P. 9.

Since the 18th National Congress of China, the Central Committee of the Party has attached great importance to the construction of ecological civilization. After the promulgation and implementation of the Civil Code on January 1, 2021, the field of environmental infringement has ushered in major institutional innovation. The attempt to apply punitive damages in ecological environmental infringement disputes is another new legislative value guidance. The application of punitive damages system in the field of environmental infringement not only deeply practices the green principle but also shows the determination and action to protect the ecological environment. In the face of the frequent occurrence of environmental illegal cases, we must thoroughly implement the punitive compensation system for ecological environmental infringement and improve its judicial application.

Establish separate compensation to clarify the ownership of penalty compensation, maximize the purpose of «investment» of penalty compensation, and protect the welfare of public good environmental rights and interests; The system of reducing and deferring the litigation costs of environmental litigation prevents high litigation costs from becoming an obstacle to the application of the punitive damages system in the environmental field. Increase the proportion of the application of alternative payment measures for labor compensation, while reducing the economic burden of offenders, achieve the purpose of combining punishment and education, and take multiple measures together, in order to better promote the application of punitive compensation system and promote the construction of ecological civilization.

REFERENCE

1. Cui Ming-feng, Ou Shan. Research on the Punitive Damages System in Common Law. — Hebei Law. — 2000 (3).
2. Chen Xue-min. Regulation of the Punitive Damages System in the Environmental Tort Damage: Based on the Reflection of Article 1232 of the Civil Code // Journal of CPL. — 2020 (6).
3. Han Yin. Punitive Damages for Environmental Tort: Application of Norms and Perfection of System // Jingchu Academic Journal. — 2022 (1).
4. Li Yan-fang. Proposals on the Legislation of Tort Law in China: Changing from Punitive Damages to Tort Law's Functions // Journal of Hohai University (Philosophy and Social Sciences). — 2009 (1).
5. Liu Jun-hai, Xu Hai-yan. The Interpretation and Innovation of China's Punitive Damages System // Journal of Law Application, 2. — 2013 (10).
6. Liu Shi-guo. Commentary on «Liability for Environmental Pollution and Ecological Damage» in the Civil Code // Oriental Law. — 2020 (4).
7. Lu Zhong-mei. Public Interest Litigation to Guard the Biodiversity of the Yangtze River — The Case of Wang Xiaopeng and 59 Others for Illegal Fishing, Trafficking, and Acquisition of Eels // Journal of Law Application. — 2022 (9).
8. Liu Chao. The Function of the Punitive Damages System for Environmental Torts in the Civil Code // Journal of Political Science and Law, 2. — 2022 (1).
9. Tang Ke, Wang-Canfa. The Proper Liability Boundaries of Environmental Punitive Damages System: Exxon Shipping Co. v. Baker case as a Reference // Seeking Truth. — 2021 (5).
10. Wang Li-min. A Study of Punitive Damage // Social Sciences in China. — 2000 (4).
11. Wang Shu-yi, Gong Xiong-yan. Research on the Issue of Punitive Damages for Environmental Tort // Hebei Law Science. — 2021 (10).
12. Wang Chong. Review and regulation of the environmental tort punitive damages system in the Civil Code // Journal of Chongqing University (Social Science Edition). — 2022 (1).
13. Xu Hai-yan. On the Improvement of the Punitive Damages System in the Revision of China's Consumer Protection Law // Western Law Review. — 2013 (2).
14. Xiao Nan. The Application of Labor Repayment in Civil Prosecution Public Interest Litigation — Taking the Case of Illegal Fishing of Aquatic Products as an Example // The Chinese Procurators. — 2021 (22).
15. Yang Li-xin. The Successes and Shortcomings of Providing for Punitive Damages Liability under the Consumer Protection Law and Measures for Improvement // Tsinghua University Law Journal. — 2010 (3).
16. Zhang Xin-bao, Li Qian. The Legislative Choice of Punitive Damages // Tsinghua University Law Journal. — 2009 (4).
17. Zhu Guang-xin. Punitive Damages in the United States // Comparative Law — Studies. — 2022 (3).
18. Zhu Guang-xin. Evolution and Application of the System of Punitive Damages // Social Sciences in China. — 2014 (3).
19. Zhang Bao-hong. On the Integration of the Punitive Damages System and China's continental tort law // Science of Law, 2. — 2015 (2).
20. Zhu Xiao, Meng Yu-nuo. Study on Trust Model of Managing Environmental Damages: In the View of Protecting Environmental Public Interests // Jinan Journal (Philosophy & Social Sciences). — 2018 (5).

³⁷ Xiao Nan. The Application of Labor Repayment in Civil Prosecution Public Interest Litigation — Taking the Case of Illegal Fishing of Aquatic Products as an Example [J] // The Chinese Procurators. 2021 (22). P. 57.