

# Research on the Judicial Application of The Punitive Damages System for Environmental Infringement

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**Abstract.** Under the initiative of "a community with a shared future for mankind", the discussion of ecological environment protection is growing nationwide, and the legal issues that follow have also received more attention. For this reason, China has introduced the system of "punitive compensation" into the field of environmental tort in Article 1232 of the Civil Code to achieve the effect of ecological environmental protection. This paper will study from the perspective of comparative law, through comparing the legislative research and judicial application of punitive damages for environmental tort in China and the United States, and then clarify the legal regulation path of punitive damages for ecological environmental tort, and further improve the legal framework of punitive damages system.

**Keywords:** Punitive damages; environmental infringement; regulatory path; comparative law.

## 1. Introduction

From the perspective of comparative law, the traditional civil law system represented by Germany is very strict in the division of the adjustment scope of public law and justice. According to the traditional theory, the civil law implements the principle of homogeneity and complementarity in the field of civil compensation, which is not applicable to the punitive compensation system. The Anglo-American law system is different. The countries of the Anglo-American law system generally recognize punitive damages, but the scope of application and number of punitive damages vary from country to country.

It can be seen from the current multiple ecological environment infringement cases that most of the environmental pollution and ecological damage are intentionally committed by the infringer. One of the main reasons for this phenomenon is the low illegal cost of the infringer and the lack of punishment measures. Therefore, it is particularly important to increase the criminal cost of infringers in curbing ecological environment infringement. In civil law countries, the French Commission for the Reform of the Civil Code submitted the first draft of the reform debt law to the Ministry of Justice in 2005, and article 1371 of the draft proposal clarified punitive damages. In the United States, in the 20th century, the punitive damages system has been widely used in the United States, and the amount of compensation is also increasing. So far, although the punitive damages system in the United States has experienced a period of criticism, the provisions after the reform have their role. Compared with China, Article 1232 of the Civil Code introduces the system of "punitive damages" into the field of environmental tort, which is very beneficial to curb the occurrence of environmental tort. This is not only a legislative innovation in the field of environmental tort in China, but also a highlight in promoting the relevant legislative process. This article enriches the forms of liability for environmental tort, while punitive damages act as a deterrent for controlling infringers to reduce illegal acts. At the same time, it also makes up for the defects of compensatory damages, and achieves the purpose of protecting the ecological environment through "punishment+filling".

For China, a new legislative setting will surely lead to different views of scholars in relevant fields in practice. It is mainly reflected in how to understand and define the "punitive damages". The main

direction of this paper is to discuss the issue of the ownership of the "punitive damages" and the determination of the amount.

## 2. Punitive Damages Overview

Punitive compensation refers to a kind of damages that the infringer pays more than the actual loss to the infringed by the court in violation of the civil law. In order to avoid the abuse of power by the judge, whether it is applicable must be made by the people's court in the form of judgment. The punitive damages in environmental torts are mainly monetary punishment, which is mainly reflected in punishing the torts with great subjective intention and bad influence, reflecting the public law nature of the country to punish and prevent the wrongdoers. At the same time, the compensation is paid to the injured party and there is no lack of private law to provide consolation relief for the victim.

When introducing punitive damages into environmental tort, the first thing to consider is its legitimacy. Social justice can either resort to traditional criminal liability or choose punitive compensation system. However, based on the principle of modesty of criminal law and limited national judicial resources, traditional criminal liability does not fully cover the treatment of environmental tort disputes [1]. Therefore, the realization path of social justice has changed to grant victims the right of surrogate relief by the state and advocate that the defendant bear "indirect civil liability" (intermediate civil sanction). Compared with the traditional civil law that the purpose of damages is to make up for the loss of the victim, punitive damages in the field of environmental infringement not only focus on compensating the interests of the infringed, but also expect to achieve the function of deterring the infringer and controlling environmental pollution [2].

Punitive compensation for environmental infringement is applied to the Civil Code. The reason is not only that punitive compensation, as a category of civil liability, has the functions of compensation and filling up, but also that the liability nature of criminal fines and administrative fines is not enough to achieve the effect of environmental protection. The purpose of criminal fine is to focus on the sanction of environmental violations. The regulation of environmental criminal liability, which belongs to the category of public law, has been firmly shackled because it involves too many interests. This is not only reflected in the fact that it is not conducive to the correct understanding and punishment of environmental crimes in terms of crime types, protection and target of punishment stipulated in the Criminal Law. It is also reflected in the coincidence of the purpose and value standards between the legal provisions of criminal procedure and the relevant civil provisions, which directly leads to the overlapping of the environmental pollution crimes and other related charges cases tried by the criminal business division of the same court and the environmental infringement cases tried by the civil Business Division. And the administrative fine responsibility assumes the way, pay more attention to stabilize the social order. Both of them can not achieve the purpose of punishing and restraining environmental infringement, so it is necessary to take punitive compensation for environmental infringement when the traditional compensatory relief cannot make up for the loss of environmental infringement.

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## 3. Current status of judicial punitive compensation for environmental infringement in China and the United States

After the introduction of "punitive compensation" by China, there are still many problems to be solved urgently. In the 2021 China Environmental Justice Development Report, it is clearly pointed out that the legal application of punitive compensation needs to be further harmonised. Since the punitive compensation method for environmental infringement stipulated in the Civil Code has been applied, judging from the analysis of 14 judgements that have been retrieved, there is still unclear

scope of application, improper identification of constituent elements, compensation calculation benchmark and maximum multiple in the current decision on punitive compensation for environmental infringement. Risks such as vague identification standards and non-uniformity of retroactive determination standards.

We searched with the keyword "punitive compensation for environmental infringement" on the "Beijing University Magic Weapon" website and found that only 4 cases of punitive compensation were applicable. It can be seen that the applicability of the system is not high. On the one hand, after the release of the Civil Code, the issue of punitive compensation for environmental infringement is more controversial, and many scholars believe that punitiveness violates the principle of fairness of civil law and should not be applied. On the other hand, because the latest judicial interpretation was promulgated in January 2022, punitive compensation for environmental tort is judicially The application of practises still needs to be studied. Clarifying the ownership of its subject of power and clarifying the measurement of compensation will be the key research issues of this article.

In the United States, since the acceptance of the punitive compensation system under British law in the 18th century, the punitive compensation system has been applied as an important legal system in the United States. Since the 20th century, the punitive compensation system has been increasingly widely used in cases of environmental infringement. Although scholars once disputed the punitive compensation system, it was fully recognised in the jurisprudence of American courts. The U.S. Supreme Court heard *Day v. Woodworth* in 1852. The *Woodworth* judgement pointed out: "We know that some scholars have questioned the appropriateness of this principle; but if the continuous emergence of such judgements for more than a hundred years can be regarded as the best way to prove the law, then the existence of this principle should be recognised."

At present, the United States has a relatively complete legal system for punitive compensation in the field of environmental infringement. And many international environmental conventions draw on this (e.g., the Third North Sea Conference, 1989: "Action should be taken to deterrent and avoid the potentially damaging effects of persistent toxicants and substances prone to bioaccumulation, even in the absence of scientific evidence of a causal link between emissions and effects [3].") Many of our legal provisions on punitive compensation are based on the United States. Although there are still shortcomings, it is undeniable that the implementation of the punitive compensation system in the field of environmental infringement in the United States has effectively combatted environmental infringement and is of positive significance to the improvement of regulations in relevant fields in other countries.

## **4. The similarities and differences of punitive compensation systems in the field of environmental infringement in China and the United States**

### **4.1 Similarity**

The purpose is the same. They are all aimed at punishing parties involved in illegal or malicious acts, compensate the complainant, and prevent the parties or others from committing similar acts in the future. The determination of the amount of compensation adhere to the principle of caution. The 1990 Bergen Statement on Sustainable Development made clear the importance of this principle ("Policies and laws must be based on the principle of prudence ") [4]. Since then, it has been adopted by major countries including China and the United States. The amount of compensation is recognised with uncertainty. Due to the nature of environmental infringement cases, the results of damage caused, etc., whether there is a relatively complete and reasonable calculation standard for the compensation amount, the final amount will be recognised with strong subjectivity. It is difficult to have a complete legal standard for punitive compensation.

## 4.2 Differences

### 4.2.1 Different legal origins

China's origins of punitive compensation in the field of environmental infringement are mainly the Civil Code and the Environmental Protection Act, while the United States has determined its reasonableness and restricted excessive compensation in its Constitution. In addition to federal laws and state laws, there are many jurisprudences approved by the Supreme Court that has been validated or validated by the Supreme Court has been applied as a basis for trial in practice [5].

### 4.2.2 Different criteria for determining the amount of compensation

In China, due to the late start of the relevant provisions on punitive compensation in the field of environmental infringement, there is no relatively unified and clear measurement standard for determining the amount of compensation, which basically depends on the court's comprehensive consideration of the circumstances of the case. In the United States, in addition to considering the case, it is also necessary to consider the extent to which the Defence's behaviour is reprehensible, the ratio between the amount of punitive compensation and the amount of compensatory compensation (both to prevent the low amount from making it difficult for the defendant to receive due punishment, and to prevent the excessive amount from making it difficult to reflect the preventive effect of punitive compensation, and Violation of legal fairness), the benefits obtained by the Defence in the infringement (punitive compensation should not enable the Defence to obtain benefits from the infringement, but should also deter the actor from circumventing legal means of obtaining benefits).

In addition, although in *BMW of North America v. Gore*, punitive compensation only needs to be reasonably matched with the actual damage result, the United States will also consider the property status of the Defence in the trial of environmental infringement cases. In the Exxon oil spill case, although the Defence did not obtain any benefits, Exxon was sentenced to a sky-high fine of \$507.5 million for its annual profit at that time based on the results of serious environmental pollution and strong strength [6]. The court held that this was not much for the defendant, but "reasonable and appropriate".

### 4.2.3 The criteria for whether to enable or not are different

The main difference between China and the United States in this regard lies in the determination of the burden of proof. China adopts the principle of reversing the burden of proof and requires the defendant to prove that the damage has nothing to do with itself. In the United States, like ordinary tort lawsuits, plaintiffs must bear the burden of proof, especially in environmental tort lawsuits where punitive damages are applied [7]. The plaintiff's burden of proof is heavier than that of ordinary environmental tort lawsuits. Punishment is a more severe form of liability than compensation, so higher standards of evidence are needed to avoid misconduct. The current mainstream standard is the use of "clear and persuasive" evidence based on the provisions of the Model Punitive Compensation Act. So far, 30 states have enacted legislation or jurisprudence to require plaintiffs to meet the "clear and persuasive" standard of proof to apply punitive compensation.

It is worth mentioning that since 2007, part of the punitive compensation has been handed over to the government in some states of the United States. Citizens either pay taxes or pay a certain proportion of compensation directly to the government. The specific states are also different [8].

## 5. Improve the legal framework of punitive damages

In fact, punitive damages are a system that needs to be considered systematically from many legal aspects because of many potential dangers. It is a system that should be treated carefully. Now, the country pays more and more attention to the perfection and development of environmental laws, and the environmental legal system is gradually perfected and mature. The punitive compensation system has been clearly stipulated in the Civil Code of the People's Republic of China, which reflects the legislative trend of China's environmental protection.

### **5.1 To clarify the standard for calculating the amount of punitive damages**

The key to applying punitive damages lies in the determination and application of the amount of compensation. From the ecological environment in the field of environmental tort law content of punitive damages as you can see, in our country for the determination of the amount of the punitive damages of ecological environment tort is no amount limit mode, but the disadvantages of the model are unable to effectively determine the number of punitive damages the margin of discretion, which due to the discretion of judges and judicial corruption. In the current judicial precedents, taking the "Zhejiang Hai-lan Case" as an example, the main criterion for determining the compensation amount is "environmental functional loss". In accordance with the law of the People's Republic of China on the Protection of the Rights and Interests of Consumers, the Food Safety Law of the People's Republic of China and other laws, the number of punitive damages should be determined by one to three times of the losses suffered. Finally, the punitive damages for environmental pollution of Hailan Company were sentenced to 171,406.35 yuan according to three times of the cost of environmental functional losses [9].

Thus, it can be seen that the judicial process is not the process of mechanical fact determination and law application, but the process of value balance and value selection. "Punitive damages system" will be applicable to more in the future judicial practice, so when determining the punitive compensation amount shall be determined form the standard of measure system and, through professional assessment to determine evaluation method to form a fixed compensation benchmark, at the same time for different case give judges discretion. The judge's discretion can calculate the number of punitive damages by considering the subjective fault degree of the infringer, the social influence and the difficulty of ecological restoration. The model of fixed compensation benchmark is conducive to making environmental tort compensation more transparent, and the elastic calculation model that gives judge's discretion can form effective relief for the interests of the infringed, so as to achieve the unification of legal effect and social effect.

### **5.2 To strengthen the connection and application of public law and private law**

Environmental legal liability is divided into administrative legal liability for environmental tort, civil legal liability for environmental tort and criminal legal liability for environmental tort. In essence, punitive damages are a special punishment system which uses private law to realize the purpose of punishment and deterrence which should be borne by public law. The application of punitive damages in the field of environmental infringement in the Civil Code has, to a certain extent, derived the problem of legal concur in the field of public law and private law. Specifically, whether the legal provisions in different jurisdictions can be evaluated repeatedly for the same illegal act. In judicial practice, because of the flexibility of administrative means, administrative punishment often takes precedence over judicial means, but based on the design of legislative system, administrative means are not the antecedent conditions of judicial procedures. First of all, it should be clear that the purpose of punitive compensation legislation is to punish the infringer to achieve a certain deterrence effect and comprehensively relieve the infringed [10]. Therefore, the construction of environmental integration should be established through legislative means, and the litigation sequence of environmental tort liability should be clarified. Based on the principle of modesty of punishment, punitive damages as private benefit relief should take precedence over administrative fines and fines. In the aspect of system design shall specify the same environment tort be filed civil lawsuits and criminal proceedings at the same time, shall make a decision before trial in civil action of criminal litigation, administrative penalty and criminal fines shall be within the civil sexual punishment beyond the scope of damage compensation for deduction, take punitive damages compensation function and avoid excessive competition and responsibility [11].

### **5.3 To Clarify the attribution of power subjects under various circumstances**

The main purpose of punitive compensation and private benefit relief is to make ordinary citizens and public welfare organizations more necessary than the state and related organizations to become

the subject of power to obtain due relief. Of course, when environmental infringement is difficult to prove, the public authority should also become the subject of power (the burden of proof is reversed). In judicial practice, the purpose of the infringer is to obtain benefits. The punitive damages system greatly increases the cost of illegal infringement through the monetary penalty far higher than the compensation for losses, which makes it difficult for the infringing party to obtain benefits through the infringing act while deterring others from committing criminal acts. To make up for the defects of public law, supplement public law enforcement, and promote substantive justice. At this time, both the public and the government need to increase the cost of violation to curb environmental infringement [5]. In addition, in some cases, punitive damages can make profits for the infringed party after making up for the incomplete losses, which will motivate the public to curb the infringement through more legal ways [12]. Promote the enforcement and perfection of the law, but also better play its punishment function. From this point of view, public agencies and public welfare organizations cannot be affected by this function based on their obligations and operational purposes, so their power can only be vested in the public.

## 6. Conclusion

Punitive compensation system is one of the legislative highlights in the effective regulation of environmental tort, and it is of great practical value and time meaning. The punishment and containment function of this system has played an important role in the practice. Because the system of punitive compensation is still in its infancy in the application of Chinese judicial practice, there still exist drawbacks and disputes in the determination and application of punitive compensation and legal concurrence. The comprehensive construction of environmental public welfare protection system requires the combination of private law and public law administration, that is, "civil law needs to amend its individual rights-based legal perspective, reasonably absorb and accept the social legal theory of environmental public interests, and properly assume the social responsibility of protecting and relieving ecological interests." Based on the analysis of the system structure, combined with judicial practice experience and legislative interpretation, corresponding judicial interpretation should be issued to guide the application of punitive damages system in the field of environmental infringement, and emphasize the prudent application of judicial practice to achieve the purpose of protecting the ecological environment.

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