

Dual Application of Punitive Damages in Environmental Public Interest Litigation and Private Litigation

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Abstract. Article 1232 of the "Civil Code of the People's Republic of China" establishes a punitive damages system for environmental infringement cases. While the applicability of punitive damages to the protection of private environmental rights is well-established, their permissibility within environmental civil public interest litigation remains a subject for legal deliberation. The academic community has long been divided on this issue, with two prevailing perspectives: one affirming and the other denying. Recent jurisprudence, however, illustrates a paradoxical trend diverging from theoretical predictions: a marked decline in punitive damages awards in private environmental litigation, coinciding with their progressive adoption in environmental civil public interest cases. This divergence between judicial practice and legal theory warrants further investigation. This paper examines the doctrinal legitimacy of imposing punitive damages in public interest litigation, while concurrently investigating the jurisprudential constraints and underlying rationales for their circumscribed application in private environmental tort disputes, from the perspectives of both public interest and private rights litigation.

Keywords: Environmental infringement liability, punitive damages, environmental public interest litigation, environmental private rights litigation.

1. Introduction

The modern system of punitive damages originated in 18th-century English common law. Upon its introduction into our legal system, it gained favor in practice due to its unique advantages beyond the traditional dichotomy of public and private law. Unlike conventional damages, the primary purpose of punitive damages is to punish the tortfeasor, Deter them and others who may commit similar torts in the future [1,2]. However, given that the civil legal framework generally aligns with the civil law tradition, which emphasizes complete compensation aimed at restoring damages, the punitive damages system—focused on sanctions—may face challenges in its application within our civil law context. This divergence between function and purpose could engender a period of normative incongruence for China's civil law system in its initial incorporation of punitive damages [3,4]. Article 1232 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) states: "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. "This statutory provision expressly articulates the juridical contours for awarding punitive damages within the sphere of environmental tort law and private rights protection, a consensus largely accepted within academic circles [5]. Scholarly consensus on the applicability of punitive damages to environmental public interest litigation remains elusive. Paradoxically, judicial practice reveals a countervailing trend of operationalizing this remedy within such cases—despite theoretical controversies—has been supported by numerous actual cases. Conversely, in the domain of environmental torts involving private rights, where legal provisions and academic consensus are more established, judicial authorities have adopted a more cautious stance toward the application of punitive damages [6].

This paper examines the dual application of punitive damages across public and private interest litigation within environmental tort law, with primary analytical focus on establishing their doctrinal legitimacy and pragmatic necessity in the realm of public interest lawsuits, while also exploring the

causes and potential improvements regarding the phenomenon of punitive damages being rendered ineffective.

2. An Empirical Examination of the Judicial Application of Punitive Damages in Environmental Tort Cases

Pursuant to relevant judicial interpretations, China's legal praxis has affirmed the juridical legitimacy of imposing punitive damages within the framework of civil public interest litigation. According to Article 98, Paragraph 2, Item 1 of the "Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates" (Interpretation No. 2 [2021] of the Supreme People's Procuratorate; hereinafter referred to as the "Public Interest Litigation Rules"), Prosecutorial organs are statutorily empowered to lodge claims for punitive damages in environmental tort cases, thereby formally incorporating this remedy into the ambit of environmental public interest litigation. Furthermore, the Supreme People's Court issued the "The Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Cases of Disputes over Ecological Environment Tort" (Interpretation No. 1 [2022] of the Supreme People's Court; hereinafter referred to as the "Punitive Damages Interpretation") on January 12, 2022, which stipulates in Article 12: "Where an authority prescribed by the state or an organization prescribed by law, acting as the representative of the infringed, requests the infringer to be liable for punitive damages, the people's court may handle it by applying, *mutatis mutandis*, the aforesaid provisions." These regulations demonstrate a judicial consensus recognizing the applicability of punitive damages in public interest litigation; however, the specific provisions also implicitly reflect a legislative intent of strict application [7].

However, it is important to note that Article 12 of the Punitive Damages Interpretation employs the term "representative" of the infringed when referring to state agencies and environmental organizations, and adds the words "*mutatis mutandis*" between "applying" and "the aforesaid provisions". These subtle lexical choices reflect, to some extent, the theoretical inclination of the judicial interpretive authority—namely, that the plaintiff entities in public interest litigation, such as state agencies and environmental organizations, do not fall under the statutory and inherent definition of "the infringed person" as specified in Article 1232 of the Civil Code. Recognizing punitive damages in environmental civil public interest litigation thus constitutes a judicial practice-based presumption rather than an explicit statutory provision.

According to an analysis of relevant judicial cases, courts predominantly support punitive damages in the context of environmental public interest litigation. Conversely, there are currently no precedents for applying punitive damages in environmental private interest litigation. A review of the China Judgments Online and other databases yielded a total of 13 cases involving punitive damages in the environmental sector. Although the sample size is limited, it provides preliminary insights.

Among the 13 cases, there are only 5 environmental civil private interest litigations and 8 environmental civil public interest litigations. In the only five private interest cases, courts denied punitive damages claims on grounds such as "no serious consequences caused," "non-retroactivity of the law," "the tortious conduct not involving illegality," and "absence of subjective intent [8-12]." Conversely, in the eight public interest environmental lawsuits, seven cases initiated by the procuratorates received courts' support for punitive damages claims, whereas one case initiated by a research institute was denied support on the basis that it lacked the legal standing to request punitive damages [13].

The differing attitudes of the People's Courts towards the application of punitive damages in public interest and private interest litigation fundamentally reflect the question of whether punitive damages can be equitably applied within the dual framework of ecological environmental tort. The Legal Work Committee of the National People's Congress provided written feedback during the formulation of the Supreme People's Court's "Punitive Damages Interpretation" indicating that "punitive damages are primarily applicable in private interest lawsuits initiated by the injured party [14]." The final "Punitive Damages Interpretation" was indeed designed with a focus on private interest torts.

Academic discourse has largely argued that punitive damages should be confined to private interest infringements and should be applied cautiously, if at all, in public interest tort cases [15]. Nonetheless, in practice, the People's Courts have unreservedly supported the application of punitive damages in public interest litigation, particularly in cases initiated by procuratorial organs. Conversely, there appears to be a reluctance to extend punitive damages to private interest lawsuits.

3. Justification for Applying Punitive Damages in Environmental Public Interest Litigation

Regarding the applicability of punitive damages in the field of environmental civil public interest litigation, academic discourse predominantly presents two perspectives: affirmation and negation.

Proponents of the affirmative stance argue that such an application is justified, citing several key reasons. Firstly, from a legislative perspective, the inclusion of punitive damages within the Civil Code in cases of environmental infringement aims to uphold and implement the ecological civilization concept of harmonious coexistence between humans and nature through legal mechanisms. Consequently, the punitive damages stipulated in the Civil Code should also extend to the protection of public environmental interests, aligning with the broader goal of advancing ecological civilization principles [16]. Secondly, in terms of systemic function, punitive damages serve to compensate for the limitations of traditional civil tort damages in imposing sufficient sanctions, effectively utilizing private law mechanisms to achieve the punitive and deterrent objectives typically associated with public law [17]. This approach enhances the punitive costs for infringers and curbs their unlawful impulses, thereby better facilitating environmental protection objectives [18]. Thirdly, from a practical standpoint, to prevent post-judgment monetary awards from being insufficient to cover damages, courts tend to adopt a punitive damages mindset in their final factual determinations. Recognizing the applicability of punitive damages in environmental public interest litigation can alleviate concerns regarding the low compensation levels often associated with remedial damages in judicial practice [19].

Scholars who hold the negative stance argue that it should not be applied for several reasons. Firstly, from a systemic interpretive perspective, punitive damages are primarily a form of private law sanctions; applying punitive damages in public interest environmental litigation breaches the traditional institutional framework, which predominantly reserves such damages for private disputes [20]. This leads to an overlap among civil liability for environmental damage, administrative environmental penalties, and criminal environmental responsibilities [6]. Secondly, from a literal interpretive standpoint, Article 1232 of the Civil Code refers mainly to specific private claimants who possess personal and property rights, whereas environmental civil public interest litigation primarily addresses "damage to the environment," with no specific "injured party." Consequently, punitive damages are inapplicable in environmental civil public interest cases [21]. Thirdly, from a systemic needs perspective, the existing environmental damage compensation system and administrative fines already serve as sufficient deterrents and sanctions against conduct harming the public interest in the environment [22]. The further application of punitive damages in environmental civil public interest litigation could impose excessive burdens on infringers, potentially violating the principle of proportionality and increasing the operational costs for enterprises [23, 24].

Both proponents of the affirmative and negative positions provide detailed and comprehensive arguments regarding the applicability of punitive damages in public interest litigation, each from different perspectives, such as legal interpretation and institutional function, and both supporting their viewpoints with substantial evidence. This paper leans more towards the affirmative stance. Although the negative view aligns more coherently within statutory logic and the civil law framework, China's introduction of punitive damages in environmental tort cases reflects a clear problem-oriented and pragmatic approach, representing a proactive response of civil law to pressing social issues. Therefore, the legitimacy and necessity of applying punitive damages in environmental infringement cases are

not primarily rooted in legal theoretical completeness but in the extent to which such damages can effectively address the current severe environmental challenges.

4. Challenges and Improvement Strategies for the Application of Punitive Damages in Environmental Civil Public Interest Litigation

As previously observed, while scholarly consensus affirms the doctrinal legitimacy of punitive damages in environmental private litigation, and their juridical status has been codified within the Civil Code and corroborated by judicial interpretations, their operationalization in practice remains markedly circumscribed within the realm of environmental civil private claims. As of August 2025, based on relevant searches of the China Judgments Online, Peking University Law Database, LawNet, and various publicly available reports, no precedents have been identified where judicial authorities in China have supported punitive damages in environmental private interest litigation. This underscores the extremely limited practical applicability of Article 1232 of the Civil Code in the domain of environmental private interest infringement, revealing a significant gap between legal provisions and their enforcement, and highlighting the awkward situation of statutory underutilization.

The core issue is likely to lie in the structural flaws of the punitive damages system within environmental infringement law. Since punitive damages impose an additional burden on the infringer and function akin to quasi-criminal liability, their application in judicial practice is subject to stringent conditions. For instance, Article 4 of Punitive Damages Interpretation stipulates that three elements must be satisfied concurrently for punitive damages to be imposed on an infringer: "The infringer's act of polluting the environment and destroying the ecology violates the law." "The infringer has the intention to pollute the environment or destroy the ecology." "The infringer's act of polluting the environment and destroying the ecology has caused serious consequences." This has also become a common justification for courts in rejecting victims' claims for punitive damages.

From the perspective of the subject of punitive damages claims, when egregious misconduct severely damages the ecological environment or results in serious harm such as bodily injury or death to the injured party, punitive measures can be effectively implemented through criminal fines or administrative penalties to serve punitive and deterrent functions. When statutory authorities neglect their duties, public interest litigants or relevant organizations authorized by law can promote the enforcement of public law sanctions through certain mechanisms [17]. Consequently, in criminal incidental civil public interest litigation initiated by prosecutors and environmental civil public interest lawsuits, claims for punitive damages are naturally and unquestionably supported by the courts. Conversely, private civil suits initiated by specific injured parties typically involve cases where no significant ecological or public interests are harmed, nor are there severe consequences such as bodily injury or death; thus, claims for punitive damages in such cases are inherently unlikely to be supported.

From the perspective of the tortfeasor, most instances of environmental pollution and ecological destruction are not committed with subjective intent to harm others; rather, these damages are incidental consequences of engaging in productive or commercial activities, thereby infringing upon the rights and interests of others. Such environmental harm often constitutes a byproduct of the pursuit of economic or operational gains, representing, in essence, the exploitation of natural resources and the associated risks inherent in socio-economic development. The core of environmental tort liability lies in the allocation of societal costs associated with risk, specifically addressing the question of who bears the diminished wealth resulting from environmental damage [25]. Under this framework, even when legal responsibility is imposed on the offending party, it is challenging to trace and establish malicious intent or malicious motives accompanying the conduct [26]. Consequently, it is difficult to satisfy the subjective element required for punitive damages, and judicial authorities are generally unable to support claims for such damages.

Regarding the approach to addressing the dichotomy in the application of punitive damages within environmental private interest litigation and public interest litigation, the author propose that, within

the domain of environmental civil private nuisance claims, a cautious application of punitive damages should be accompanied by a lowering of the threshold for establishing its criteria, thereby granting judges greater discretionary authority.

Firstly, the criterion of "violating legal provisions" as a prerequisite for punitive damages warrants reconsideration. Even if an act does not contravene statutory law, the presence of clear malicious intent and the infliction of significant harm should not entirely preclude the imposition of punitive damages, as doing so would undermine the fundamental purpose of the system. Consequently, as long as other elements of liability are satisfied—namely, that environmental pollution or ecological destruction, even if not explicitly illegal, results in harm to others—such conduct should attract liability for damages or other civil remedies.

Secondly, the interpretation of "serious consequences" should not be narrowly confined to tangible, immediate damages. Potentially severe harm must also be taken into account. Civil rights—whether personal rights, property rights, or purely economic interests—should be equally protected under the law, without hierarchical distinctions. When limiting "serious consequences" to the "serious consequences" of private interests suffering harm, this should not exclude cases where environmental elements such as soil, air, or water are severely polluted or adversely affected, resulting solely in substantial economic losses to others.

Finally, the "intentional" element should be assessed based on an objective standard, encompassing cases of gross negligence. When a defendant's conduct involves gross negligence regarding the potential for causing serious harm, the subjective element of intent is satisfied.

5. Conclusion

Advancing the environmental rule of law is an essential aspect of modernizing human-nature relations towards harmonious coexistence, serving as a robust safeguard for achieving ecological harmony. Punitive damages, as a form of civil liability, represent a significant departure from China's longstanding principle of compensatory damages in the fields of environmental pollution and ecological destruction. The emergence of ecological damage compensation and public interest environmental litigation further exemplifies this evolving legal landscape. Incorporating punitive damages into liability for environmental pollution and ecological harm inevitably raises theoretical conflicts and practical challenges. The question of whether and how punitive damages can be applied to environmental civil litigation is an inevitable outcome of the development of environmental legal governance at a certain stage in China, posing unavoidable issues for both theory and practice. Through reflection, interpretation, and construction of judicial practices and academic perspectives, the principles under which punitive damages may be conditionally applicable in environmental civil public interest litigation can be substantiated both theoretically and practically. As research progresses, the application of environmental punitive damages in private environmental civil litigation—particularly regarding the interpretation of stringent constitutive elements—remains an area requiring more refined rules. This may well constitute the next focus for scholars in environmental law.

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