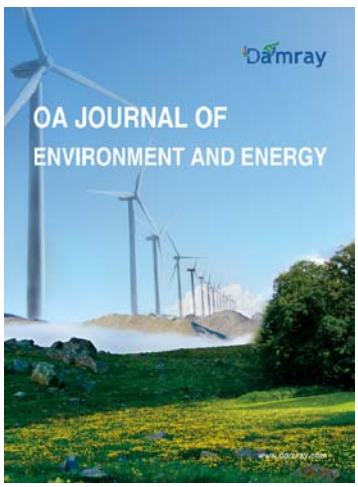
The Connection between Environmental Damage Compensation System and Environmental Public Interest Litigation



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Abstract

The ecological environment damage compensation system is based on the traditional environmental public interest litigation, focusing on reflecting the environmental supervision and protection responsibilities undertaken by the state, and the construction of a special system for relieving ecological environment damage. The existing legal disputes, legislation, and law enforcement conflicts and contradictions between the two systems still need to be resolved and clarified. Therefore, its convergence is necessary and urgent. Constructing a main body of litigation mechanism with administrative organs as the priority and supplemented by environmental protection organizations, perfecting the consultation mechanism is a feasible way to achieve the convergence of the two systems.

Keywords

Environmental damage compensation, Environmental public interest litigation, Institutional convergence

1. Introduction

With the large-scale economic development and construction, the problem of environmental damage has become more and more prominent, which has become a stumbling block hindering China's development. In response to the damage to the ecological environment caused by illegal enterprises, my country has generally adopted a management model based on administrative means for a long time, and basically only adopts single administrative penalties such as fines and orders to suspend production and business. As another remedy, environmental public interest litigation has filled the vacancy to a certain extent, but this judicial method is still in its infancy, and the reality of high requirements for litigation subjects, relatively complicated litigation procedures, and high litigation costs limits to a certain extent that environmental public interest litigation plays a role. In this regard, in order to promote the construction of ecological

civilization, it is very important to explore and establish a compensation mechanism for ecological environment damage. The "Several Provisions of the Supreme People's Court on Hearing Cases of Compensation for Ecological and Environmental Damage (Trial)" (hereinafter referred to as "Several Provisions") promulgated on June 5, 2019 marks that China has added ecological Environmental damage compensation system. Compared with the original environmental public interest litigation, there are many overlaps and vacancies, including disputes over existing legal principles, legislation, and judicial enforcement. The conflicts and contradictions need to be sorted out and clarified urgently.

2. The relationship and division between ecological and environmental damage compensation litigation and environmental public interest litigation

2.1 The basis for the integration of ecological and environmental damage compensation litigation and environmental public interest litigation

In judicial practice, the phenomenon that the two lawsuits overlap and apply to the same case is prominent. The focus of resolving litigation conflicts is the connection between the two, and the necessary premise of the connection between the two litigations is the necessity of integration, that is, there are commonalities between the two litigations, and strict attention should be paid to the division of boundaries. At the same time, attention should also be paid to the differences between them to avoid system confusion.

First, the scope of application of the two overlaps in part, and both are applicable to the behavior of civil subjects that pollute the environment or damage the ecology, but the focus of the two is different. The scope of application basically overlaps with each other, which is also the reason why different subjects bring different lawsuits for the same illegal act of harming the environment, resulting in co-opetition. Therefore, the connection between the two plays a very important role in the improvement of judicial practice for environmental issues. Second, although the purpose of the two types of lawsuits is to protect the ecological environment, they are different in nature. The nature of the ecological environment damage compensation lawsuit is the national interest lawsuit. Different from the traditional environmental public interest lawsuit, the environmental public interest lawsuit is initiated by the environmental protection organization or the inspection agency when the environmental protection organization does not file a lawsuit. It is of the nature of a civil lawsuit. The plaintiff of the ecological environment damage lawsuit, that is, the right holder of compensation is the government, a public authority. Therefore, the two systems have similarities in norm-setting and function in restoring and relieving the ecological environment, but due to the inconsistency of their purpose and orientation, further research is needed on the connection between the two.

2.2 Identification criteria for ecological and environmental damage compensation lawsuits and environmental public interest lawsuits

The main difference between the two is the difference in the subject of litigation. After years of development and improvement, the traditional environmental public interest litigation system has a broad basis for subject participation, and the scope of litigation subjects continues to expand. First, the Civil Procedure Law cancels the requirement that the plaintiff in civil litigation must have a direct interest relationship with the case, leaving legislative space for the subject of the lawsuit. Secondly, the revision of the Civil Procedure Law in 2014 gave social organizations the right to sue, and in 2017, the People’s Procuratorate’s qualification as the subject of public interest litigation was confirmed. The main body of the lawsuit for ecological damage compensation is the administrative organ. In judicial practice, whether the position of the main body of the lawsuit in the two systems is the same in the lawsuit is the key issue of the connection between the two systems [1].

The procedure of environmental public interest litigation has been gradually improved after several years of development. However, the emerging ecological environment damage compensation system is still in the research and exploration stage. The ecological environment damage compensation system is not a branch and refinement of environmental public interest litigation, but a new system design, which exists in the litigation procedure with the current environmental public interest litigation. Divide. There are two typical differences, one is the procedure of prosecution, and the other is the procedure of reconciliation, mediation and negotiation between the parties. In environmental public interest litigation, social organizations and agencies stipulated by law can directly initiate public interest litigation, but the order of people's procuratorates is restricted. However, in the compensation system for ecological environment damage, the absolute pre-negotiation principle is implemented, that is, the administrative organ must consult with the compensation obligatory agent before bringing the lawsuit for ecological environment damage, and if the negotiation fails, the compensation lawsuit can be brought to investigate the liability of the compensation obligatory agent [2].

3. The connection between ecological and environmental damage compensation litigation and environmental public interest litigation

3.1 The premise question: the question of the order of prosecution

As mentioned above, they overlap in the scope of application. In other words, environmental protection organizations or procuratorial organs have filed environmental public interest lawsuits and entered into litigation procedures, but due to the lack of connection with the consultation procedures of ecological environmental damage lawsuits, the compensation obligor has been accused for the same behavior for several times. Therefore, in the case of the same ecological environment damage, it is necessary to clarify the order of action.

According to several regulations, ecological and environmental damages lawsuits and environmental public interest lawsuits can be accepted at the same time. These two litigation systems are parallel in actual judicial activities and contain two situations. The first case is the combination of the two lawsuits, that is, when an administrative authority and an environmental protection organization file a lawsuit against the same environmental damage behavior, the accepting court deals with the contradiction through the combination of the case. On the surface this is a good idea. But the author thinks, two kinds of lawsuit merge trial existence is improper. Due to the particularity of the litigation procedure of ecological environmental damage compensation, different from the environmental public interest litigation, there is a pre-consultation procedure. The combined trial ignores the difference between the two systems and simply considers the same procedure.

The second situation is to choose one to hear the claims of two kinds of lawsuits. However, the "Several Provisions" did not make detailed provisions, which need to be further stipulated in detail. In actual judicial practice, most of the courts take ecological damage compensation lawsuits first, which is also the method that the author agrees with. The administrative organ, as the right holder of compensation, has priority in the lawsuit for ecological damage compensation, which is conducive to saving judicial resources. After all, environmental protection organizations or their inspection agencies are not as efficient as public power governments. Because in the administrative management, the administrative organ has investigated and dealt with the behavior of damage to the environment, but only because the administrative means cannot fully pursue the responsibility of the obligor of compensation and use judicial means to recover it. At the same time, prioritizing the litigation for ecological and environmental damage is also conducive to solving the enforcement problem of the compensation obligor. After all, the deterrence of environmental protection organizations is not as effective as the government. Some scholars have also pointed out that if the ecological environment damage compensation lawsuit is given priority, the enthusiasm of the environmental public interest litigation in reality will be suppressed, which is not conducive to the development of this system. The author believes that there is a more efficient solution for the same environmental damage behavior. Of course, it is necessary to choose the best, and there is no need to worry about it. Environmental public interest litigation is still useful. After all, not every behavior that damages the ecological environment, the administrative organ will File a claim for compensation.

3.2 The problem of results: the problem of responsibility

There are two levels of responsibility in the ecological environment damage compensation system, horizontal and vertical, which are to solve the relationship between restoration responsibility and compensation responsibility and the problem of repeated compensation by the responsible party in repeated lawsuits.

An important working principle emphasized in the "reform plan" is that the environment has value and that damage is responsible. Because of the damage to the ecological environment, the administrative organ has taken responsibility for it by administrative means, such as fines and orders to suspend production and business. However, the restoration effect of administrative measures on environmental damage is limited and cannot fundamentally solve the problem. If an environmental public interest lawsuit is filed, monetary compensation has already been demanded in the relevant lawsuit, and the environmental protection organization or the procuratorial organ also pays more attention to the recovery of property damage, and does not take the restoration of the ecological environment as the focus of the lawsuit. At the same time, because the management and use system of restoration funds in environmental public interest litigation has not been effectively established, the effect of using funds for restoration is minimal. In exploring the ecological environment damage compensation system, the ecological environment restoration responsibility is the first, and the compensation for losses is the second responsibility. Make remediation responsibility a key point in litigation and future enforcement to make up for the insufficiency of administrative means and environmental public interest litigation. However, compensation for losses is also an indispensable means. When it is difficult to restore the environment, only monetary compensation can be made to make up for the losses. The ecological environment damage compensation

lawsuit directly regards the administrative organ as the right holder of compensation, and directly transfers the restoration funds to the government for management and use, and supervises the responsible person to restore the environment. However, neither the "Reform Plan" nor the "Several Regulations" have strict regulations on the amount and scope, which will lead to the same environmental damage behavior that may make the responsible person bear three responsibilities. This leads to the second problem, the problem of repeated compensation, which is also an important issue in improving my country's ecological environment restoration responsibility system.

While building a legal network for environmental lawbreakers, legislators have invisibly ignored a basic modern administrative rule of law principle, the principle of non-punishment. In reality, the responsible person has already paid a fine or assumed other responsibilities when taking the responsibility of administrative means, and then lost the lawsuit for ecological damage compensation, resulting in paying a certain amount of monetary compensation. Is the responsible person at this time constituted? For repeated compensation, whether the administrative agency violated the principle of "neither penalty" [3]. The author believes that, first of all, administrative responsibility and civil responsibility should be distinguished. In the administrative means, the responsible person bears the administrative responsibility, which is different from the responsibility that should be borne in the environmental public interest litigation, and does not constitute repeated compensation. However, in the environmental public interest litigation and the ecological environment damage compensation lawsuit, although the nature of the lawsuit is different, they are aimed at the essential behavior of destroying the ecological environment. For the environment, if the compensation is doubled, the responsible person will bear excessive punishment, and it may also lead to the improper use of funds by the relevant departments and corruption. On this issue, a unified compensation system for the three should be established to avoid repeated compensation. That is to establish the rules for the coordination and independent calculation of the amount of compensation for ecological damage, the amount of administrative fines and the amount of criminal fines [4].

4. Procedural and Mechanism Guarantee for Litigation of Compensation for Ecological Environmental Damage

4.1 The construction of the litigation subject mechanism

The first question is the order of the two lawsuits. When arranging the order of the subject of the lawsuit, the attributes, functions and functions of the plaintiff should be considered first, and at the same time, whether it can represent the public interest of the environment to the greatest extent, so as to achieve the expected environmental protection effect. Some scholars suggest that considering the current situation in my country, it is more reasonable not to set the order of prosecution, because due to the deterrence and authority of the administrative organ of the compensation right holder, the public welfare organization is on the weaker side, and the environmental public interest litigation has a strong foothold [5]. However, if the order of prosecution is not set, the existing litigation will be chaotic, and administrative agencies and environmental protection organizations will all file lawsuits, which will inevitably lead to a waste of litigation resources.

The second proposition is that, according to the standard of the strongest public interest representation, having environmental public interest representation and having a certain authority is a necessary requirement for a subject to be prosecuted [6]. According to this standard, the administrative organ as the right holder of compensation for ecological environmental damage compensation has a relatively dominant position, which is also the order model preferred by the author, that is, ecological environmental damage compensation is given priority, and environmental public interest litigation is supplemented. First of all, administrative organs have the convenience of discovering cases of ecological and environmental damage, and they have funding guarantees. The priority of ecological and environmental damage compensation litigation can solve the problem of uneven litigation caused by powerful infringers fighting against relatively weak environmental protection organizations. At the same time, administrative organs are not for-profit and can achieve the effect of environmental damage recovery objectively and neutrally, and better ensure the effective execution of litigation judgments to achieve the effect of restoring the ecological environment [7].

The second question is whether an environmental public interest lawsuit can be filed again after an ecological environment damage compensation lawsuit is filed. The author believes that after filing a lawsuit for damages to the ecological environment, it is generally not possible to file an environmental public interest lawsuit. First of all, on the issue of the order of the two, the administrative organs are given priority, and the environmental protection organizations are supplemented. Therefore, when two lawsuits are filed at the same time or at the same time, the accepting court should consider the environmental public interest litigation after the ecological environment damage compensation lawsuit has been heard. If the environmental protection organization has a new lawsuit request, it will be allowed to file an environmental public interest lawsuit, otherwise it will not be accepted. This prevents the problem of repeated prosecutions

for the same claims, avoids wasting litigation resources, and, based on the powerful public power status of the administrative organs, will be held accountable for acts that damage the ecological environment. Because the ecological environment damage compensation lawsuit is a pre-negotiation, before the lawsuit, the administrative organ has already communicated and communicated with the responsible person, and the administrative organ already has more information and evidence than environmental protection organizations when using administrative means. This gives administrative organs an advantage over environmental public interest lawsuits brought by environmental protection organizations when filing lawsuits for damages to the ecological environment.

4.2 Convergence of negotiation proceedings

The "Several Provisions" make it clear that consultation is the pre-procedure for filing a lawsuit, and realizing the mutual coordination and cooperation of the two means of consultation and lawsuit is the premise for the people's court to hear the ecological environment damage compensation case well. The connection between the negotiation and the litigation procedure can be divided into two aspects, one is the negotiation before the litigation, and the other is the judicial confirmation procedure after the successful negotiation.

Before resolving the issue of the connection between negotiation and litigation procedure, the nature of negotiation should be determined first. In the traditional litigation system, negotiation belongs to the consent behavior of civil subjects before, during or after litigation, but negotiation in ecological environment damage compensation is a necessary procedure before litigation [8]. Negotiation is still the way for administrative organs to exercise public management functions, and the compensation agreement reached after negotiation is only a mutually binding administrative agreement. Therefore, the nature of negotiation can be viewed from two aspects. From the perspective of the purpose of negotiation, negotiation reflects the administrative objective of environmental supervision and has an administrative nature; from the perspective of dispute resolution, the contractual nature of negotiation is the embodiment of private law. Therefore, the administrative nature with the color of private law is the nature of the negotiation of ecological environment damage compensation. If the negotiation is successful, the effect of reducing disputes through judicial channels and saving judicial resources will be achieved. However, in the connection between the negotiation procedure and the litigation procedure, the existing system is still not comprehensive enough to solve the problems in reality.

There is no stipulation on when the consultation will start. The "Reform Plan" only stipulates that both parties can negotiate before filing a lawsuit for ecological damage compensation. There is no specific time. More precisely, it does not take into account the external impact of environmental public interest litigation. That is, at this time, environmental protection organizations or procuratorial organs may have filed an environmental public interest lawsuit against the case, or they are in the process of reconciliation or mediation, whether they can initiate consultation at this time. If the settlement or mediation has already been settled and the consultation is initiated, it will inevitably lead to a waste of human and material resources, and the delayed time may lead to the failure to remedy the ecological damage in time and expand the loss. Therefore, it is very important to choose the best time to start the consultation. As mentioned above, it is suggested to establish the priority order of administrative organs as compensation rights holders, so consultation should be given priority in the whole ecological environment damage case.

5. Conclusion

The purpose of the exploration of the compensation system for ecological environment damage is to ensure the effectiveness of judicial enforcement by means of the intervention of the state's public power. This is not only to promote the reform of the ecological system, but also to break the limitation of the civil litigation system of "emphasizing personal property and neglecting the protection of the ecological environment". However, there is some overlap in the system design of the ecological environment damage compensation lawsuit and the environmental public interest lawsuit, and the system and coordination of the two are insufficient, and the environmental interests of citizens cannot be fully realized. In order to adapt the ecological environment damage compensation litigation system to the social development situation and realize the connection with environmental public interest litigation, it is necessary to clarify the relationship between administrative power and judicial power, and establish a system construction with consultation as the core, and build a "environmental restoration" as the guide. In the event of damage to the ecological environment, the administrative organs should be the first priority to remedy the ecological damage, and environmental protection organizations and procuratorial organs should be used as supplements, so as to build ecological harmony and achieve an effective connection between the two systems.

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