

Causality recognition of environment law on Ecological Environment damage liability--A study based on Chinese regulations and cases

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Abstract: At present, the research on the ecological environment damage system is insufficient, which has a negative impact on the judicial application and the unification of the legal system. Among the ecological environmental damage system, the determination of responsibility is undoubtedly the most critical. Therefore, this dissertation only selects the element of causality to carry out research. Specifically, on the basis of defining "ecological environmental damage". Then, it focuses on the causality of ecological environmental damage liability in China, through the research of judicial practice of causality determination. Finally, the paper puts forward a solution for the identification of causality in China's ecological environment damage liability, based on the theory of presumption of causality, and the burden of proof as a supplementary system.

Keywords: Ecological Environment Damage; Environment Law; Determination of Liability

Introduction

For decades, the jurists have concentrated on specific issues of ecological environment damage. They gained agreement last century and claim that "the most critical question in determining whether or not a public interest case is established is the causal connection between acts and effects". (Harada Naohiko, 1999) Since 21st century, China has been committed to strengthening environment security to confront of the ecological damage, which means China is resolved to promoting system and original green revolution, utilizing strict society legal system to preserve environment. However, the acknowledgement of causation is always accompanied by difficulties and controversies. The evolution of the law should keep pace with the passage of time as well, as should the speed of change itself. The purpose of this study is to encourage the formation of an ecological compensation system and to advocate for a new solution to old legal difficulties in order to ensure the well-being of humanity's common future.

1. The definition of ecological environment damage

From the standpoint of legal history, the discovery of natural science guides the creation of legal concepts. By the improvement of human civilization's awareness of ecological environmental damage, the relevant legal concepts and systems of ecological environmental damage have been gradually improved. In fact, there is no unified concept of specific damage caused by environmental pollution or ecological damage at home and abroad. "In Anglo-American law, 'environmental pollution' is often used to express; while Japan and Taiwan, which are deeply influenced by the German legal system and culture, use the form of 'pollution'." (Lv, 2007) Similarly, there are countless discussions by domestic scholars. In the conclusion, it is widely recognized that ecological environmental damage refers to the damage caused purely to the ecological environment, but not all distinguish environmental damage from infringement.

Professor Sun (2019) argued: "Environmental damage points to environmental public interests; the goals of the two are different. The purpose of setting environmental tort liability is to remedy personal and property damage caused by the environment as a medium, while the purpose of setting ecological environment damage liability is to remedy the damage to the earth's ecological environment itself."

Criticisms from academia are incessant, but the determination of legislators cannot be ignored. In China, the outdated Tort Liability Law stipulates that the types of acts related to environmental torts are too narrow: "Specific damage to personal,

property and other rights and interests” and “pure ecological environmental damage caused by two types of behaviors such as polluting the environment and destroying the ecology”. Relevant evidence shows that in the revision process of the Civil Code, legislators have long recognized this problem and decided to achieve unified relief for private and public rights and interests caused by environmental pollution or ecological damage. Before new regulations are issued, scholars and judicial personnel will apply such regulations and judicial interpretations, until one day the ecological environment damage is regulated by environmental law and public law.

Nowadays, laws and regulations in China generally stipulate "damage" in the "Tort Liability", which leads to an unfavorable situation in the relief of ecological environment damage. This article will refer to the definition issued by the Ministry of Ecology and Environment, and try to distinguish it from environmental infringement.

The definition of ecological environmental damage is the occurrence of human ecological destruction, endangering the physical and chemical composition of the entire natural environment medium and even the functions of the earth's ecosystem.

2. The status survey of causality's determination

2.1 The basic rules for causality are scarce

With the accelerating pace of ecological civilization construction, it is imperative to improve the legal system of ecological environment. At present, though, a legal and normative system centered on the harm caused by environmental torts has been established, regulations have not made clear provisions when it comes to the problem of damage to the ecological environment itself. On account of the widespread use of improper application in the practice of ecological environmental damage, the phenomenon of causality determination rules for environmental torts may not only make the defendant excessively responsible, but also may be disadvantageous to the relief of the ecological environment.

There are obvious differences between ecological environmental damage, traditional civil tort and environmental tort in terms of harmful behavior and damage results. Therefore, the particularity of such damage should be considered when citing traditional environmental tort theory.

Causation is of vital importance part of the establishment of liability for damages. The notion has incurred a research upsurge in the academic community on the causal relationship of environmental torts, resulting in considerable academic achievements. However, after careful review of these theoretical studies, it is indicated that there is no research related to the determination of the causal relationship of ecological environmental damage liability. The long-term forgetting attitude in the field of civil law and environmental law has resulted in the incomplete construction of the relevant theories on liability for ecological environmental damage.

2.2 The inherent defect in the inversion of the burden of proof

While the inversion of the burden of proof is in application, once the defendant fails to disprove the causation between the act and the effect, the judge of course ascertain that a causal link between the damaging act and the result is proved, stemming from Article 4, Paragraph 3 of my country's "Several Provisions on Evidence in Civil Procedures" and Article 66 of the Tort Liability Law, which itself is the absolute inversion of the burden of proof, that is, as long as the plaintiff submits acts and evidence of the fact of damage, in turn, require the defendant to disprove the causal relationship. In addition, according to a survey on the status quo of environmental justice in China, the proportion of causality determined by the inversion of the burden of proof rule accounts for about 50%. Undoubtedly, the absolute inversion of the burden of proof can indeed allow the plaintiff to crash the barrier of proving causality and achieve more advantageous protection. However, it is undeniable that this move is also likely to lead to the proliferation of lawsuits, and at the same time increase the litigation burden on the defendants.

3. The advice and solution to improving the system of environment law

3.1 Clarify the concept of ecological environmental damage

The judicial interpretation has recognized that ecological environment damage refers to the damage to the ecological environment itself caused by polluting the environment and destroying the ecology. However, there are still disputes within academia about its meaning; just as the statutes on which the courts decide cases are different. Ultimately, theoretical researchers and some practical departments need to change the way of thinking of confusing types of environmental infringement and ecological environmental damage, and accurately grasp the differences and connections.

3.2 Confirm the basic rules for presumption of causality

The presumption of causality may have a favorable function. Because the formation of ecological environment damage is latent, complex and cumulative, it is approximately impossible to prove the inevitable causality between various damage effects and damage facts. The reason is that the real world is in motion, and the law is hard to rely on a single standard for the determination of causality, and it is often the case that theoretical innovations are constantly carried out with the development of practice, and the presumption of causality is a process that keeps pace with the times. The establishment of an identification system based on the presumption of causality is not only conducive to the relief of environmental public welfare, but also can better deal with new problems arising from practical development.

3.3 Establish the auxiliary rule of "who claims, who gives evidence"

As mentioned earlier in this article, some representatives from the academic and practical circles continue to apply for ecological and environmental damage cases. The inversion of the burden of proof has been opposed. Considering that the plaintiff in the ecological environment damage compensation case has mastered key evidence in the stage of administrative law enforcement and demonstrated a strong ability to provide evidence, the plaintiff is required not only to be responsible for the defendant's environmental pollution, ecological damage and other circumstances that should be held liable according to law, including the burden of proof, the corresponding burden of proof for the damage to the ecological environment, the cost of ecological restoration, the specific amount of damages, and even the correlation between the defendant's environmental pollution, ecological destruction and ecological environmental damage. The author suggests that the legislative department or the judicial department should clearly define the principle of distribution of the burden of proof in the ecological environment damage compensation lawsuit, that is, the inversion of the burden of proof should not be applied.

References

- [1] Nan JY. Ecological and environmental damage: from scientific concept to legal concept [J]. Hebei Law. 2018(11).
- [2] Lv ZM. Legal Analysis of "Compensation for Ecological environment Damage" [J]. The Law Forum. 2017(3).
- [3] Chen XK. Analysis on the causal relationship of ecological and environmental damage liability [M]. Journal of Chongqing University of Science and Technology (Social Science edition). 2019(1).
- [4] Lv ZM. Principles of Environmental Law [M]. Shanghai: Fudan University file edition club. 2007.
- [5] Cai SQ, Haiyan: "Also talk about environmental damage from the European Union's Environmental Responsibility directive on Preventing and Remedi Environmental Damage", Journal of Henan Institute of Political Science and Legal Management Cadres, No.3, 2005.
- [6] Sun YH, Wang Q: " Research on the green regulation limit of the Tort Liability Section of the Civil Code: Pay for the ecological and environmental damage liability under the 'division of public and private undertakings' Dissent into the Civil Code", Journal of Gansu University of Political Science and Law, 05, 2019.