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Legal Effect of Private Remedies for Wildlife Damages

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Abstract:

As China's ecological protection has increased, the number of wildlife populations has increased, and human-animal conflicts in areas where the ecological niches of humans and wildlife overlap have intensified. Private remedies for wildlife damage are that the subject who suffers from wildlife damage or is threatened by wildlife damage and relies on private power to take measures to safeguard his or her rights and interests. The legal effect of the private remedy for wildlife damage is reflected in the local government's obligation to compensate and prevent, the procuratorate's obligation to supervise the government's administration and initiate administrative public interest litigation, as well as the obligation to file lawsuits against the subject of private remedies, the court's obligation to conduct a reasonable trial, and the criminal liability or civil liability of the subject of private remedies.

Keywords: Wildlife conservation law;Human-wildlife conflict;Private remedies; Wildlife damage;Legal effect.

1. Introduction

As China's ecological protection efforts increase, the number of wildlife populations increases, and the phenomenon of wildlife inflicting harm on humans becomes more and more serious. Article 19 of the Wildlife Conservation Law of the People's Republic of China (hereinafter referred to as "Wildlife Conservation Law") stipulates that the local government shall compensate for the wildlife damage, however, in practice, the local government often neglects to establish a compensation system due to the lack of funds, and even if there exists a compensation system, there are complexities of determining certain damage, the amount of compensation is relatively small, and compensation is delayed and there is no perfect rules of the damage and the problem of compensation is insufficient. In order to safeguard their legitimate rights and interests, some citizens use private remedies to protect their personal and property rights and interests, but at the same time, they cause harm to state-protected wildlife, which violates the criminal law, and in practice, suspects are often held criminally liable, and such cases of killing wild animals to prevent them from destroying farmland are often a source of controversy in society.

In order to balance the protection of wildlife and the right to survival of citizens, especially aborigines, on 8th April 2022, the Supreme People's Court and the Supreme People's Procuratorate issued the Interpretation of Several Issues Concerning the Application of Laws to the Handling of Criminal Cases of Destruction of Wildlife Resources (hereinafter referred to as the Judicial Interpretation). From the point of view of legal interpretation, the judicial interpretation for some special circumstances is not stipulated yet, and the stipulated circumstances lack uniform application standards. In view of this, this article takes the issue of private remedy or wildlife damage as the entry point, analyses the legal effect of private remedy for wildlife damage from the attribution of legal responsibility for private remedy, and improves the compensation measures for wildlife damage in various aspects and from multiple angles and proposes the operable path to improvement.

2. Definition of the legal effects of private remedies for wildlife damage

2.1 The concept of wildlife

At the legislative level, article 2 of the Wildlife Conservation Law stipulates: "The wildlife protected under the provisions of this Law refers to precious and endangered terrestrial and aquatic wildlife and terrestrial wildlife with important ecological, scientific and social values." The terms "terrestrial wildlife" and "aquatic wildlife" are set out in detail in the Implementing Regulations for the Protection of Terrestrial Wildlife and the Implementing Regulations for the Protection of Aquatic Wildlife respectively. According to this article, wild animals can be categorised as precious and endangered terrestrial and aquatic wild animals and "three kinds" of animals. The Act defines the scope of wildlife protected under the Act and does not define the meaning and scope of wildlife.

This issue is somewhat controversial in the academic community. Generally speaking, when discussing the concept of wild animals, it is indispensable to explore the concept of "domesticated". According to the literal understanding, wild animals refer to "non-domesticated" animals living in the wild, but "wild" and "domesticated" are far from being a simple dichotomy. However, "wild" and "domestic" are far from being a simple dichotomy (Jiang, 2023). The legal profession has concluded that there are two types of wild animals, one is animals that survive in a natural and free state, and the others are animals that originate from a natural and free state and have not been tamed in a short period of time (Chang, 2011; Sun, Wang, Li, 2012; Ma, Jia, 2004). This paper discusses the legal effect of private remedies for wildlife damage, and the responsibility and duty to provide remedy after the damage is attributed to the government, which should exclude the possible application of tort liability law. This paper adopts the definition of "all kinds of animals that are not domesticated and live in their natural state" (Wang, 2014).

2.2 The concept and characteristics of wildlife damage

2.2.1 The concept of wildlife damage

Damage in the sense of civil law is caused by certain events or behaviours that bring people personal or property disbenefits, i.e., bad consequences or bad states (Peng, 1997). Therefore, the connotation of wildlife damage is also caused by wildlife activities in the citizen's personal or property adverse consequences or bad state, that is, wildlife activities to the victims of personal and property disbenefits.

2.2.2 Characteristics of wildlife damage

(1) The causes of wildlife damage are complex. On the one hand, the implementation of ecological protection policies or the invasion of exotic species in certain areas without natural enemies has led to the gradual growth of wildlife populations. On the other hand, as the population grows, the areas where wild animals used to live are exploited and the living space of people and wild animals overlap. In addition, changes in the ecological environment may also lead to a lack of food for wildlife, thus forcing wildlife to forage for domestic animals and crops. The prohibition on hunting has also, to some extent, made wildlife much less fearful of humans (Tsering, 2010). Such factors often co-exist and interact with each other in wildlife killings, leading to considerable complexity in the occurrence of wildlife killings.

(2) The consequences of wildlife damage are diverse and are reflected in direct and indirect damage to persons and property. Attacks by wild animals can cause direct damage to people, and in serious cases can lead to physical disability and loss of ability for labour; additional medical expenses and loss of work; crops being eaten and trampled by wild animals; livestock being preyed upon by wild animals; and facilities being damaged (Cao, 2008). In addition, the costs incurred by victims or individuals threatened with harm by wildlife for measures taken to prevent damage caused by wildlife are also a form of indirect damage.

(3) The perpetrator of the act of damage in the case of wildlife damage does not have subjective qualifications. There has been a debate in the academic circle about whether animals can have legal personality. Professor Yang (2004) thinks that there are many varieties, huge differences between animals, and the concept of legal personality cannot be unlimited expansion, so it is not suitable for animals to have legal personality. Based on the current legislative status and practical operation point of view, this paper is in favour of Professor Yang Lixin's view. Therefore, other subjects should bear the responsibility of wild animals. China's legislation does not specify the ownership of wild animals belongs to the state, but the wildlife law provides that wildlife resources belong to the state, that is, the state is the owner of the wild animals, this paper believes that reference should be made to the principle of the tort liability law, the wild animals caused harm by the state to bear the tort liability.

2.3 The meaning of private remedies for wildlife damage

Remedy arises from the premise of injury. Remedy is "the right to correct, redress, or wrongdoing that has caused injury, harm, loss, or damage (Walker, 1988)." The definition of private remedy varies among scholars. Civil law scholars believe that remedies include both private and public remedies, and that private remedies are those in which the subject of the right relies on his own power to remedy the infringed right under the conditions permitted by law (Xu, 2005). This general theory emphasises the legitimacy of its private remedy, which is basically limited to acts of self-defence, emergency avoidance and partial self-defence, and excludes all unlawful acts. Scholars of civil procedure law consider private remedies to be one of the civil dispute resolution mechanisms (the remaining two being social and public remedies), including self-determination and reconciliation (Cai, 2019). Xu Xin also defines it as the parties' determination that their rights have been infringed upon, and in the absence of a third party to intervene in the name of neutrality in the dispute resolution, they rely on their own or private power to resolve the dispute and realise their rights without the aid of the state organs or through the statutory procedures.

Both of these statements emphasise that private remedies are a dispute resolution mechanism for disputes without recourse to public power.

With reference to the above definition, not all "private remedies" for wildlife are strictly legal in practice. The Wildlife Conservation Law stipulates that in case of emergency when wildlife endangers human safety, those who take measures to cause damage to wildlife shall not be liable under the law. However, taking preventive measures beforehand that cause damage to wildlife, or counter-attacks against on-the-spot destruction of people's property that cause wildlife damage are likely to be found illegal, and in serious cases will be held criminally liable. Therefore, this paper considers and discusses private remedies for wildlife damage as the subject who suffers from wildlife damage or is threatened by wildlife damage and relies on private power to take measures to safeguard his or her rights and interests. The elements are broken down, i.e., the subject is any individual who suffers from or is threatened by wildlife damage, the object is his or her own rights and interests, and the way is to rely on his or her own strength.

2.4 What is the effect of private remedies for wildlife damage

This paper discusses the legal effect of private remedies for wildlife damage, which refers to the legal effect of the act of private remedies for wildlife damage, i.e., the creation of possible rights and obligations for individual subjects and subjects of public power throughout the entire process from the initiation of private remedies (the occurrence of damage, or the realistic possibility of its occurrence) to the treatment of the results of private remedies.

From the perspective of the causes of private remedies, if wild animals harm the rights and interests of individuals, according to articles 18 and 19 of the Wildlife Conservation Law, local governments have the obligation to take measures to prevent possible wildlife damage and to compensate people who have suffered personal and property damage. In order to ensure that the compensation can be implemented, the local government should formulate comprehensive compensation rules in accordance with the requirements of the Wildlife Conservation Law. If the government's compensation rules are inadequate or not formulated so that compensation is not in place, the local procuratorate should assume the function of administrative supervision, make procuratorial recommendations to the government, and initiate administrative public welfare litigation against it when necessary.

From the perspective of the results of private remedies, if the behaviour of the subject of private remedies destroys wildlife resources, he or she may be subject to civil liability; if the circumstances are serious, he or she may be subject to criminal liability. Therefore, the Procuratorate is obliged to file appropriate lawsuits against the subject of private remedies, and the court should accept the lawsuits and try them reasonably, so as to eliminate the mechanical justice. The wildlife list is a standard document for the accountability of private remedy, and its appropriateness to the region and the times directly affects the reasonableness of the responsibility of the subject of private remedy, so the wildlife list-making organ should bear the obligation to make reasonable and regular modifications to it.

3. The realistic situation of the legal effect on private remedies for wildlife damage

3.1 Legal overview of the legal effect on private remedies for wildlife damage

3.1.1 Legal responsibility

(1) Criminal liability of subjects of private remedies for wildlife damage

The 1979 Criminal Law for the first time made wildlife an object of criminal law protection, marking the beginning of criminal law protection of wildlife in China. Article 341 of the current Criminal Law provides for the offences of endangering precious and endangered wildlife, illegal hunting and illegal hunting, acquiring, transporting and selling of terrestrial wildlife, respectively, all of which can potentially be used to convict and punish acts of endangering wildlife.

On 9 April 2022, the Supreme People's Court and the Supreme People's Procuratorate jointly issued a judicial interpretation of paragraph 2 of article 341 of the Criminal Law, which sets out in greater detail the "aggravating circumstances". The regulations stipulate that, for the violation of hunting laws and regulations to damage wildlife resources, from the number of prey, value and hunting methods, means and other aspects of the analysis, if it is considered that the damage caused to wildlife resources is obviously small, then taking into account the hunting motives, purposes, and the perpetrator took the initiative to be subjected to administrative penalties, and took the initiative to restore the ecological environment of the circumstances may be regarded as the crime of the circumstances are relatively minor, will not be prosecuted or exempted from criminal penalties. Those who are obviously minor and do not cause much harm shall not be punished as a crime. The Judicial Interpretation has lowered the sentencing criteria for killing wild animals, but objectively there are still problems such as the lack of pro-

visions for special circumstances and the lack of uniform standards for the application of specific provisions. On the other hand, when it comes to justifiable defence, if the act falls within Article 22 of the Criminal Law, the person involved shall bear criminal responsibility, but be given a mitigated punishment or be exempt from punishment.

With regard to the identification of "precious and endangered wildlife" in the category of crimes of destroying wildlife resources, Articles 1 and 4 of the Judicial Interpretation enumerate the extensions of the "precious and endangered wildlife under the State's key protection" covered in Articles 151 and 341 of the Criminal Law, including "wildlife listed in the List of Wildlife under the State's Key Protection".

(2) Civil liability of subjects of private remedies for wildlife injuries

Article 1229 of the Civil Code stipulates that: "Where damage is caused to another person as a result of polluting the environment or destroying the ecology, the infringer shall be held liable for the infringement.", and the subjective element follows the principle of no-fault liability. Wildlife harm private remedy behaviour destroys wildlife resources, that is, destroys the ecological environment, regardless of whether the motive of its behaviour is justified or not, should bear tort liability according to law. Unlike the punitive nature of criminal liability, environmental tort liability focuses on the tortfeasor's compensation for the damage to the ecological environment, i.e., the responsibility to repair the ecological environment. Meanwhile, if the act falls within Article 181 and Article 184 of the Civil Code, namely force majeure and emergency evacuation, the person involved shall bear civil responsibility, but be given a mitigated punishment or be exempt from liability.

Due to its own civil liability nature, ecological environment restoration liability can only be applied to civil cases, but cannot be invoked in criminal cases to remedy the damaged ecological environment (Mi, Luo, 2022). Therefore, in private remedies for offences against wildlife resources, the ecological environment restoration responsibility of the infringer is often pursued in the form of incidental civil public interest litigation.

3.2 Practical review of the legal effect of private remedies for wildlife damage

3.2.1 A practical review of the frequency of wildlife damage

At present, some areas in China have serious human-animal conflicts, which pose a threat to the local people's property, life and health, and many scholars have conducted research on the losses caused by wildlife infestation. Wu (2023) and other scholars conducted research on wildlife damage in the northeastern region of the Taihang Mountains from 2019 to 2020, and 89 percent households had suffered from wildlife damage, which caused extensive losses. In Sanjiangyuan National Park, wildlife damage is also widespread, according to Zhao (2022) et al.'s study, there were 5,295 cases of wild animals attacking livestock, 14 cases of human casualties, and 238 cases of brown bears damaging their homes, making human-animal conflicts more intense. In order to avoid property damage and threats to personal safety, herders in the region have been forced to give up economic activities such as collecting antlers, and have even chosen to relocate their families at high cost (Su, Ren, Yuan, Wen, 2022). Dawa Tsering (2010) conducted a study on human-animal conflict in Shenzha, Shuanghu and Nyima counties in the Nagchu region of Qiangtang, northern Tibet, and found that 87 per cent of households had suffered from different forms of conflict, and 49 per cent said they had been affected.

In October 2022, I conducted a field survey in the rural areas of northwestern Chongqing Municipality and distributed 144 questionnaires. According to the results of the questionnaires, 79.17% of the respondents lived in areas where there were large numbers of wild animals; 94.44% of the respondents had suffered or heard of people around them suffering from wild animal damage, and the type of damage was mainly property damage, accompanied by a certain frequency of personal injury. From the interviews with the farmers, it was learnt that in the northwestern part of Chongqing, weasels, sparrows and rabbits are the most common types of wildlife damage. These wild animals have a strong ability to escape, which makes it difficult to catch them, and that the farmers there are unable to do anything about the phenomenon of wildlife damage.

3.3 Judicial practice of private remedies for wildlife damage

In order to understand the objective reality and current status of adjudication of private remedies for wildlife damage, judgements of relevant cases in China were collected, resulting in 228 first-instance criminal judgements and 137 decisions not to prosecute, for a total of 365 judicial cases. I adopted a keyword-dispersed search method in the advanced search field of judicial cases in Beida Fabo, typing in turn "illegal hunting offence" (subject matter) "criminal first instance" (type of case) "judgement " (type of instrument) "crops"/"agricultural crops" (full text in the same article), and obtained 300 criminal first instance judgements. In order to collect cases as comprehensively and fully as possible, in the advanced search field "illegal hunting" (title) "crops"/"agricultural crops" (full text) " Decision not to prosecute" (type of instrument), 143 deci-

sions not to prosecute were obtained. By integrating and analysing the judicial treatment of these cases, the following conclusions were drawn.

Tab. 1 Statistical table on the judicial handling of illegal hunting offences resulting from private remedies for wildlife damage.

Year	Discretionary non-prosecution (cases)	Number of judgements at first instance (cases)	Outcome					
			Exempton from criminal punishment	Limited term of imprisonment (i.e. Anything less than life imprisonment)	Detention	Suspended prison sentence	Control	Single penalty
2014	0	6	0	6	0	6	0	3
2015	0	6	0	2	0	1	0	4
2016	0	10	0	5	8	12	0	0
2017	0	9	4	1	2	2	1	4
2018	1	29	1	10	12	17	0	10
2019	9	45	0	26	13	30	2	15
2020	36	87	5	33	51	64	4	18
2021	79	24	1	10	16	21	1	5
2022	12	12	0	7	3	6	1	1
Total	**137**	**228**	**11**	**100**	**105**	**159**	**9**	**60**

It can be seen from the above table that the proportion of non-custodial sentences (control, probation, and single fines) applied to illegal hunting offences resulting from private remedies for wildlife infliction is high, and the perpetrators in the vast majority of cases do not need to be restrained in their freedom of conduct. And by analysing the number of discretionary non-prosecution cases, the rate of discretionary non-prosecution of illegal hunting offences resulting from private remedies for wildlife damage by prosecutors' offices has increased since 2020, resulting in more cases not needing to go through a trial. The reason for this is simply that private remedies are a desperate attempt to protect one's own rights and interests, and the subjective malice and social harm are very small compared to traditional illegal hunting offences. Moreover, the imprisonment sentence prevents the perpetrator from engaging in labour, which leads to a reduction in agricultural production and an increase in the financial pressure on the family. This approach not only fails to avoid the occurrence of private remedies, but also reduces the credibility of the law and leads to the intensification of human-animal conflicts.

Therefore, in order to reconcile this contradiction, current judicial practice mainly adopts the approach of discretionary non-prosecution and non-custodial sentences to ensure that the perpetrator carries out his agricultural labour normally. However, the application of discretionary non-prosecution and non-custodial sentence is still based on the premise that the behaviour of the perpetrator constitutes a crime, from the viewpoint of the masses of simple legal feelings, to defend their rights and interests of the farmers on the "crime" label is obviously unreasonable. Discretionary non-prosecution and non-custodial sentences are also only a palliative measure to balance the conflict between citizens and wildlife, rather than an optimal solution.

3.4 Practical review of the wildlife damage compensation system

The Wildlife Conservation Law stipulates that compensation standards for damage caused by wildlife are to be set by local governments. In the course of judicial practice, such a compensation system is often inadequate and fails to provide adequate compensation to victims.

In the Shandong Liu administrative litigation case, the plaintiff Liu, whose son was killed by a wolf, requested the court to recognise the local government's failure to formulate compensation standards for wildlife injuries in accordance with the Wildlife Conservation Law, which resulted in the plaintiff's inability to receive appropriate compensation for the corresponding damages. The Court of First Instance held that the local government's act of formulating the wildlife compensation scheme in accordance with the Wildlife Conservation Law was an abstract administrative act, and dismissed the case on the ground that it did not fall within the jurisdiction of the People's Court. The court of second instance dismissed the appeal

on the same grounds.

In the administrative litigation case of Li in Sichuan, the plaintiffs, Mr and Mrs Li, were attacked by a black bear, a protected animal, during the course of their agricultural work, and both of them suffered serious disabilities as a result. Then they applied to the local government for compensation for the damage caused by the wild animals. However, because the Sichuan province at that time did not formulate the wildlife damage compensation scheme, they did not get the corresponding compensation. The two filed an administrative lawsuit with the Chengdu Intermediate People's Court, requesting the court to sentence the local government to bear their treatment costs. The Court of First Instance held that there was no legal basis for the couple to be compensated because the local government had not formulated a corresponding compensation scheme, and the Court of Second Instance made the same judgement, but at the same time granted the couple's request for judicial assistance.

The above two typical cases reflect the reality of the dilemma of the wildlife damage compensation system. In both cases, the victims suffered losses due to wildlife and were unable to obtain appropriate remedy due to the failure of the local government to set appropriate compensation standards. In the second case, although he eventually received judicial aid, judicial aid is only applicable to the life of the parties in a state of extreme distress, a kind of equitable measure, and cannot be widely applied. As a result, the vast majority of victims of wildlife-related injuries are unable to obtain appropriate remedies, leading some victims to resort to private remedies to safeguard their rights and interests.

3.5 The two main reasons behind the problems of the realistic situation

3.5.1 Unscientific scope of the list of endangered animals

Wildlife protection lists are rooted in the Wildlife Conservation Law, and play a quasi-legal role as a supporting document for wildlife protection. In cases of private remedies for wildlife damage, the lists involved are the List of Wildlife under State Key Protection, the List of Wildlife under Local Key Protection, and the List of Terrestrial Wildlife with Important Ecological, Scientific, and Social Values (the "Sanyou" Lists). In practice, however, there are scope gaps at the level of modification and application of the list system, leading to great controversy in cases of private remedies for damage caused by wildlife.

3.5.2 List revision aspect

Firstly, there is a sectoral conflict of interest in the main body of the revision of the list. Article 10 of the Wildlife Conservation Law stipulates that the State Forestry and Grassland Administration and the Ministry of Agriculture and Rural Development are the authorities responsible for formulating the list of wildlife under State priority protection. According to Article 7 of the Wildlife Conservation Law, the actual implementation, application, and management authorities of the list of state-protected wildlife are also the State Forestry and Grassland Bureau and the Ministry of Agriculture and Rural Affairs. Unlike foreign countries where the formulation and management of the list of endangered wildlife is the responsibility of a specific organ, China's list of state-protected wildlife implements a "two-way ordination system", whereby the State Forestry and Grassland Administration (SFAA) and the Ministry of Agriculture and Rural Development (MARD) carry out monitoring, investigation and approval of the list of terrestrial wildlife, and the Ministry of Agriculture and Rural Development (MAFRD) carries out monitoring, investigation, and approval of the list of aquatic wildlife on their own authority. When the list needs to be adjusted, the two departments should reach an agreement and apply to the State Council for approval (Zhang, Lu, Di, 2022). The two departments are more familiar with and pay more attention to the wildlife species managed by their own departments, and when there are different opinions on the adjustment of the level and change of species of different wildlife species, it will take a long time for argumentation and coordination, which results in a delay in the updating of the list, and the timeliness, validity and credibility of the list system will be challenged greatly in the delayed updating.

Secondly, there are legal gaps in the procedures for revising the lists. Procedural norms should provide the necessary guarantees for the realisation of substantive norms, and in the currently effective Wildlife Conservation Law, there are legal gaps in the initiation of the revision process of the list, the species assessment process, and the public participation process (Zhang, Lu, Di, 2022). In the 2016 revision of the Wildlife Conservation Law, the time limit for the revision of the List of Wild Animals under State Key Conservation was stipulated for the first time, and it was not until the 2022 revision of the Wildlife Conservation Law that the time limit for the revision of other lists was stipulated. However, other relevant procedural measures are only expressed in general terms as "formulated after scientific assessment", lacking specific procedural constraints, and their detailed implementation is yet to be supplemented by corresponding departmental rules and local regulations.

Finally, the scope of the revision of the lists is difficult to meet the needs of the reality of species conservation. The Wildlife Conservation Law still adopts the traditional

thinking of resource utilisation, while ignoring considerations of ecological balance (Zhang, 2020). According to statistics, in China, including mammals, birds, amphibians and reptiles, the cumulative number of protected species only accounts for 62.71% of the total number of mammals, birds, amphibians and reptiles recorded in China. Among the remaining thousands of species of animals, some kinds of rare animals have not been included in the list due to insufficient data, low attention, lack of special research and other reasons. At the same time, wild boars and other previously protected animals have reached large populations due to rapid proliferation, and there are many cases of them causing personal and property damage to people living in their habitats, so it is still controversial whether they should be included in the list of protected animals. The updated List of State Key Protected Wildlife in 2021 for the first time classified some animals into two categories, namely captive-bred and wild, and implemented different levels of protection measures, but did not provide for the "Sanyou" list, which has resulted in obstacles to the harvesting of special-purpose animals, such as two-toothed ants, and impeded the development of specialised industries such as traditional Chinese medicine, indicating that the scope of the list needs to be improved.

3.6 List management aspect

According to the institutional design of China's Wildlife Conservation Law, localities should formulate local lists of wildlife under priority protection outside the scope of the national list of wildlife under priority protection, and the local list of wildlife under priority protection and the National List of Wildlife under Priority Protection should be two collections that do not cross each other. More than 500 new species have been added to the newly revised List of State Priority Wildlife Protection, but the local lists have been slow to change, resulting in a long period of time when the list of State Priority Wildlife Protection and the list of Local Priority Wildlife Protection overlapped with each other. In addition to the overlap between the national and local lists, there is also a large overlap between the local lists and the "Sanyou" list. For example, the Beijing Key Protected Wildlife List issued in 2023 includes species such as the Chinese honeybee, which is also on the "Sanyou" list. From the perspective of biological facts, both national and local key protected terrestrial wildlife have important ecological, scientific and social values, and can be categorised under the "Sanyou" list, so there is no excuse for the overlap in scope. However, from a legal point of view, the main body of the list is diversified, the main body in the development of the wildlife protection list is often based on the scope of the authorised and administrative needs. If the same species of wildlife are listed in more than one list, it is likely that the abuse of authority in the management of wildlife, shirking of duties and other issues, which is not conducive to the implementation of the Wildlife Conservation Law, and also not conducive to the achievement of the objectives of ecological environment protection and wildlife protection. This is not conducive to the implementation of the Wildlife Conservation Law, nor is it conducive to the realisation of ecological environmental protection and wildlife conservation (Tang, Wei, 2020).

The scope of the list is concentrated between the "Sanyou" list and the list of locally protected wildlife, and the retention or abolition of the "Sanyou" list has aroused considerable controversy. First, the principle of adjustment of the "Sanyou" list is inappropriate. On 10th December 2021, the State Forestry and Grassland Administration (SFGA) released a draft of the "Sanyou" list for consultation, and in the principle of "conducive to social development", it specifically cited the "Sanyou" list as an example of the "Sanyou" list that is not suitable for social development. In the "in favour of social development" principle, it specifically cited the big and small crows as examples to be removed from the list, with the reason being that "the ecological and scientific value does not yet need to be included in the scope of protection, and the public's willingness to accept it is difficult to accept. Relevant studies have shown that small-billed crows are closely related to urban heavy metal pollution, and its study will help to monitor changes in pollution in the urban environment (Zhang, Dang, Zhang, 2013). Its study has scientific value and is contrary to the principle of list adjustment. In addition, the "Sanyou" list has lagged behind the progress of social concepts, and the 2016 Wildlife Conservation Law changed the "list of terrestrial wildlife with important economic and scientific research value" to the "list of terrestrial wildlife with important ecological, scientific and social value", which demonstrates the importance attached to ecological values by national policies and the public. However, the "Sanyou" List has been published for more than 20 years, and despite the change of its name, its content has remained unchanged and still emphasises the nature of the wildlife's economic resources. Furthermore, according to the Wildlife Conservation Law, the subject of the "Sanyou" list is the same as the subject of the "Wildlife under State Key Protection", and the content of the regulations is similar to its role, so it is questionable whether there is a need for and significance of its independent existence.

Secondly, there is also a conflict of classification. Currently, China's wildlife protection adopts the "classification and grading" protection, but the classification and grading method is inconsistent in different legal documents, the

Criminal Law 341 of the protection of wildlife excludes the "Sanyou" list and the local key protection of wildlife. At the same time, there are inconsistencies in the level of protection of the same species in different lists. According to judicial interpretations, illegal hunting of species listed in Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is enforced under the criteria of the first and second levels of national key protection, which gives rise to the problem of inconsistency in the criteria for determining the different lists (Fang, 2021).

Finally, there is a systematic lack of a public participation system for the entire process from the creation of the list to its functioning. The principle of public participation is a fundamental principle throughout the protection of environmental resources in China (Shi, 2010). However, through the Wildlife Conservation Law, wildlife conservation in China currently implements a management model that is administratively led and supplemented by expert participation. The 2018 Wildlife Conservation Law puts forward the proposition of encouraging public participation, but the public participation system is still characterised by formality and symbolism (Qin, 2020). Public participation in wildlife conservation is of great significance. On the one hand, only when the people are personally involved in the design of the list and other systems and policies will they have the opportunity to influence and adjust the implementation and formulation of policies involving their interests; on the other hand, civil power is an important complement to the revision of the wildlife conservation list, and in the face of the complex and extensive distribution of wildlife, it is far from enough to rely on the official power alone (Gao, Hu, Li, 2020). Only through the participation of the public can the monitoring and implementation of the wildlife protection list system and compensation system be guaranteed.

3.7 Lack of strict litigation supervision by the procuratorial authorities of the government's wildlife protection duties

Pursuant to Article 25 of the Administrative Procedure Law, procuratorial organs have the right to make procuratorial recommendations against administrative organs that do not fulfil their responsibilities for the protection of the ecological environment, with the filing of administrative public interest litigation as a reserved means. Although the Administrative Procedure Law does not explicitly stipulate that the victimisation of wildlife is a cause of action for administrative public interest litigation, according to Article 2 of the Environmental Conservation law, wildlife is an important part of ecological environment resources. At the same time, according to the theory of environmental public trust, the administrative supervisory departments need to undertake the responsibility of environmental and resource protection, and the procuratorial organs need to supervise the litigation on the responsibility of the relevant government departments to protect wildlife (Feng, Bo, 2020).

In the case of private remedies for wildlife damage, there are two failures of the administrative organ. Before the wildlife damage, the government did not timely fulfil its duty to control the wildlife flooding, which directly led to the infringement of citizens' property; after the wildlife damage, the government did not timely fulfil the duty to compensate, the victim had to take private remedy behaviour to protect their own rights and interests, and this private remedy behaviour infringes on the wild protection of animals, damage to the environmental resources. There is a direct causal relationship between the government failure and the victim of wild animals, the procuratorial organs need to fulfil the duty of supervising the administrative organs to protect the environment and file administrative public interest litigation to prevent the problem before it occurs.

Historically, the protection of the ecological environment has had two modes: damage control and risk prevention (Lv, 2019). In view of this, public interest litigation for environmental protection in the field of wildlife can also be divided into these two modes (Li, 2020). It is true that in recent years, the procuratorate has actively dealt with public interest litigation cases in the field of wildlife protection, but it seems that most of the cases released by the procuratorate are filed in the form of civil public interest litigation in the form of criminal collateral. I used "wildlife protection" and "public interest litigation" two keywords in the China Judicial Instruments Network search, after a preliminary analysis, found that purely civil cases are rare and administrative cases are only a few cases.

4. Suggested solutions to the realistic problems of the legal effect on private remedies for wildlife damage

4.1 Increasing judicial review of wildlife conservation lists

With regard to the criminalisation of private remedies for wildlife damage, the theoretical community is more inclined to focus on the revision of the Penal Code with regard to the penalty and quantum of the offence, but if the wildlife protection list, which serves as an important reference for it, is itself irrational, then the above efforts become water without a source and wood without a root, and are doomed to be futile. Judicial review of technical norms such as wildlife conservation lists is an important

and forgotten area of judicial adjudication in regulating wildlife offences at present.

Firstly, the main body of the revision of the list should be unified. For a long time, the "two-way ordination system of departments" for the revision of the List of Wildlife under State Key Protection has led to a delay in updating the List, and different departments have been hampered by each other's constraints. In Canada, the Endangered Species Act provides for the establishment and management of the list of the only body - the Canadian Council for the Protection of Endangered Species (CCPES), which plays a leading role in the development of the list of wildlife protection. China can learn from Canada's experience in list development, by various departments, scientific research units of biological and other multidisciplinary experts to jointly set up endangered wildlife protection agencies, specifically responsible for the development of the list, modification, and interpretation and maintenance, while the local wildlife protection list to be guided and supervised, to avoid the list of the process of modification of the list of the overly concerned about the views of a sector resulting in the divergence of views, the list of the slow update of the problem. Problems.

Secondly, the revision criteria should be improved. In addition to referring to the domestic protection list, China also refers to the appendices of CITES in the handling of wildlife criminal cases, which requires that the revision of China's wildlife protection list should be connected with international standards, refer to the international common IUCN standards, and realise the transformation of the international wildlife list into the applicable rules in China by sounding the rules of application of the international list in the country. The relevant work may be carried out by a specially established organisation. The relevant work can be carried out by a specially established institution for the protection of endangered wildlife. The revision of the standards should take into account the opinions of the academic community, and be submitted by the relevant departments to the legislative organs for finalisation and eventual institutionalisation.

Finally, the amendment procedure should be improved. Providing in the law the initiating subject, initiating procedure and initiating conditions for list revision is the most important of the procedural norms of the wildlife protection list system. The Endangered Species Act of the United States clearly stipulates the strict order of listing each species on the list of endangered species, including listing criteria, initiation of the listing process, corresponding assessment measures, conservation strategies that are individually matched with each species, and the solicitation of public opinions, etc. To ensure the timeliness of the list update, the Endangered Species Act also stipulates the timeframe for the competent authorities to respond to the public's needs, the timeframe from the application for listing to the final decision, etc. The Endangered Species Act also stipulates the timeframe for the competent authorities to respond to the public's demands. etc. In China's Wildlife Conservation Law, there are no specific provisions except for the general statement of "organising scientific demonstration and assessment every five years". China can refer to the system design of the Endangered Species Act of the United States, and institutionalise the procedures for the initiation of the list revision, the application statement, the public announcement procedure and the time limit, etc., by clearly stipulating them in the law.

As far as the issue of overlapping scopes of lists is concerned, multiple lists should be reintegrated and a coordination mechanism at the central and local levels should be identified. Scientific integration measures should be adopted, and experts from various sectors and disciplines should be organised to conduct multi-dimensional assessments of the existing lists in ecological, economic, social and legal terms, and to put forward systematic integration opinions for submission to the legislature for validation. Clarify the roles in different lists, and classify overlapping species into a particular list based on expert recommendations, combined with public opinions, to avoid the phenomenon of overlapping lists. Implementing a two-tier wildlife protection mechanism at the central and local levels, with the State Forestry and Grassland Bureau in charge of those involving the national formulation of a list for the protection of terrestrial wildlife, and the local authorities in charge of those involving the local formulation of a list for the protection of wildlife.

From the perspective of public participation, public participation should be extended to all aspects of the listing system. The preparation or adjustment of wildlife lists can be broadly divided into seven stages: project initiation, research, drafting, consultation, deliberation, approval and publication, and public participation is currently concentrated in the consultation stage. Public participation can be extended to the initiation stage of the revision of the list. The animal conservation laws of the United States and Canada provide that the public can jointly apply to the list-making organisation to initiate the revision of the wildlife protection list through relevant supporting documents. In the feedback stage, the "Measures for Public Participation in Environmental Protection" currently followed by our country only mentions "in an appropriate manner" in general, which can neither guarantee that the public's opinions and feedback can be responded to, nor affect the enthusiasm of public participation. For this reason, the relevant departments should improve the Measures for Public Participation in Environmental Protection,

collect public opinions through multiple channels, and actively respond to public feedback in a timely manner, so as to enhance the enthusiasm of public participation, and at the same time, make the revision of the list widely known to the public. In addition, the public scope of the list revision procedure should be expanded, and the reasons for listing or delisting each species, and the initiation and conduct of the revision procedure should be made public so that the public can have a full knowledge and understanding of the revision of the list.

4.2 Optimising the system of litigation supervision by the procuratorial authorities of the government‘s wildlife protection duties

Firstly, promoting legislation on the system of administrative public interest litigation to supervise wildlife protection. In order to strengthen the supervisory responsibilities of the procuratorial authorities for government wildlife protection, the Wildlife Conservation Law can make it clear that the procuratorial authorities shall initiate administrative public interest litigation in accordance with article 25 of the Administrative Litigation Law against administrative authorities whose indiscriminate or lazy exercise of authority results in the destruction of wildlife resources and damage to the public interest. Although administrative public interest litigation work has been carried out for about five years, the procuratorate has accumulated considerable experience in the practice of judicial activities, the relevant laws still urgent to be improved and regulated. Procuratorate as a legal supervisory organ, has the authority to promote the development of legislation related to wildlife protection. By making its powers and obligations clear in the legal system, the Procuratorate will be able to place greater emphasis on its duty to supervise the government’s protection of wildlife.

Secondly, promoting the improvement of the administrative public interest litigation system for wildlife protection. First, the power of the procuratorate to investigate and collect evidence in environmental public interest litigation is only provided for in the Organic Law of the People’s Procuratorate and the Interpretation of Several Issues Concerning the Application of Law to Procuratorial Public Interest Litigation Cases, and therefore the procuratorate lacks the legally mandatory means to satisfy the needs of its investigation process. In this regard, the procuratorate should be given the legal right to investigate and obtain evidence, and at the same time can refuse to cooperate with the relevant personnel to implement disciplinary measures. Secondly, it should be stipulated that prosecutors with insufficient expertise in ecological environmental protection should not be required to individually pursue the achievement of restoring the original ecological environment, as the government does not have the ability or possibility to restore the ecology within the 30-day rectification time. Third, in environmental civil public interest litigation, it is extremely unreasonable for the defendant to prove that there is no causal relationship between the act and the result. Despite the subject, in the environmental administrative public interest litigation the situation is the same. This is extremely inappropriate to ascertain the facts of the case from the underlying logic of the obtaining of evidence. Fourth, in the environmental public interest litigation, according to the judicial interpretation of the supreme law, the restoration of the original state refers to the restoration of ecological function, which for the environmental public interest litigation results of the vision is very beautiful but unrealistic, for the environmental public welfare litigation in the main body of the lawsuit is too harsh, it should be in the interpretation of the law and the practice and the spirit of article 1234 of the civil code to reach a consensus.

Thirdly, promoting the smooth operation of the mechanism for administrative public interest litigation in wildlife protection. Before filing an administrative public interest litigation, the procuratorate should issue a procuratorial recommendation to the relevant administrative organ, which needs to make improvements within 15 days or two months. Pre-litigation procedures are very effective for the protection of public environmental resources, but the bureaucratic implementation of pre-litigation procedures by administrative organs directly leads to the supervision of the Procuratorate only in certain cases, and it is in urgent need of an external force to impose constraints. As the administrative organs of China’s ecological and environmental governance leader, both the power to draft the formulation of laws and regulations, but also in the substance of the legislative text is not clear and hold too much discretion, pre-litigation procedures are very good restraint of the administrative organs of the hand of power. But at the same time there is also a contradiction - let us not fully understand the knowledge of ecological environmental protection procuratorial organs to supervise the protection of the ecological environment in the dominant position of the administrative organs. In this regard, the Supreme People’s Procuratorate said that if there is extremely complex content, relationship or provincial level or above, the case can be directly reported to the Supreme People’s Procuratorate for direct handling, but if you easily raise the level of the procuratorate to deal with this kind of situation, it will inevitably lead to the higher procuratorate case squeeze, reduce the efficiency of the review. The practical solution is that on the one hand, the prosecutor has to issue prosecutorial recommendations the performance assessment, on the one hand, the government

staff have received prosecutorial recommendations by the situation and rectification of the performance assessment. So, the bureaucratic mechanism to ensure that the administrative organs respect and attention to the inspection recommendations, but only solves the problem of system operation, did not solve the fundamental problem of the lack of knowledge of environmental protection inspectors, not to mention China's environmental law enforcement personnel has been quite short of. So, the assessment of the pressure and their own relevant professional knowledge is insufficient in the case of selective supervision of the procuratorate related to the case of the problem. In this regard, the Standing Committee of the National People's Congress (NPC) should regulate environmental legislation, and clearly establish the responsibilities of both parties at the legislative level. Rather than relying solely on the bureaucracy to function internally, the NPC Standing Committee should regulate environmental legislation, clearly establishing the roles of both sides externally.

Finally, Promoting the development of the theory and system of administrative public interest litigation for preventive wildlife protection. The "risk society" for the protection of environmental resources and the development of the environmental legal system has pointed out a new direction, China's environmental law needs to change from damage control mode to risk prevention mode. The construction of a new type of preventive environmental public interest litigation is the task and responsibility of the state organs. It is the environmental public interest litigation in the new period of development requirements, that is China's environmental governance from "command-control" mode into a multi-centre governance model. First, the environmental public interest litigation system in the pre-litigation procedure should be optimised. The current pre-litigation procedures of 15 days or two months of prosecutorial advice period compared to the pilot fixed one month has been improved, but there is still room for progress, according to different degrees of environmental damage, ecological conditions, and the actual situation to determine a more flexible and effective period of time. Second, the construction of preventive protection measures and preventive environmental public interest litigation is the purpose of proactive before the damage has not yet occurred before the lawsuit, but at this time the destruction has not yet appeared, so the need to build supporting preventive protection measures. In conclusion, we need to improve the environmental public interest litigation system in the suspension of the provisions, to avoid the evolution of hidden danger into real harm, wildlife suffered undeserved disaster.

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