

The Dilemma and Way Out of the Configuration of Environmental Civil Liability: An Analysis Based on Typical Cases

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Abstract:

As the environmental problems become more and more serious, environmental damage disputes are on the rise and the environmental civil liability, as an important part of the environmental protection legal system, faces many configuration dilemmas. Therefore, the configuration and improvement of environmental civil liability have become an important issue in the legal system of environmental protection. The purpose of this study is to reveal the problems in the configuration of environmental civil liability by analyzing the typical cases and discussing the dilemmas in the configuration of environmental civil liability. It has been found that the dilemmas in the configuration of environmental civil liability mainly include the limitations of the identification of the responsible subject, the complexity of the identification of the damage results, and the difficulty of the burden of proof. In view of the existing difficulties, from the perspective of the government, enterprises and the courts, it is possible to strengthen the definition of responsibility and accountability mechanisms of regulatory authorities, improve the internal accountability system of enterprises, and establish a mechanism for reviewing the burden of proof of the defendant, and so on.

Keywords: Environmental civil liability, configuration dilemma, typical cases, environmental protection law, environmental civil public interest litigation, compensation standard

1. Introduction

As an important part of the legal system for envi-

ronmental protection, environmental civil liability plays an important role in sanctioning environmental

wrongdoing and protecting the rights and interests of the State and the public in environmental resources. However, in the allocation of environmental civil liability, the complexity of judicial practice and other reasons have led to many disputes and confusions in the allocation of liability, resulting in difficulties in obtaining effective compensation for environmental damages, and the legitimate rights and interests of the victims are not adequately safeguarded. Among them, enterprises as one of the main subjects, environmental pollution incidents occur frequently. Therefore, from the judicial perspective, in-depth research on the allocation of environmental civil liability is of great significance for clarifying the responsibilities of all parties, promoting the better fulfillment of the responsibility of environmental protection by all responsible subjects, and promoting the development of the cause of environmental protection. This study uses the literature research method and case study method to understand the theoretical basis of the allocation of environmental civil liability, the current status of research, and the latest progress and achievements of the current research by reviewing the literature on the allocation of environmental civil liability, including academic papers, monographs, laws and regulations, and so on. Representative environmental civil liability cases are selected, and the civil liability allocation issues involved therein are analyzed in depth, so as to summarize the experience and lessons learned in judicial practice.

2. Literature review

Many scholars have discussed and studied the dilemma and way out of the configuration of environmental civil liability:

Lv Zhongmei (“Reconstructing the Environmental Tort Relief System with the “Ecological Restoration Theory” 2020) focuses on the construction of the environmental civil liability system and the problems it faces in practice. Emphasizes that environmental civil liability is not only related to the compensation of victims, but also to the restoration and protection of the environment. She believes that China’s environmental civil liability system is constantly developing, but there are still some problems, such as insufficiently clear standards for the determination of liability, limited scope of compensation, and difficulties in the implementation of the responsibility for environmental restoration. It is necessary to further improve the relevant laws and regulations and strengthen the professionalism of environmental justice in order to better realize the function of environmental civil liability.

Wang Shuyi (“The Dilemma of China’s Environmental Criminal Justice and Its Countermeasures” 2014) con-

ducts an in-depth study of the principles of attribution of environmental civil liability, and analyzes the application of different principles of attribution in environmental infringement cases. At the same time, he also pays attention to the interface between environmental civil liability and other legal liabilities (e.g., administrative liability and criminal liability). He believes that the principle of no-fault liability should be the main attribution principle of civil liability for environmental infringement, but it needs to be judged and adjusted according to different situations in the specific application. Moreover, a coordination mechanism for the environmental legal liability system should be established to avoid conflicts and contradictions between different liabilities.

Cao Mingde (*Legal Analysis of Provisions on Compensation for Ecological and Environmental Damages 2022*) focuses on the issue of compensation for environmental civil liability, including the determination of compensation standards, and the sources and management of compensation funds. It also explores the methods and techniques of assessing environmental damages and how to safeguard the legitimate rights and interests of victims through legal means. He argues that there are many shortcomings in the current compensation for environmental civil liability, and that there is a need to establish scientific and reasonable compensation standards and assessment systems, to broaden the sources of compensation funds, and to strengthen the supervision of compensation funds, so as to ensure that the victims can receive adequate compensation.

Although scholars on the theory of environmental civil liability research is more in-depth, but in the application of theory to practice there are still some deficiencies. Based on this, this study will explore the specific application and practice of civil liability allocation through in-depth analysis of actual cases, focusing on the cases, so as to refine the more operational rules of liability allocation.

3. Introduction to basic concepts

3.1 Environmental civil liability

Environmental civil liability refers to the civil legal consequences of violating the legitimate rights and interests of others as a result of violating environmental protection regulations by polluting, destroying or damaging the environment.

3.2 Environmental civil liability legislation

(1) *The relevant provisions of the Civil Code:*

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 tortfeasor shall be liable for the tort.” This clarifies the subject and scope of environmental civil liability.

Article 1230 of the Civil Code provides that: “In the event of a dispute arising from pollution of the environment or damage to the ecology, the perpetrator shall bear the burden of proof in respect of the circumstances provided for by law for which he is not liable or for which he is mitigating his liability, and in respect of the absence of a causal relationship between his conduct and the damage.” This reflects the principle of the presumption of causality and the shifting of the burden of proof in environmental civil liability.

(2) Other relevant laws and regulations:

In addition to the Civil Code, China has several other laws and regulations that pertain to environmental civil liability. For instance, the Environmental Protection Law, the Water Pollution Prevention and Control Law, and the Air Pollution Prevention and Control Law all explicitly stipulate the legal liability for environmental pollution and ecological damage. Collectively, these laws and regulations form the legal framework of environmental civil liability in China.

4. Study on the allocation of environmental civil liability: based on the analysis of typical cases

4.1 Typical case studies

(1) Air Pollution Case of an Enterprise in Shanghai (Shanghai’s First Public Interest Litigation Case on Air Pollution)

An enterprise was reported by the people around the factory for complaints by the people around the factory because it did not take effective pollution prevention and control measures for the outdoor painting construction, which resulted in a large amount of VOCs being emitted into the atmosphere, exceeding the emission standards, thus posing a potential threat to the health of the neighboring residents, as well as affecting the local air quality and ecological environment. The court actively coordinated with the relevant departments, prompting the defendant to complete the environmental protection rectification as soon as possible, and to build a new painting workshop and move the outside paint mixing operation indoors. Eventually, the enterprise paid ecological damage compensation to the District Ecological Environment Bureau, and the funds were paid into the state treasury to be used for the air pollution prevention and control project in the

area and the low-carbon demonstration creation project declared by the district.

This case concerns atmospheric pollution, which is long-term and potential, and for which it is difficult to accurately assess the extent and scope of the damage, posing a challenge to the allocation of environmental civil liability. And for this kind of specialized and highly technical cases, the plaintiff often lacks relevant professional knowledge and technical means, it is difficult to collect enough evidence to prove the causal relationship between the defendant’s behavior and the environmental damage, resulting in the plaintiff being in a disadvantageous position in the litigation.

(2) The case of the death of saplings caused by the emission of soot from a glass factory in Yantai

In 2015, a large number of cedar seedlings cultivated by Sun and Hao died. It was determined that the black powder on the withered seedlings’ branches and leaves contained components related to the exhaust fumes from a nearby glass factory’s production of glass products. After Sun and Hao completed the initial burden of proof regarding the fact that the company’s sewage behavior caused the death of the cedar saplings, the glass factory failed to prove that there was no causality between its behavior and the damage results. Therefore, the court ruled that the glass factory should compensate the plaintiffs Sun and Hao for the corresponding economic losses.

In this case, the plaintiff needs to prove that there is a correlation between the glass factory’s sewage behavior and the death of saplings, while the defendant needs to bear the burden of causality rebuttal, to prove that there is no causality between its behavior and environmental damage. This allocation of the burden of proof in a certain degree of balance between the plaintiff and the defendant’s litigation position, both to ensure the legitimate rights and interests of the plaintiff, but also to avoid the defendant unwarranted liability.

(3) Chongqing Municipal People’s Government, Chongqing Liangjiang Volunteer Service Development Centre v. Chongqing Zangjinge Property Management Co. Ltd. and Chongqing Shouxu Environmental Protection Technology Co. Ltd. for Compensation for Ecological Damage to the Environment and Environmental Civil Public Interest Litigation (Guiding Case No. 130)

Chongqing Zangjinge Property Management Co., Ltd. provides property management services for enterprises located in the park and is responsible for treating the wastewater produced by the enterprises; Chongqing Shouxu Environmental Protection Technology Co., Ltd. undertook a wastewater treatment project for the Zangjinge Electroplating Industrial Centre. However, it was detected that the production wastewater was discharged into the exter-

nal environment without treatment, and the concentration of relevant pollutants in the wastewater seriously exceeded the standard. The Chongqing Yubei District People's Procuratorate prosecuted Shouxu, Cheng Long (Shouxu's legal representative) and others, and the Chongqing Yubei District People's Court ruled that Shouxu, Cheng Long and others constituted the offence of polluting the environment.

Firstly, Zangjinge Company, as the subject of the discharge, failed to fulfil its due supervisory obligations after entrusting the wastewater treatment project to Shouxu Company. After knowing that Shouxu Company had carried out the illegal discharging behaviour, it not only did not stop it, but also continued to hand over the wastewater to Shouxu Company for treatment, which indicated that it did not actively perform the supervisory and management duties on the discharging behaviours of the entrusted party in the process of entrusting the treatment of wastewater. After undertaking the project, Shouxu should treat the wastewater legally and in accordance with the relevant regulations and contract requirements. However, it violated the regulations and carried out illegal sewage discharge for a long period of time, seriously violating the relevant requirements of environmental protection and the contractual obligations it should undertake.

4.2 A large number of cases summarize the dilemma

(1) Limitations on the identification of responsible parties

Although in some cases the person in charge of the enterprise or the individual concerned will be held accountable, on the whole, there is not enough effort to hold individuals accountable, which to a certain extent affects the fairness and effectiveness of the allocation of environmental civil liability.

Some heads of enterprises ignore environmental protection requirements in order to pursue economic interests, but the current lack of a clear definition of the personal responsibility of heads of enterprises and the relatively light penalties imposed on them make their liability mismatched with the environmental damage they have caused. In addition, in some complex environmental cases, which may involve a number of responsible subjects, the difficulty in defining responsibility due to the complexity of the legal relationship between the subjects often leads to unclear allocation of responsibility.

(2) The complexity of determining the outcome of the damage

Inconsistent standards for assessing damage to the ecological environment: different regions and different professional organizations may use different assessment

standards and methods, leading to differences in assessment results and affecting the accurate determination of environmental civil liability.

Difficulty in accurately assessing long-term and potential damages: The impact of environmental pollution on the ecological environment is often long-term and potential, and for these long-term and potential damages, current assessment methods and technologies are not yet mature enough to accurately assess the extent and scope of the damages, which also poses a challenge to the allocation of environmental civil liability.

Environmental pollution may have long-term effects on the structure and functioning of ecosystems, but the complexity and dynamics of ecosystems make it difficult to accurately predict and assess the extent and duration of these long-term effects. Potential damages, on the other hand, are often uncertain and difficult to assess accurately through existing assessment methods and techniques.

(3) The dilemma of allocating the burden of proof

Plaintiffs are still difficult to prove: for some of the more specialized and highly technical environmental cases, plaintiffs often lack the relevant professional knowledge and technical means, while environmental pollution is often diffuse and hidden, it is difficult to determine the specific source of pollution and the scope of pollution, so it is difficult to collect enough evidence to prove that the defendant's behavior and the causal relationship between environmental damage.

Lack of effective supervision of the defendant's burden of proof: Some defendants may use various means to evade or reduce their burden of proof, or provide false evidence to refute the plaintiff's allegations; for example, certain enterprises may intentionally adjust the parameters of their equipment in the course of environmental monitoring to bring the monitoring results into line with environmental protection standards, thereby evading legal responsibility. The court may have difficulty in effectively screening and judging the defendant's evidence due to the limitation of professional knowledge or the imperfection of the evidence review mechanism, which to a certain extent affects the fairness and reasonableness of the allocation of the burden of proof.

5. Path to fulfillment of corporate environmental responsibility: own efforts and external support

5.1 Government

(1) Strengthening the definition of responsibilities and accountability mechanisms for regulatory authorities

The government should clarify the scope of environmental regulatory responsibilities of the regulatory authorities to avoid cross-cutting and shirking of responsibilities. It should also formulate detailed workflow and standards for environmental supervision, clarify the person responsible for each supervision link and the requirements, and seriously hold accountable regulatory departments and their staff for ineffective or negligent supervision by pursuing their corresponding legal responsibilities.

(2) Improvement of the environmental information disclosure system

The government should increase the disclosure of environmental information, establish a sound platform for disclosure of environmental information, and timely disclose information on enterprises' emissions, environmental monitoring data, and environmental impact assessment reports, so as to provide plaintiffs with sufficient evidence to support their case.

5.2 Enterprise aspects

(1) Improvement of the internal accountability system of enterprises

Enterprises should establish a sound internal environmental accountability system to clarify the specific responsibilities and obligations of personnel in various positions within the enterprise in terms of environmental protection. They should also strengthen the environmental education and training of internal personnel to enhance their awareness of environmental protection and responsibility. Serious investigation and punishment of internal environmental violations should be carried out, and the relevant responsible persons should be held accountable.

(2) Increase research and development of environmental protection technologies

Enterprises have increased their investment in the research, development and application of environmentally friendly technologies, and have developed green production technologies and products to reduce long-term and potential damage to the environment.

5.3 The courts

(1) Establishment of a mechanism for reviewing the burden of proof on the defendant

The court shall establish a strict mechanism for reviewing the defendant's burden of proof, and shall conduct a comprehensive and meticulous review and evaluation of the evidence provided by the defendant. In environmental litigation, for highly specialized issues, experts in relevant fields may be invited to testify as witnesses, and the evidence provided by the defendant shall be scientifically analysed and evaluated.

(2) Increased penalties for false testimony by the defendant

Defendants who provide false evidence should be severely penalized in accordance with the law. Defendants' integrity files should be established, the defendants' behavior in providing evidence in environmental litigation should be included in the integrity files, and defendants who provide false evidence should be recorded and publicized, so as to increase the defendants' cost of violating the law.

6. Conclusion

The configuration and improvement of environmental civil liability is an important issue in the legal system of environmental protection. By analyzing typical environmental civil cases, this study discusses the dilemma of the configuration of environmental civil liability based on the analysis of typical cases, and proposes the corresponding solution. In the future, the government should strengthen the responsibility definition and accountability mechanism of the regulatory departments and improve the environmental information disclosure system; enterprises should improve their own internal accountability system, increase the research and development of environmental protection technology and disclose environmental information; and the court should establish a review mechanism of the defendant's burden of proof, and increase the penalty for false proof of the defendant.

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