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Damage Compensation and Protection of Rights in Environmental Health Torts

-- Based on the Principle of "Priority of Health Right" in Environmental Law

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Abstract: The analysis of the correlation between human beings and the natural environment shows that the natural environment is the foundation of the right to health, and from the perspective of environmental law, the latter leads to the notion of "Priority of Health Right", which must be institutionalized in order to truly implant it into the teleological dimension of environmental law, so that it can become a working principle that unifies the legislative notion and judicial practice, thus realizing the protection of public health rights. In order to apply and implement the principle of "priority of health right", this paper focuses on the litigation system of eco-environmental damage compensation, and proposes an optimal path to strengthen the protection of public health rights from two perspectives: the standardization of the appraisal system and the elaboration of moral damage.

Keywords: health right, "priority of health right", the litigation system of eco-environmental damage compensation, protection of public health rights

1. Introduction

Since human civilization entered industrial society, the rapid development of industrialization has led to numerous eco-environmental problems, and human beings themselves have eventually become the victims, the first and foremost of which is the public health rights. In the past academic research and judicial practice, the issue of environmental health tort is usually studied and dealt with as a civil law issue, which is at odds with the scale and public nature of environmental health tort cases in reality, requiring expansion, deepening and improvement from the public law perspective of environmental law. In addition, the public health rights have not received sufficient attention in environmental health tort issues, which is inconsistent with the "Healthy China" strategy that China has been vigorously promoting in recent years, and the "priority of health right" should be further highlighted. Therefore, the focus of this paper is to examine the environmental health tort issue from the perspective of environmental law and explore how to realize the priority and effective protection of health rights.

This paper focuses on the following two aspects of academic work: first, rethinking the right to health from the perspective of environmental law, thus expounding the notion of "priority of health

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right" and discussing the principlization and institutionalization of it; second, focusing on the litigation system of eco-environmental damage compensation, implementing the principle of "priority of health right" and proposing feasible optimal paths by way of examplification.

2. The Right to Health from the Perspective of Environmental Law: The Notion of "Priority of Health Right"

The right to health is a highly comprehensive right, and although China has not explicitly stipulated it as an independent constitutional right, the right to health has been included in the Civil Code of the People's Republic of China as the core content of the civil right to personality. As far as the connotation of the right to health is concerned, it is clear that it necessarily covers the rights of both physical health and mental health, and requires that these rights be explicitly guaranteed by law in a variety of ways.

Further, as a product of the natural environment, human beings in turn shape the natural environment, create social relations on its basis, and realize their own species-essence in it. In this sense, the natural environment, as the intermediary of the overall construction of human society, lays the foundation of its actuality, and legal rights, as the normative category of real social relations, necessarily obtain the essential foundation of their own connotation and value in the natural environment. The right to health, which is the subject of this paper, is no exception, and it should be said that the natural environment is the foundation of the right to health. In this regard, the inherent connection between environmental law and the right to health is both natural and inevitable, and the need to re-examine the right to health from the perspective of environmental law is also self-evident. In essence, the right to health from the perspective of environmental law is the convergence of the relationship between the natural environment and human health in the subject of legal rights and thus the presentation of rights [1], that is, the protection of health rights is a normative and institutionalized requirement for how to deal with the relationship between the environment and public health. In other words, the treatment of the relationship between environment and public health is required to be oriented towards the protection of health rights, and the target subject is certainly human beings, which is the meaning of the "priority of health right" in this paper's title.

In fact, Chen Zhenliang, in his book Research on the Response of Environmental Law to the Strategy of "Healthy China" [2], was the first to make a groundbreaking construction and application of the environmental law notion of "priority of health right". In a nutshell, the "priority of health right" means that in the work related to ecological environmental protection, the protection of health rights should be given priority, especially when the economic and social interests are in conflict with the public health rights, the public health needs should be given priority. This is also in line with the report of the 20th Congress of the Communist Party of China, which explicitly calls for "putting the protection of people's health in a strategic position of the priority development".

However, the challenge to the notion of "priority of health right" in environmental legislation is how to implant it into the teleological dimension of environmental legislation and make it a core logical component of environmental legislation. In fact, this challenge is intrinsic to the notion itself. If the "priority of health right" remains only at the level of a notion, it is bound to be challenged by other notions, either belittled by economocentrism or condemned by ecocentrism.

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3. The Institutionalized Protection of the Right to Health in Environmental Law: Toward a "Law in Action"

As a matter of fact, the implantation of the notion of "priority of health right" into the teleological dimension of environmental legislation necessarily requires the full integration of this notion into relevant legal systems and policies. As a matter of fact, the implantation of the notion of "priority of health right" into the teleological dimension of environmental legislation necessarily requires the full integration of this notion into relevant legal systems and policies. The health right in the notion is not an isolated center, but a pivot that is always closely related to the intricate social relationships and plays a dominant role in them, and the process of standardizing these relationships is the institutionalized path to consolidate this dominant role. Only in this way can the "priority of health right" become a principle that unifies legislative notion and judicial practice, and then be carried out in environmental law and other related fields. The National Approach to Environmental Protection and Health (for trial implementation) promulgated in January 2018 emphasizes "promoting the integration of the notion of protecting public health into environmental protection policies," which in effect means integrating the protection of public health rights into various environmental protection-related policies as a basic element and central goal, and promoting the healthification of environmental law. This is to promote a healthificating transformation of environmental law and to deepen the fundamental state policy of the environment from the constitutional level to the institutional level. It is important to note that the institutionalization here should not be limited to the institutionalization of environmental law itself, but should also include the coupling of regulation and synergy with other related laws.

Further, as the saying goes, "If there is right, there must be relief, and if there is no relief, there is no right." In order to finally implement the institutionalized protection of public health rights, the litigation relief system for environmental health is undoubtedly the last line of defense. At the present stage, China's litigious environmental damage relief channels mainly include general environmental litigation and environmental public interest litigation, of which the former is divided into environmental civil litigation, environmental administrative litigation, environmental criminal litigation, and the latter is divided into environmental administrative public interest litigation, environmental civil public interest litigation and environmental criminal civil public interest litigation. The more common and important way is environmental civil public interest litigation, which is further divided into environmental pollution civil public interest litigation, ecological damage civil public interest litigation, and ecological environmental damage compensation litigation by the Civil Case Rules issued in 2020, among which the competition-cooperation relationship between environmental pollution civil public interest litigation and eco-environmental damage compensation litigation indicates the necessity and significance of promoting the greenization and ecologicalization of the civil code and its public-and-private-law-coordinating synergy with the environmental law [3]. This paper attempts to further examine how to implement the principle of "priority of health right" into the litigation system of eco-environmental damage compensation, so that "priority of health right" can link the damage compensation system and public health rights in environmental health torts, with a view to guaranteeing the priority of public health rights in judicial decisions. In this sense, the environmental civil public interest litigation actually breaks through the traditional civil liability principle and is no longer limited to individual liability and individual damages, but further reflects the principle of social responsibility and public interest compensation emphasized by environmental law [4].

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4. The Optimal Path for the Litigation System of Eco-Environmental Damage Compensation to Protect Health Rights

At this point, the problem domain of this paper finally focuses on the following: when it comes to the problem of environmental health torts, how can the litigation system of eco-environmental damage compensation, which is based on the principle of "priority of health right", better achieve the protection of public health rights? In this regard, this paper tries to explore from the following two perspectives:

4.1. The Standardization of the Appraisal System

Undoubtedly, the primary concern of the litigation system of eco-environmental damage compensation based on the principle of "priority of health right" is definitely the damage of the principle, i.e. health tort, and it usually refers to the damage caused by environmental pollution to the right to health. In order to achieve the protection of public health rights, it is imperative to promote the standardization of the appraisal and assessment of the damage to health rights, which is also a technical respect for the right to health. As a special type of civil tort, environmental health tort is generally agreed in theory and practice that its constituent elements should include the causal relationship between the infringer's behavior and the damage of the victim. Since eco-environmental damage appraisal and assessment is highly professional, third-party institutions and personnel with specialized technology and qualifications are required to participate in it, so as to provide technical support for the determination of the fact and degree of damage. However, it is this technical limitation that has become a huge obstacle to the determination of causality in judicial practice, and thus hindered the smooth operation of the damage compensation system. In this regard, I believe that in the future revision of the Civil Procedure Law, it is necessary to regulate the appraisal and assessment of eco-environmental damage as a legal procedural aspect of eco-environmental damage compensation litigation: on the macro level, the appraisal and assessment management system and work procedures should be regulated, and the legal system and technical specifications should be well connected; on the micro level, we can consider the adjustment of Article 76 of the Civil Procedure Law to legalize the appraisal conclusions unilaterally commissioned by the administrative organ after the procedure of proof and cross-examination, and to clearly stipulate the rights and necessary elements of the application for objection and re-appraisal by the person liable for compensation.

In addition, the establishment of highly specialized and professional environmental health damage medical appraisal institutions and expert groups should also be put in place as soon as possible, and the transparent disclosure of information on appraisal and evaluation findings should be further institutionalized, which is undoubtedly a respect for the health rights of the victims and the public as a whole, and is also conducive for the public, in turn, to carry out supervision and actively participate in public environmental affairs related to their own interests.

4.2. The Elaboration of Moral Damage

Since the right to health also includes the rights of mental health, the mental health damage caused by environmental tort should also be included in the scope of the compensation litigation system, and this is undoubtedly the implementation of the principle of "priority of health right". Specifically, the moral damage caused by environmental pollution can be divided into direct damage and indirect damage[5]: the former means the moral damage caused directly to the victim by environmental pollution, such as the victim's nervousness caused by noise pollution; the latter means the moral damage suffered by the victim due to physical injury caused by environmental pollution, such as the mental illness caused by the damage to the victim's nervous system as a result of water pollution. In

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fact, in the judgment documents I collected, most of the victims requested for property compensation together with the payment of moral damage compensation [6]. For this type of claims, the main basis of court decisions is the Interpretation on Several Issues Concerning the Determination of Liability for Moral Damage in Civil Tort, which the I hereby summarize as follows:

(1) Paragraph 2 of Article 8 stipulates that if the environmental tort has caused serious damage to the victim's mental health, the court may, at the request of the victim, order the infringer to bear a certain amount of compensation for moral damage when sentencing the infringer to bear the responsibility of stopping the infringement and removing the obstruction.

(2) The provisions of Article 10, the amount of compensation for moral damage should be considered in combination with a variety of factors, including the size of the infringer's fault, the consequences of the damage caused by the infringement, the specific circumstances of the infringement, the infringer's benefit, the infringer's economic affordability, the average local living standards, etc., and the judge should be discretionary under full consideration of these circumstances.

However, in the environmental health tort cases heard by the court, most of the victims were unable to get compensation because they failed to prove that their moral damages reached the so-called "serious" level, and a few victims' claims were supported but the final amount of compensation was far from the expected amount of the victims. It is true that moral damages cannot be accurately quantified because they are intangible damages, and can only be achieved through the discretion of judges to achieve the value of justice in law, but the factors to be considered for moral damages should still be refined and elaborated so that judges are more cautious in exercising their discretion. In this regard, I propose some possible optimal paths to achieve the elaboration of moral damage in the following three aspects:

(1) To analyze from the perspective of the infringer, the nature of the infringing act committed by the perpetrator, the degree of subjective evil of the perpetrator, the profit of the perpetrator and whether the necessary measures were taken to prevent the expansion of the damage are important elements to be referred to;

(2) To analyze from the perspective of the victim of the infringement, in addition to the degree of moral damage, the existence of subjective fault of the victim has an important impact on the determination of the amount of moral damage compensation;

(3) To analyze from an overall perspective, since the situation and living standards of the two parties may differ greatly, it is necessary to quantify the amount of compensation for moral damage according to the level of economic development in different regions, compare the economic conditions between the parties, classify different levels of compensation according to the degree of damage, and determine what level should be applied in conjunction with the specific circumstances of the parties. The compensation standard of the parties, so that it has operability in judicial practice.

5. Conclusion

In summary, this paper applies and implements the principle of "priority of health right" from the perspective of environmental law, and exemplarily proposes relevant optimal paths for the litigation system of eco-environmental damage compensation. Of course, there is still a long way to go to fully implement the principle of "priority of health right" in the current intricate system, and the principlization and institutionalization of the notion must be tested repeatedly in practice before it can finally be firmly established, not to mention the realization of the priority of health right in the actual judicial practice of environmental health tort.

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