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Functional Orientation and Legislative Perfection of Tort Liability for Ecological Damage

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ABSTRACT
Focusing on the particularity of ecological damage tort liability, using comparative analysis and normative analysis to study the concept and characteristics of ecological damage tort liability, and combining the theories of civil law and environmental law, and clarify the imputation principles and constituent elements of ecological damage tort liability, and straighten out the logical relationship between environmental pollution tort and ecological damage tort to coordinate the tort liability in environmental protection law and civil code.

Keywords: *Environmental tort, Ecological damage, Environment law.*

1. INTRODUCTION

Environmental pollution and ecological damage together constitute secondary environmental problems, and tort occurs in the process of environmental pollution and ecological damage. Compared with the current legislative situation of environmental pollution tort liability, the number of relevant provisions of ecological damage tort liability is very few and the legal liability is vague. In judicial practice, many courts try ecological damage infringement cases with the relevant provisions of environmental pollution liability, which reflects the embarrassing dilemma brought by the lack of legislation.

2. FUNCTIONAL ORIENTATION OF TORT LIABILITY FOR ECOLOGICAL DAMAGE

Compared with the concept of ecological damage in ecology, the ecological damage in the field of environmental law is much narrower, and the way of ecological damage only includes the development and utilization of natural resources; In terms of the category of ecological damage infringement, it only refers to the act of asking for energy or material from the environment, but does not include the phenomenon or consequences of ecological damage. According to this logic, circumstances such as climate change caused by greenhouse gas emissions do not belong to environmental tort in environmental law, because it emits substances into the air rather than asking for substances from the environment.

2.1 Connotation and Characteristics of Ecological Damage Tort: Based on the Comparison Between Ecological Damage Tort and Environmental Pollution Tort

The study of the connotation and characteristics of ecological damage tort must be compared with environmental pollution tort. Specifically, both are sub concepts of environmental tort, with obvious connections and differences, and their particularity is mainly reflected in the differences after parallel comparison. For the connection between the two: first, both infringe on personal rights or property rights, which is based on the concept that environmental infringement is the inferior concept of infringement; Second, both of them are closely related to environmental factors, which induce tort liability in the process of secondary environmental problems; Third, there is a symbiotic relationship between the two, which can be transformed into each other under certain conditions. The same human behavior may produce the results of environmental pollution and ecological damage at the same time. For the difference between the two:

first, the ways to cause environmental problems and damage results are different. Environmental pollution is the discharge of substances that should not be in the environment, while ecological destruction is the demand from the environment that should have been retained in the environment. Relatively speaking, the infringement ways of ecological damage tort are more diverse and complex. Second, the controllability of behavioral consequences is different. There are more unknown risks caused by environmental pollution. Many substances discharged into nature may undergo chemical changes after mixing, and the predictability of behavioral consequences is not strong [1].

2.2 Classification and Particularity of Tort Liability for Ecological Damage

With regard to different classifications, some scholars have proposed that if the object of infringement is taken as the standard, it can be divided into ecological damage liability for infringement of personal rights and ecological damage liability for infringement of property rights. Based on the number of ecological damage actors, it can be divided into single ecological damage tort liability and several ecological damage tort liability [2]. These classification methods only differ in one aspect of the subject or object of tort legal relationship, and have little impact on the overall constituent elements of tort liability. The author believes that we should take the way of ecological damage infringing on civil rights and interests as the standard, and divide it into direct tort liability of ecological damage and indirect tort liability of ecological damage. When the perpetrator is engaged in ecological destruction, his infringement on the rights and interests of the victim is phased. In this infringement process, environmental elements may become the object of infringement and the intermediary factor to extend the consequences of infringement, and further extend the consequences of ecological destruction to the personal and property rights and interests of others. Therefore, the significant difference between direct infringement of ecological damage and indirect infringement of ecological damage lies in: first, the role of environmental factors is different. In direct infringement, environmental elements are the object of infringement, and in indirect infringement, environmental elements are intermediary elements. Second, the object of infringement is different. One is the property rights and interests of the ownership of natural resources, and the other is the personal rights and property rights of others. The "others" here can be extended to all people, not just the subjects of natural resource ownership.

First, in the field of environmental pollution, the author focuses on comparing several separate laws and regulations such as pollution prevention and control laws. Except that the provisions of the law on the prevention and control of solid waste pollution are slightly special, the liability methods stipulated in other laws only include excluding hazards and compensating losses, that is, they still belong to the traditional category of civil tort liability; In the field of ecological damage, many articles such as Article 44 of the forest law and Article 39 of the Fisheries Law stipulate the liability for compensation, but there is no way to bear the liability of "excluding hazards". In addition to the liability for compensation for losses, Article 44 of the forest law also provides a form of liability - similar to alternative compensation in tort law. Article 39 of the mineral resources law stipulates that "order to stop mining and compensate for losses". The form of liability here should literally belong to administrative liability, but it also contains the content of tort liability.

Second, the principles of imputation are different. From the current pollution prevention and control law and other laws, it is not difficult to see that the principle of no fault liability is applicable to environmental pollution tort, which also reflects the principle of protecting the weak between infringers and victims with great strength; It is much more complicated in the infringement of ecological damage. Generally speaking, only a few articles embody the principle of no fault liability. For example, the revised water law cancels the constituent elements of illegality, indicating that the principle of no fault liability should be applied at this time. However, many provisions adopt the principle of fault liability. For example, Article 44 of the forest law stipulates that the premise of liability is "violation of the provisions of this Law". Although the word "fault" does not appear directly, it can be inferred from the objective elements of illegality that the perpetrator has a subjective fault at this time, Here, the author takes whether the objective act is illegal or not as the objective identification standard of subjective fault, so the responsibility reflected at this time should be fault liability.

Third, the composition of responsibility is different. In the field of environmental pollution, firstly, the principle of no fault liability is

applicable to environmental pollution tort, so fault should not be regarded as the constituent element of environmental pollution tort liability; Secondly, the constitutive elements of environmental pollution liability do not include the result of damage, and damage or the risk of damage can lead to tort liability; Finally, the provisions on civil liability in the separate laws on pollution prevention and control do not take illegality as the constituent element of various pollution tort liabilities. Of course, the causal relationship between the injuring act and the damage (the risk of damage) is a necessary element. In the field of ecological damage tort, firstly, fault is the constituent element of most ecological damage tort liability in the existing legislation; Secondly, in most natural resources protection laws, the tort liability of the perpetrator is based on the result of damage. Article 39 of the mineral resources law stipulates that the violator shall be forced to bear substantive civil liability in the form of administrative liability. Because the legislator considers the issue of administrative liability when formulating this article, it does not involve the issue of damage, but only stipulates the elements of illegality. The administrative legal liability is generally the legal consequence caused by administrative violation, which has little to do with the damage result of the illegal act.

3. LEGISLATIVE PERFECTION OF TORT LIABILITY FOR ECOLOGICAL DAMAGE

Destruction of ecology and pollution of the environment are specific forms of environmental tort. As mentioned above, there are many similarities and differences between them, so they must have many similarities and differences in the logical level of system construction. The foothold of this paper is the particularity of ecological destruction tort, so we focus on the core issues and special rules of ecological destruction tort.

3.1 Imputation Principle of Tort Liability for Ecological Damage

The imputation principle of ecological damage tort can not be generalized. We still need to follow the type division of ecological damage tort made above, distinguish between direct ecological damage tort and indirect ecological damage tort, and analyze their imputation principles respectively.

The object of direct infringement of ecological damage is other people's property rights and interests, which is not very different from the general infringement of other people's property rights and interests. Generally speaking, this kind of infringement does not have special danger and complexity. Therefore, this kind of tort liability can be compared with the general tort liability and take fault liability as its imputation principle.

Compared with the direct infringement of ecological destruction, the indirect infringement of ecological destruction is much more complex. At this time, as an intermediate medium, the ecological environment acts as a bridge between ecological destruction and the damage to the personal and property rights and interests of others, which is obviously very similar to the occurrence process of environmental pollution tort. [3] In terms of logical appearance, there is at least spatial elasticity that can be compared with environmental pollution tort. As for whether the principle of no fault liability can be applied. It is necessary to analyze the necessity and rationality of applying the principle of no fault liability. First, there is the principle of "who uses, who compensates, who destroys, who recovers" in environmental law, and there is also the principle of coexistence of interests and risks in civil law. Therefore, when the harmful consequences occur, it is more fair and reasonable for the actor who obtains greater benefits to bear the responsibility. Second, the act of taking over the infringer from the infringer to the infringer is often not illegal. Taking the logging behavior after obtaining the logging license as an example, although it is an activity within the scope of the license, it may still cause ecological damage and then damage the civil rights and interests of others. At this time, the principle of no fault liability can effectively urge loggers to minimize the adverse impact of their actions on the environment. Third, there is often a wide gap in economic strength between ecological destroyers and victims. The indirect infringement consequences of ecological damage are often serious. When the damage results occur, the two sides with great strength often have no fault. At this time, it is more in line with environmental justice to let the dominant party bear the risk. As Professor Zhou Ke said, "the transformation of the function of tort law makes it the first priority to fill the damage and disperse the loss, and it also requires that the loss of the victim must be filled. Therefore, we can only abandon the principle of fault liability in order to get out of this dilemma". [4]

3.2 Special Rule of "Inversion of Burden of Proof in Causality"

The causal relationship between the direct infringement of ecological damage and the damage result is obvious, which is not different from the general infringement of property rights and interests, and it is easier to judge. This paper focuses on the particularity of ecological damage tort liability. Most of the particularity is concentrated in the indirect tort liability of ecological damage. The most complex and special indirect tort of ecological damage is causality, and the most characteristic of causality is the "inversion of causality burden of proof".

First, although the existing legislation stipulates the rule of proof of the inversion of the burden of proof of causality for pollution tort disputes, in judicial practice, the trial judges of the vast majority of pollution dispute cases will still require the victims to bear the preliminary burden of proof for the damage theyhave suffered and that the damage they have suffered is caused by the behavior of the perpetrator. The development of natural science can not accurately prove whether there is an inevitable relationship between ecological destruction and geological disasters. At the same time, the indirect infringement of ecological damage is also large-scale, and the number of subjects participating in the infringement is large and uncertain. At this time, the inversion of the burden of proof can improve the possibility of the plaintiff winning the lawsuit, and does not violate the requirements of the principle of legal fairness[5].There are many similarities between ecological damage tort and environmental pollution tort, and the commonness also provides a theoretical possibility for analogy. In the infringement of ecological damage, the status of the perpetrator and the victim is very different. The perpetrator should bear the corresponding risk because of his profit. Environmental factors also act as an intermediary, and the promotion of the whole infringement process is often potential for a long time, and the causal relationship between ecological destruction and the final damage result is difficult for even experts to clarify its movement mechanism.

Second, when designing indirect tort liability for ecological damage, we must more comprehensively consider the evidential rules of causality. First of all, we should draw lessons from the unreasonable rules on the inversion of the burden of proof in the causal relationship of pollution tort liability in the existing legislation. We should not stipulate the absolute inversion rules of the burden of proof, but set a reasonable condition for the victim to bear a certain burden of proof for the causal relationship between his own damage and the defendant's behavior. This kind of evidence can be proved in principle without specifically pointing to the defendant's behavior. In addition, on the basis that the evidence provided by the plaintiff is sufficient to form a primary evidence chain, whether the defendant's specificecological damage behavior has a causal relationship with the damage result should be borne by the defendant [6].

4. CONCLUSION

Because the relationship between ecological damage infringement and natural resource protection is relatively closer, future research should be based on the consideration of problem awareness, take judicial practice as the perspective, compare the implementation of local environmental protection laws and individual laws, and solve the environmental problems of ecological damage.

AUTHORS' CONTRIBUTIONS

Wenkang Zhou built the article framework and put forward ideas, Yanying Fei wrote the manuscript.

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