Analysis of attribution of liability for ecological damage torts

Fanfei Yu[1,a], Zhide Zhou[2,b*]

[1]LawSchool/Intellectual Property School of Guilin University of Electronic Technology, China
[2]LawSchool/Intellectual Property School of Guilin University of Electronic Technology, Intellectual Property Research Institute of Xiamen University, China
[a]innocencereal@163.com
[b*]zzdlgy@163.com

Abstract. Accompanied by the rapid development of the economy at the same time, the state on the protection of ecological environment is also more and more attention, green mountains is the mountain of gold and silver. However, China's ecological and environmental infringement of the relief system can be taken is not perfect, the relevant legislation is not comprehensive, the practice lacks a specific legal basis to determine the case. Therefore, the civil code for this phenomenon, clearly put forward the green principle, stipulates the ecological environment infringement responsibility, including repair responsibility and liability. For the practice of ecological environment infringement cases for the trial of the direction, but also conducive to the implementation of subsequent cases. In this paper, from the new type of tort liability, no-fault liability and causality reversal and other proof of responsibility for the specific application of the analysis.

Keywords: No-fault liability; ecological damage; reversal of causation

1 Introduction

The generally applicable principle of attribution in traditional environmental pollution tort liability, i.e., in the private law sense, is the principle of no-fault liability. T The application of this principle has its corresponding theoretical support, including reward doctrine, danger doctrine, equity doctrine, risk-sharing doctrine and so on.

2 Application of traditional no-fault liability

The starting point of repay doctrine is "profit", and a balance should be struck between loss and profit. This doctrine is specific to the field of environmental pollution, that is, the polluter of the environment through the implementation of acts affecting the environment and thus obtaining a certain amount of economic benefits, and accordingly this behavior will inevitably cause corresponding losses to the subject of the activities in the environment or to the object understood as the impact of the behavior, so the

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infringing party should give the benefits obtained to the victims of the pollution in order to compensate for the damage suffered accordingly.[1]

The basic idea of danger doctrine is that the person responsible for the consequences of a danger should be the person who creates the danger. The aggressor who engages in the hazardous activity objectively creates the hazard, is in fact in a position to control the hazard and, at the same time, derives a greater benefit from the commission of the hazardous act, so it is reasonable that he or she should be held responsible for the corresponding consequences.[2] This doctrine rests on the idea that dangerous behavior and its consequences should be attributed to the same subject.

The doctrine of equity is a theory based on the interests of the victim. Specifically in the field of environmental pollution, the responsibility should be borne by the person who pollutes the environment, i.e., the enterprise that generally commits the offence. Undoubtedly, these enterprises have achieved self-interest at the expense of the victims, so it is fair to let the enterprises compensate the victims who have suffered losses in a corresponding amount.[3]

The core term of risk sharing doctrine is sharing, where sharing refers to the separation and diffusion of risk. The doctrine advocates that the portion of the damage caused to the victim by the polluter of the environment (generally a business) through the commission of an act of pollution of the environment should be returned to the business, which in turn should transfer it to society to be borne by society through the consumption of the public. [4] What actually works is that the damage is extrapolated inwards to identify the perpetrator of the damaging act, who then shares the cost with society by transferring the compensation or indemnification costs to the product offered to society. Mr. Chen Quan sheng shared the concern that the kernel of risk-sharing doctrine lay in that sharing. [5]

From the above analysis, it is clear that the background to the application of no-fault liability lies in the profound changes in the life of human society, and is rooted in the imbalance between the aggressor and the victim, whose capacities are very different in comparison. It is unrealistic to achieve fair justice by balancing the states of the two parties, and it is necessary to achieve relative equality through substantive distributive justice.[6] Therefore, the specific application to the traditional environmental pollution litigation cases, obviously can see the gap between the two sides of the main force, so out of the two sides of the distribution of the burden of proof need to be fair and just position, the law tends to choose to protect the interests of the weaker party, that is, the tortfeasor should come to their own no-fault proof, if the proof can't be, then bear the risk of losing the lawsuit, and the victim does not have to bear this risk.

3 Specificity of ecological damage

Firstly, according to the relevant provisions can be seen, need to be in violation of state regulations to implement the damage to the ecological environment, the perpetrator needs to go to the ecological restoration responsibility and compensation for the corresponding losses and costs. This is different from the traditional environmental pollution infringement. [7] Fundamentally, the ecological and environmental interests or a public

law level, added to the civil code, is under the banner of private law to solve the problem of public law, and public law in solving the problem of liability, usually used to fault as a prerequisite to achieve the function of punishment and education. Therefore, it is proved that the liability for ecological and environmental infringement is premised on the fault of violating the state regulations.

Secondly, in the tort liability for ecological environmental damage, the infringed object is no longer the personal and property interests of the civil subject, but the ecological environmental interests that the public is entitled to enjoy in a specific area. [9] Therefore, the relationship between the two interests to be resolved is also different, the traditional environmental pollution infringement to be resolved is the tortfeasor's behavior of the interests of the damaged interests of the victim of the relationship between the tortfeasor's interests, the economic public interest and the environmental public interest of the relationship between the tortfeasor's interests, the relationship is obviously more complex, can not be based on the principle of fairness to select the protection of the interests of the victim. [8] In addition, we should consider that, if it is no-fault liability to determine the way, then the ecological environment damage is in fact indiscriminate double charges, in the level of public law, has been through the environmental tax to the operator of the internalization of external costs, if the operator to comply with the provisions of the State to compensate for ecological environment damage, it is not fair. On the one hand, there is a suspicion of excessive internalization of external costs, on the other hand, it is also not conducive to the good development of industry and commerce, and better guide operators to set up the green concept, to better protect the ecological environment. Therefore, set up the violation of state regulations, to make a distinction, the ecological environment damage to the determination of infringement, is very useful.

Thirdly, unlike the traditional environmental pollution tort liability filed by the subject is generally a citizen, the subject of ecological environmental damage lawsuit filed by the state prescribed organs or organizations prescribed by law. [9] Moreover, unlike traditional cases, where victims claim compensation because they have damaged their rights and interests, in eco-environmental litigation, state agencies and organizations do not hold the aggressor liable on the basis of damage to their own interests. Further, the inequality of status between the enterprise (aggrieved party) and the citizen (injured party) in the traditional environmental pollution infringement case is not established here. [10] Ecological environment damage litigation subject party for enterprise (aggrieved party), a party for the state organs or related organizations (compensation rights), obviously the state organs or related organizations are more powerful, in an advantageous position, based on its position in the national operation system, through the exercise of the law based on the rights given to it, easier to carry out a full range of investigations, and access to more comprehensive and complete regulatory data. At the same time, it should also be noted that it is not possible to decide whether to adjust the rules of proof only by comparing the evidential capacity of the two parties to the litigation, and it is necessary to recognize that ecological and environmental damages and tort liability have their own special characteristics.

Fourth, through the analysis of the results of the above damage can be seen, ecological damage is directly in the environment, soil pollution is not easy to spread, more

easy to evidence, and air and water pollution is fluid and easy to spread, and no matter which kind of pollution, based on the ecosystem has its own purification of the environment's function, have to wait until beyond the ecosystem can withstand the scope of the ecosystem will be slowly revealed, and this is a long-term process for evidence is extremely difficult and challenging to trace the source. This is a long term process, which is extremely difficult and challenging for evidence collection, and it is difficult to trace back to the source. [11] Furthermore, in order to prove that there is a causal relationship between the landfilling, sewage disposal, exhaust gas discharge or improper exploitation of the ecological environment by the perpetrator and the damage to the ecological environment, it is necessary for a special institution to determine and issue the relevant appraisal report, and it is not an act that can be taken by the State organs or the relevant organizations, which also need to entrust professional institutions and talents to go through the process of exploration, laboratory tests and analyses, etc., and to arrive at the final conclusions. [12] And this series of operation process, compared to the traditional environmental pollution case evidence, in proving the causal relationship between the act and the result, the difficulty is obviously higher level, also more professional. If the burden of proof is not reversed, the difficulty of proof brought about by the increased risk of losing the case is also increasing, if the evidence can not lead to the loss of the case, the ultimate consequences are borne by the public. For curbing the wanton destruction of the ecological environment or regulate the development of the ecological environment is obviously unfavorable, so for the ecological environment infringement case, should also adopt the inverse causality, let the infringer to prove, at the same time the infringer is to make the wrongdoing, but also more aware of its behavior will produce which pollutants, these pollutants of the nature of how, etc., easier to conclude that the infringer to bear the burden of proof of causality. Let the tortfeasor to bear the burden of proof of causation, is no excuse.

4 Conclusion

In the traditional environmental pollution tort liability, the main basis for adopting no-fault liability is the imbalance of power between the two sides, the need to protect the rights and interests of vulnerable groups. Ecological environment damage is special, first, it belongs to the banner of private law to solve the problem of public law, so it is in violation of state regulations as the premise of fault liability. Secondly, it is to protect the interests of specific civil subject is no longer, but the public environmental interests, three is the subject is no longer a citizen, but the state organs or organisations prescribed by law, both sides of the power is no longer disparate, do not need to balance here. Fourth, the ecological environment damage has a long-term nature, the evidence is extremely difficult, the need to reverse the burden of proof, so that the infringer to prove, on the one hand, to prevent the emergence of the public due to the inability to prove the responsibility of the public, on the other hand, the infringer is to make the misconduct of the person, relatively easy to get evidence.

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