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The Suing Parties of Pure Civil Public Interest Litigation in China Should Not Claim Punitive Damages

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Abstract: With the transformation of Chinese society and the development of its economy, many infringements against public interests have occurred. The legal resolution of those disputes is vital to the country's further growth. In order to fully protect the public welfare, the National legislature of China revised the Civil Procedure Law, and created the system of civil public interest litigation (CPIL). In line with valid laws, the suing parties of CPIL are only entitled to file claims of inaction and claims for actual losses. However, for the purpose of enhancing the effect of punishment, deterrence and thereby better protecting the public interest, as one of the proper suing parties in CPIL, People's Procuratorates of China have been keen on filing a new type of request to the court---the claim of punitive damages. As for the filed claim of punitive damages, the attitude of judges is polar opposite on it. Some upheld that claim, while others rejected it. The academic circle is roughly divided into two similar mutual opposing groups. So, should the suing parties be authorized to file such claims to the court? The conclusion of this article is: No, they shouldn't. There are three reasons to support that argument: 1. Legal bases for filing CPIL punitive damages are administrative regulations and judicial explanatory documents. Firstly, for their vague meaning, they possess a low status in China's law hierarchy, and are incompetent for the assigned job. Secondly, because the function of administrative regulations or judicial explanatory documents is to "patch loopholes in basic systems of civil law", they actually committed *ultra vires* in legislative affairs. 2. This topic is constantly plagued by a paradox: if we stick to the developing trend of merely filing claims of inaction and claims for actual losses, it will negatively affect the deterrent and punishing effects of CPIL; on the other hand, if punitive damages are introduced into CPIL, it will certainly cause the confusion of CPIL and the traditional civil litigation for the protection of harmed private interests. 3. The theoretical studies of punitive damages for harmed public welfare is far from perfect. This awkward status quo is reflected in a train of conundrums yet to be deciphered. As far as this article is concerned, the author mainly used the following research methods such as case analyses, theoretical analyses, and comparative law studies.

Keywords: Pure Civil Public Interest Litigation, Not Applicable, Punitive Damages, Theoretical Analyses

1. Introduction

The background of the writing of this article are: on the macro level, with the accelerated transformation of Chinese society and the rapid development of its economy, a large number of appalling infringements against public interests have occurred in this country. The disputes caused by those infringements mainly involve areas such as the protection of ecological environment and natural resources, cultural heritage protection, food and drug safety for unspecified large number of customers, the protection of state-owned assets, and transfer of the rights to the use of the state-owned land in the urban area. The legal and timely resolution of those disputes is vital to China's further development in the coming days. State top leaders attach great importance to this and have repeatedly emphasized the need to resolve those major social issues through legal means. As one of the concrete measures to implement this requirement, the National legislature of China revised the relevant articles in the Civil Procedure Law in 2012 and 2017 respectively, and created the system of civil public interest litigation (CPIL).

On the micro level, the civil public interest litigation system has been operating well in China's judicial practice

and has played a positive role in protecting the related social welfare. In line with valid laws, the suing parties of civil public interest litigation are only entitled to file claims of inaction and claims for actual losses. However, for the purpose of further enhancing the effect of punishment, deterrence and thereby better protecting the relevant public interest, as one of the proper suing parties in civil public interest litigation, People's Procuratorates of China have been keen on filing a new type of request to the court, that is, the claim of punitive damages. Even though the intention of this innovation is good, its application in judicial practice has caused related controversies in the academic circle. The hotly debated issues mainly are: 1. How to harmonize the relationship between this newly-invented system of claims for punitive damages and the existing civil litigation system institutionally and theoretically? 2. If this system of claims for punitive damages is proved to be incompatible with the existing civil litigation system, is there a lawful and feasible alternative for it? 3. in the light of valid laws of China, criminal sanctions, administrative penalties and civil sanctions can be imposed against law violators whose acts harmed the public interest. When those three types of sanctions are imposed on the same defendant simultaneously or one after another, especially when the newly-created punitive damages are also imposed on the defendant, will this result in an awkward situation of disproportional punishment against unlawful acts? There by violating the general principle of equal protection for the parties enthroned by the Civil Procedure Law? 4. If this system of claims for punitive damages were finally enacted as a part of the law, for the sake of implementing the doctrine of imposing proportional penalties against perpetrators, how should we smoothly coordinate the relationship between that newly-created system and the related property punishment of the penal code and administrative penalty measures? In other words, how to lawfully offset this kind of civil punitive damages against the related property punishment of the penal code and administrative penalty measures? 5. Theoretically, what are the reasons and bases for the existence and operation of such a offsetting system?

The contents of this treatise have nothing to do with the aforesaid issues on the macro level. It will only concentrate its discussion on the analyzing of first two issues on the micro level. As for the studies of the last 3 puzzles listed in the preceding paragraph (issue 3, issue 4 and issue 5), which will be explored by this author in another related paper.

2. Raising Questions

"Punitive compensation is a kind of damages. As the counterpart to compensatory damages, it means that when the defendant commits the injurious act in a malicious, intentional, fraudulent or purposefully neglecting manner and causes losses to the plaintiff, the plaintiff can obtain additional damages outside the scope of the actual damages. Its aim is to punish the defendant, prevent him from repeating malicious acts, warn others and protect public peace." [1] Theoretically, "punitive damages is essentially a special punishment system under the dichotomy of public law and private law, which uses the mechanism of private law to implement the function of punishment and deterrence undertaken by public law." [2] At the root, that system is not the inherent civil law constituent of Romano-Germanic Law System, but comes from the reference to the Common Law System.

In judicial practice, the suing parties of pure civil public interest litigation (hereinafter referred to as PCPIL) [1] has filed claims of punitive damages to courts, but the attitude of judges is polar opposite on that matter. Some judges upheld that claim, while others rejected it. The former attitude is demonstrated by the following two cases: "On December 8, 2017, the People's Court of Lichuan City, Hubei Province announced the civil judgment of (2017) E 2802 Xing Chu No. 453, upholding the claim for punitive damages in the incidental PCPIL attached to a criminal case filed by the People's Procuratorate of Lichuan City, Hubei Province against Wu Ming'an, Zhao Shiguo and Huang taikuan." [3] In a PCPIL case heard by Guangzhou Intermediate People's Court (the Civil Judgment of (2017) Yue 01 Min Chu No. 383), "after performing the pre-litigation announcement procedure, Guangzhou Municipal People's Procuratorate filed the PCPIL case with Guangzhou Intermediate People's Court on October 26, 2017, requesting Liu Bangliang not only to pay for a punitive damages of 1.2 million RMB, which is 10 times the price of fake and shoddy salt products made and sold by him, but also to apologize publicly. In March 2018, Guangzhou Intermediate People's Court held that Liu Bangliang passed industrial salt off as edible salt and non iodized salt off as iodized salt, endangering the personal safety of unspecified number of consumers. Considering that he has been held criminally responsible, Liu Bangliang was ordered to pay 1.12 million RMB as punitive damages and make a public apology." [4]

The latter attitude is vividly shown by the following two cases: "In 2017, Shenzhen Intermediate People's Court declared the Civil Judgment of (2017) Yue 03 Min Chu No. 547 on the case of 'Guangdong Consumers' Association v. Li Hua Wen. The hotly-debated issue of the case is whether 20 defendants headed by Li Hua Wen should bear punitive damages for the fact that their processing and sale of sick and dead pigs infringed upon the social and public interests in line with paragraph 2 of Article 148 of *the Food Safety Law of China*. At the same time, this lawsuit involves the ascertaining of the nature and purpose of PCPIL for consumer protection (merely claims of inaction, or claims of

[1] In China, civil public interest litigation in a broad sense (CPIL in a broad sense) includes non pure CPIL and PCPIL. Among them, the former includes two kinds: one is the case in which there are both immaterial private interest claims and substantive public interest claims. Such cases are labeled as the Composite CPIL. Second, the plaintiff's claims are of private nature, but the case is typical among a vast number of injured citizens. It can be named as the Diffused CPIL. Article 55 of the Civil Procedure Law only governs PCPIL. Valid laws of China clearly prohibit citizens from filing PCPIL lawsuits. The rights and interests protected by PCPIL can be divided into two categories: one is the overall and indivisible public interest. Public welfare disputes involving ecological environment are typical. The other is the sum of harmed private interests of unspecified majority. Online and offline public welfare cases for the protection of the rights and interests of unspecified number of consumers are typical ----------the author's note.

damages are feasible, too), what are the legal bases of the plaintiff's claim for damages? What are the calculation method of compensation amount and the ownership of the paid damages? In the end, Shenzhen Intermediate People's Court rejected the plaintiff's claim for ten times punitive damages on the grounds that the 'liability of punitive damages' was not clearly expressed in Article 13 of *the Judicial Interpretation* and that Guangdong Consumers' Association was not a consumer and subsequently did not enjoy the rights provided in Article 148 of *the Food Safety Law of China*." [5] In the case of All-China Environment Federation (ACEF) v. Zhen Hua Co. Ltd. of Jing Hua Group, the defendant (Zhen Hua Co. Ltd.) is an enterprise engaged in the manufacture of glass and deep-processed glass products. Although the defendant invested in the construction of desulfurization and dust removal facilities, its two chimneys still discharged pollutants exceeding the standard for a long time, which seriously affected the lives of the surrounding residents. The defendant was criticized by the former Ministry of Environmental Protection and punished repeatedly by the administration of environmental protection of Shandong Province. ACEF filed the lawsuit and requested the court to order the defendant to bear a punitive damages of 7.6 million RMB in accordance with Article 59 of *the Environmental Protection Law of China* and Article 99 of *the Law of China on the Prevention & Control of Atmospheric Pollution*. However, after trials, as for "the claim of environmental remediation compensation costs filed by an environmental protection organizations, which imbues with the feature of punitive damages, the court refused to support it on the ground that 'punitive damages are not provided in *SPC's Certain Interpretations on How to Apply Laws to the Trials of the Environmental PCPIL*'." [6]

At present, there is a great controversy in the practical and academic circles about whether the claims for punitive damages should be allowed in PCPIL (including incidental PCPIL attached to criminal cases). This paper holds the opinion that whether the claims of PCPIL punitive damages are permitted or not is only the superficial appearance of the aforesaid scholastic controversy. In essence, it reflects the immature and non systematic academic research on that subject. That superficial appearance can be further broken down into the following questions: (1) Are PCPIL punitive damages and punitive damages for harmed private interest exactly the same? (2) What are the legal and regulatory bases for filed claims of PCPIL punitive damages? Are there any defects in those related law articles and regulatory rules? (3) Can the law provisions on punitive damages for harmed private interests be applied to the trial of PCPIL punitive damages through the judge's interpretation of the said law provisions? (4) What are the remaining unsettled puzzles when advocating scholars elaborate on the benefits of the legislative creation of a PCPIL punitive damages system? (5) When considering the establishment of a PCPIL punitive damages system, should it be designed as an uniform size for all? Or should it be divided into sub-versions to meet the corresponding needs of each type of PCPIL?

Before the above questions can be convincingly answered, we should take a negative attitude towards that legislative proposal. The reason is simple: hasty revision of the law can not solve practical problems, but may lead to greater legal conflict and confusion.

3. Differences Between Punitive Damages for Private Interests and Its Counterparts for Public Welfare

So far, China's laws have established the system of punitive damages for harmed private interests, and its courts have applied it in their judicial practice. Some scholars believe that due to the similarity and affinity between punitive damages for harmed private interests and PCPIL punitive damages, the latter can easily borrow or copy the relevant contents of the former both in specific law articles and legal theories. In this regard, it is difficult for this author to agree. Those two kinds of punitive damages have obvious distinctions, which are mainly reflected in the following ten aspects:

First, the legal interests to be protected by those two systems and their respective theories are different. The punitive damages for harmed private interests aim to protect the private interests of the victims, while PCPIL punitive damages focus on the protection of the damaged public welfare.

Second, the necessary prerequisites for the application of the two systems and their respective theories are different. The necessary premise of claiming punitive damages for harmed private interests is that there is a contractual relationship or tort relationship between the two parties. In contrast, the premise of advocating PCPIL punitive damages is that the defendant has committed unlawful acts against specific public welfare or is in real danger of doing something like that, while there is neither contractual nor tort relationship between the suing parties of PCPIL and the defendant.

Third, as far as the claims involving the two systems are concerned, their claimants are different. The claimant of punitive damages for harmed private interests is the infringed. In contrast, the claimant of PCPIL punitive damages is not the infringed, but a few legally certified government branches or organizations.

Fourth, the relationship between those two systems and the claims of actual damages is different. As far as punitive damages for damaged private interests are concerned, they are closely related to the relevant actual damages: the judge's approval of the latter is a necessary prerequisite for his/her subsequent endorsement of the former. In contrast, PCPIL punitive damages are not directly related to the said claims of actual damages.

Fifth, the relationship between PCPIL punitive damages, its counterparts involving private interests, and the parties' right of disposition is different. "The former should specifically provided by the law, and should not be freely dealt with by the parties, which reflects the State intervention; while the latter is the relief between the parties, and allows the parties to reach an agreement in advance as well as

consent to change afterwards, which reflects the autonomy of will and equality of status." [7]

Sixth, the relationship between two types of punitive damages and the dichotomy of public law and private law is different. Punitive damages for harmed private interests are private law in nature. In contrast, there is a great controversy among scholars on the nature of PCPIL punitive damages. Most scholars allege that it should be a mixture, that is, it possesses the attributes of both public and private interests simultaneously. For example, "Xiao Jian Guo, a professor at the Law School of Renmin University of China, believes that the right of punitive damages enjoyed by the consumer association should be different from that enjoyed by consumers. The consumer's right of punitive damages belongs to the suing right for civil disputes, which aims to compensate the property losses of the victim. It is the consumer who truly enjoys the interests declared by the judgment. The plaintiff and the beneficiary of the rendered judgment are the same one; The right of punitive damages enjoyed by the consumer association is different from rights of private nature, and should not be a public power either, but should be an independent right of claim between the two." [8]

Seventh, as far as the two are concerned, the damages' calculation methods and standards for clarifying it are different. In terms of punitive damages for harmed private interests, the bases for calculating its amount is either the amount of illegal profits earned by the defendant, or the amount of losses suffered by the plaintiff, or the price paid by the plaintiff, and so on. The related calculation methods and standards are clearly provided by the law. By comparison, there is a legal loophole for the calculation of PCPIL punitive damages in China.

Eighth, as far as the two are concerned, their relevance to public welfare protection is different. The public welfare protection effect of punitive damages for harmed private interests is indirect, that is, the type of "subjective for their personal gains and objective for others' benefits". In contrast, the judgment concerning alleged PCPIL punitive damages is directly related to public welfare.

Ninth, as far as the two are concerned, the holders of the judicially affirmed punitive damages are different. When the court upholds the claim of punitive damages for harmed private interests, the compensation amount belongs to the victim; When the court approve the claim of PCPIL punitive damages, the compensated money is either attributed to the state treasury, or managed and used by certain government organs, or managed and used by a trust fund.

Tenth, in line with the law, punitive damages for harmed private interests are applicable in a wide range of fields. It is mainly used in the areas of consumers' rights and interests protection, food and drug safety, issues concerning product quality, cases involving ecological environment damage, disputes involving the signing of labor contracts, issues concerning the implementation of tourism contracts, etc. By comparison, the application scope of PCPIL punitive damages is quite narrow. "At present, PCPIL punitive damages can only be applied to civil public interest litigation on the rights and interests of consumers in the field of food and medicine, and there is no clear legal basis for its application in other fields." [9]

We can reach the following conclusion by resorting to the preceding analyses: "PCPIL and traditional civil litigation to protect the individual interests of the parties are very different in many aspects, such as trial ideas and trial rules." [10] The former lacks the conditions to directly borrow the relevant systems and theories of the latter. Therefore, the following views are untenable: "When filing PCPIL to a court, consumer associations can refer to the provisions on consumers' request for punitive damages and claim punitive compensation accordingly. Similarly, procuratorial organs, while acting as the suing party of a PCPIL, can also refer to the provisions on consumers' request for punitive compensation." [11]

4. Assessments of the Current Legal Bases for PCPIL Punitive Damages

4.1. The Law Articles on Punitive Damages for Harmed Private Interests Cannot Be Used as the Bases for Alleging PCPIL Punitive Damages

From the perspective of literal interpretation, the punitive damages enacted in China's valid laws, regulations and judicial interpretations can only be used in civil cases with harmed private interests. Specifically, the following law provisions limit the scope of obligee who are entitled to claim punitive damages to the victims in relevant contractual or tort relations: paragraph 2 of Article 179 of *the Civil Code of China* (hereinafter referred to as *CCC*), Article 1185 of *CCC*, Article 1207 of *CCC*, Article 1232 of *CCC*, Article 55 of *the Law of China on the Protection of Consumers' Rights and Interests*, Article 82 of *the Law of China on Employment Contracts*, Article 148 of *the Food Safety Law of China*, paragraph 3 of Article 144 of *the Drug Administration Law of China*, paragraph 1 of Article 70 of *the Tourism Law of China*, and Article 15 of *SPC's Certain Provisions on How to Apply Laws in the Trials Concerning Food & Medicine Consumption Disputes* (Fa Shi [2013] No. 28). Even scholars who support the establishment of a PCPIL punitive compensation system also admit that "the system of punitive damages for harmed private interests, through the interpretation of legal provisions, can not be directly used to try PCPIL by extending their meanings, but can only be used as a reference source." [12] In addition, according to the contents of part II of this paper, there are multiple obvious differences between the two types of punitive damages, which are insurmountable barriers for the two to directly invoke from its counterpart.

In the light of the analyses in preceding paragraphs, the following views are difficult to justify theoretically: "the claiming of PCPIL punitive compensation is also affirmed by Article 1232 of *CCC*." [13] "The punitive damages provided by Article 1232, which do not specify the types of victims suffering serious consequences, may be applicable to both

private interest litigation and public interest litigation." [14] "Article 1232 of the *CCC* clearly provides that punitive damages shall be applied to pursue responsibility for infringements against ecological environment. This also shows that the practice of Introducing the system of punitive damages into environmental PCPIL has been affirmed by law." [15]

This paper holds that: first, from the perspective of the contents of the said Article 1232, the proper person for its application is the infringed. In contrast, the competent person of PCPIL is not the infringed, but a few legally certified government organs and organizations provided by Article 55 of *Civil Procedure Law of China* (hereinafter refers to as *CPL*). Therefore, if the court applies this Article 1232 when trying environmental pollution PCPIL, it will certainly constitute an appealable law application error. Second, from the contents of Article 1232, because its applicable person is the victim, it can only be applied to ecological environment tort actions with private losses, not to PCPIL. Third, In combination with the contents of Articles 1234 and 1235 of *CCC*, since the related claim-filing parties are those aforesaid government organs and organizations, those two Articles can be used in the trials of PCPIL. But at the same time, between the lines of these two Articles, we can't identify any positive trace of authorization expressed by the Legislator allowing these suing parties to file the so-called punitive damages in PCPIL.

4.2. To Date, There Isn't a Direct Legal Basis for Alleging PCPIL Punitive Damages

When it comes to the application of PCPIL punitive damages, its proponents not only advocate referring to the provisions of punitive damages for harmed private interests, but also believe that there are some normative documents that can be directly applied. These mainly include: 1. *Notice of the Supreme People's Procuratorate on Strengthening the Handling of Public Interest Litigation Cases in the Field of Food and Medicine* (hereinafter referred to as *the Notice*). It states that "for PCPIL cases in the field of food and medicine, we can explore the possibility of filing claims for punitive damages." 2. *Opinions on Deepening Reform and Strengthening Food Safety Work* (hereinafter referred to as *the Opinions*) jointly issued by the CPC Central Committee and the State Council. It points out that "we should actively improve food safety civil and administrative public interest litigation, do a better job in the connection and cooperation with civil and administrative litigation, and explore the possibility of establishing a punitive compensation system for food safety PCPIL." 3. *Decisions of the CPC Central Committee on Several Major Issues Concerning Upholding & Improving the Socialist System with Chinese Characteristics and Promoting the Modernization of the National Governance System and Governance Capacity* (hereinafter referred to as *the Decisions*). It also points out "strengthen the punishment of serious violations and implement the punitive compensation system." Accordingly, scholars supporting the establishment of PCPIL punitive damages believe that these three normative documents "basically dispel the practical dispute over whether to claim punitive damages in PCPIL from the perspective of national governance system, central and national policies and judicial policies, and also show that it is imperative to introduce punitive damages in consumer PCPIL." [2]

This author fully agrees with the above three normative documents. However, a legal doubt remains to be solved here: Can these normative documents be used as the legal bases that can be cited by courts at all levels when trying PCPIL cases? This paper holds that some have this possibility, while others do not. The reasons are as follows:

Firstly, Article 4 of *the Provisions of the Supreme People's Court on the Reference of Laws, Regulations & Other Normative Legal Documents in Judicial Documents* (Fa Shi [2009] No. 14) indicates: "civil adjudication documents shall quote laws, legal interpretations or judicial interpretations. Administrative regulations, local regulations, autonomous regulations and specific regulations that should apply may be directly cited." in line with Articles of *the Lawmaking Law of China* (hereinafter refers to as *LL*): (1) *the Notice* and *Decisions* mentioned above are neither laws, legal interpretations or judicial interpretations, nor administrative regulations, local regulations, autonomous regulations and specific regulations;(2) China's basic policies are formulated by the Party Central Committee. Although it does not belong to the category of state organs, the CPC Central Committee is the highest policy-making organ in China. However, there is no law article clearly tell us that the normative documents formulated by the Party Central Committee can be used as the legal bases for judges to try lawsuits. Therefore, *the Decisions* can not be used as a legal source for alleging and judging the claims for PCPIL punitive damages.

Secondly, from a theoretical point of view, if it is a red headed document jointly issued by the CPC Central Committee and the State Council, that document in essence is both a policy and an administrative regulation. Therefore, *the Opinions* have the nature of administrative regulations, which may become a legal basis for judges to hear claims of PCPIL punitive damages. Similarly, *the Opinions on Accelerating the Construction of Ecological Civilization* issued by the CPC Central Committee and the State Council in 2015 and *the Overall Plan for the Reform of Ecological Civilization System* issued by those two powerful institutions in September 2015 are also administrative regulations in essence. However, it should be noted that paragraph 1 of Article 88 of *LL* provides that "the effectiveness of laws is higher than administrative regulations, local regulations and rules." Therefore, when looking for the legal bases for PCPIL punitive damages, the level of the valid laws is higher than *the Opinions*. For the same object of law application, if the content of the valid law is different from that of *the Opinion*,

[2] In terms of the meaning of judicial explanatory documents, the differences between them and SPC's judicial interpretations, and the external and internal functions of those judicial explanatory documents, the main reference sources for this section are: Peng Zhongli: "On the Legal Status of Judicial Explanatory Documents of the Supreme People's Court", "Science of Law", 2018, (3).

the law shall prevail.

Next, it should be noted that: first, in terms of the establishment and operation of PCPIL punitive damages, such administrative regulations can play an temporary gap-filling role, but for the long run, it is better to modify relevant laws. Second, such administrative regulations generally have the problems of vague contents and lack of system details. Therefore, when applied, local courts may have to make different interpretations of their meaning, which will lead to the problem of "different judgments for similar cases".

In addition to the above normative documents, the Supreme People's Court (hereinafter refers to as SPC) has also promulgated relevant normative documents in recent years. For example, SPC issued *the Opinions on Comprehensively Strengthening the Trial of Environmental Resources & Providing Strong Judicial Guarantee for Promoting the Construction of Ecological Civilization* (hereinafter referred to as *SPC's Judicial Guarantee Opinions*) in 2014. Its Article 5 indicates: "We should adhere to the principle of suitable responsibility for damage. Fully implement the provisions on comprehensive compensation, and explore the establishment of systems such as environmental remediation and punitive damages." The question here is: in addition to issuing a large number of judicial interpretations, SPC often issues such kind of normative documents. Then, can these documents, which are usually expressed in the forms of (*Guidance*) *Opinions*, *Notices*, *Minutes of Meetings*, and occasionally "*Answering Reporters' Questions*", *Public Speeches of Judicial Officials issued by SPC* and *Specific Writings published by SPC*, become the legal bases for the court to try PCPIL punitive damages?

According to Prof. Peng Zhong Li[3], in addition to SPC's judicial interpretations numbered by "Fa Shi", SPC also formulates and promulgates a large number of normative documents numbered by "Fa" every year. Prof. Peng believes that such normative documents are judicial explanatory documents in essence. In this regard, *SPC's Judicial Guarantee Opinions* are typical. Externally, the biggest difference between judicial interpretations and judicial explanatory documents is that according to the authorization expressed by Article 104 of *LL*, SPC and the Supreme People's Procuratorate (hereinafter refers to as SPP) are entitled to formulate judicial interpretations severally or jointly. In contrast, the formulation of judicial explanatory documents has not been explicitly authorized by law.

Prof. Peng believes that from the external point of view, judicial explanatory documents have the following functions: 1. Bearing political intentions. 2. Implementing public policies. 3. Connecting with other State organs. In this regard, *the Notice on Implementing the System of Environmental Civil Public Interest Litigation* jointly issued by SPC, the Ministry of Civil Affairs and the former Ministry of Environmental Protection is typical. From the internal perspective, the main functions of judicial explanatory documents are: 1. Shaping the ideas of adjudication activities. For example, SPC often issues judicial explanatory documents dubbed "*Providing Judicial Guarantee for XX*". 2. Standardizing the filling of legal loopholes. For example, in the process of promoting China's socialist market economy, the legal norms for the futures trading are far from perfect, and there are lots of loopholes. Therefore, SPC has successively issued the following documents by turns: *SPC's Notice on the Minutes of the Symposium Concerning the Trial of Futures Dispute Cases*; *the Notice on Issues Like Freezing & Transferring Securities or Transferring of Clearing Account Funds Controlled by Futures Exchanges, Securities Registration & Settlement Institutions, Securities Operation or Futures Brokerage Institutions; SPC's Urgent Notice on Certain Issues that shall be noticed while implementing* '*the Notice on Issues Like Freezing & Transferring Securities or Transferring of Clearing Account Funds Controlled by Futures Exchanges, Securities Registration & Settlement Institutions, Securities Operation or Futures Brokerage Institutions*'; *SPC's Notice on Strictly Implementing the Provisions on Litigation Preservation or Enforcement Measures Against Account Funds of Securities or Futures Trading Institutions*, and so on.

When people's courts try cases, those judicial explanatory documents are the normative bases for presiding judges to make decisions. For example, in the judgment of "Yang Wei et al. v. Hainan Hisense Futures Brokerage Co., Ltd. and others", the court pointed out: "this court believes that according to *SPC's Notice on the Minutes of the Symposium Concerning the Trial of Futures Dispute Cases*... it is an invalid act..."

Specifically, in terms of the contents of *SPC's Judicial Guarantee Opinions*, it can play 1 and 2 of the above external functions and 1 and 2 of the internal functions. Therefore, *SPC's Judicial Guarantee Opinions* may be one of the legal bases available for judges when trying cases. However, the shortcomings of such judicial explanatory documents in judicial application are also obvious, and their defects are similar to the faults in the administrative regulations jointly issued by CPC Central Committee and the State Council mentioned above (e.g. vague content and lack of system details). What needs more attention here is that compared with the aforesaid administrative regulations, those judicial explanatory documents have a even lower status in the law hierarchy of China.

To sum up, the claim for PCPIL punitive damages is not in a state of absolutely no "legal base". However, as far as the aforementioned administrative regulations and judicial explanatory documents are concerned, they are suspected of committing *ultra vires* in the area of legislative affairs. The reasons for that assessment are as follows:

First of all, Article 8 of *LL* clearly indicates: "Only laws can be enacted for the following matters:... (VIII) basic systems of civil law." As far as the theme of this paper is

[3] In terms of the meaning of judicial explanatory documents, the differences between them and SPC's judicial interpretations, and the external and internal functions of those judicial explanatory documents, the main reference sources for this section are: Peng Zhongli: "On the Legal Status of Judicial Explanatory Documents of the Supreme People's Court", "Science of Law", 2018, (3).

concerned, proponents for the establishment of PCPIL punitive damages hold the following view, that is, the system originates in the Common Law System. According to the classic civil law theory of Romano-Germanic Law System, whether it is tort compensation or contract violation compensation, the infringed can only get the actual damages from the wrongdoer, not the punitive one. There are two theoretical bases for this argument: (1) a fundamental starting point for law studies in Romano-Germanic Law System is the division of public law and private law, and civil law is undoubtedly a private law; (2) the traditional civil law holds a negative attitude towards the penalty imposed by one party against its counterpart on an equal legal status. Therefore, two types of punitive damages have positively challenged the classic jurisprudence of civil law in Romano-Germanic Law System. Consequently, if those two punitive damages are established by Chinese laws, the damage compensation in civil law will acquire the effect of punishment and deterrence that is the hallmark of the public law. From this analyses, the system of PCPIL punitive damages should be identified as a basic system of civil law. It can only be set by law.

This can also be verified by the setting of punitive damages for harmed private interests: so far, besides old Article 9[4] of *SPC's Judicial Interpretation on sales contracts of commercial housing* (Fa Shi [2003] No. 7), other types of punitive damages for harmed private interests are universally provided by law. With the implementation of *CCC*, SPC revised the relevant judicial interpretations at the end of 2020. It must be noted that the said old Article 9 has been deleted in *the Revised SPC's Judicial Interpretation on sales contracts of commercial housing* (Fa Shi [2003] No. 7, as amended by Fa Shi [2020] No. 17). This confirms the above view from one perspective, that is, the system of punitive damages for harmed private interests is a basic system of civil law. Its establishment and modification shall be carried out by law.

Secondly, paragraph 1 of Article 104 of *LL* states that "the interpretation of the specific application of law in judicial and procuratorial work made by SPC and SPP shall mainly focus on specific law articles and comply with their purposes, principles and original intentions of legislation." Even scholars who are in favor of establishing a PCPIL punitive compensation system admit that the system is not clearly enacted in China's valid laws. Subsequently, the practice of filling this loophole through a judicial explanatory document (*SPC's Judicial Guarantee Opinions*) violates paragraph 1, Article 104 of *LL*. In addition, with regard to Article 98, paragraph 2 (1) and (2)[5] of *SPP's Rules for Handling Public Interest Litigation* (effective as of July 1, 2021), for the same reason, it also violated paragraph 1, Article 104 of *LL*. In other words, items (1) and (2) of paragraph 2 of Article 98 of *SPP's Rules for Handling Public Interest Litigation* are also suspected of *ultra vires* in legislative affairs.

Thirdly, "punitive damages should be based on the explicit provisions of the law. Arbitrarily expanding the scope of application of punitive damages is a destruction to the Rule of Law, which is tantamount to the judge depriving the property rights of proprietors wantonly." [16] Paragraph 1 of Article 13 of *China's Constitution* provides: "Citizens' lawful private property is inviolable."Article 3 of *CCC* also indicates: "The personal rights, property rights and other legitimate rights and interests of civil bodies are protected by law, and no organization or individual may infringe."“From the legislative intent of punitive damages in the field of food safety, the claim for punitive damages belongs to the infringed consumers and is a substantive claim in essence." [17] Judging from the decided cases of PCPIL punitive damages in China, the punitive damages awarded by the court are as little as thousands of RMB, and as many as hundreds of millions of RMB. Such punitive civil sanctions for depriving the private property must be provided by law, otherwise they are suspected of illegally depriving others of their legitimate interests, or even violating the provisions of *the Constitution* and *CCC*.

5. PCPIL Punitive Damages Can't Be Justified in Theory

5.1. Proponents' Interpretation of "and So on" in an Article of a Related Judicial Interpretation Is Inappropriate

In recent years, proponents of PCPIL punitive damages have published many academic works, introducing various supporting theories. Among them, this paper takes the most important ones and analyzes them as follows:

Many proponents argue that the existence and application of PCPIL punitive damages system is based on the phrase "and so on/*Deng*" as well as its meaning explanation conducted by the presiding judges of the related lawsuits. The said document is *SPC's Certain Interpretations on How to Apply Laws to the Trials of the Public Interest Lawsuits Concerning Customers' Rights & Interests* (Fa Shi [2016] No. 10). Paragraph 1 of its Article 13 says: "In a consumer PCPIL case, if the plaintiff requests the defendant to bear civil

[4] Old Article 9 of SPC's Judicial Interpretation on sales contracts of commercial housing (Fa Shi [2003] No. 7): "When the seller entered into the commercial housing sales contract, under any of the following circumstances, resulting in the invalidity, cancellation or dissolution of that contract, the buyer may request the refund of the paid house purchase price, interest and compensation for losses, and may request the seller to bear the liability for compensation not exceeding twice the paid house purchase price: ……"

[5] Para. 2 of Article 98 of *SPP's Rules for Handling Public Interest Litigation*: "For cases in different fields, the following claims can also be made: (1) for cases in the field of damage to the ecological environment and resource protection, a claim can be made to require the defendant to repair the ecological environment by means like replanting and greening, ecological proliferation and fry release, land reclamation or others, or pay the cost of ecological environment restoration, Claim for compensation for the loss caused by the loss of service function during the period from the damage to the ecological environment to the completion of restoration, and the loss caused by the permanent damage to the ecological environment function. If the defendant intentionally pollutes the environment and destroys the ecology in violation of laws and regulations, resulting in serious consequences, claims like punitive compensation can be filed against the offenders; (2) For cases in the field of food and drug safety, litigation claims such as requiring the defendant to recall and dispose of relevant food and drugs in line with the law, and bear relevant expenses and punitive damages may be filed."

liabilities such as stopping the infringement, removing the obstruction, eliminating the danger, making an apology, and so on, the people's court may support it." Proponents believe that paragraph 1 of Article 13 "is reserved with the phrase 'and so on', which reserves space for the expansion of the claim types of consumer PCPIL in practice." [18] Therefore, "there is a legal basis for the procuratorial organ to file a claim for PCPIL punitive compensation." [19]

This author believes that there are serious defects existing in that theory. They are mainly showed as the following:

"Firstly, since the judicial interpretation leaves room for the future innovation of liability bearing methods in consumer PCPIL, why not explicitly list the traditional liability of 'compensation for losses'?" [20] Generally speaking, compensation for losses (the actual damages) is the logical premise for further enacting punitive damages for private losses and even PCPIL punitive damages. But so far, no one has made a detailed and convincing theoretical explanation for this missing part.

Secondly, as for the decided cases in favor of PCPIL punitive damages, the law interpretation method applied by the judge belongs to the objective purpose interpretation method under the purpose interpretation method. In essence, this interpretation method is part of the category of meaning expansion interpretation. The usage of this method is strictly limited. If these restrictions are willfully broken or ignored, it is easy to lead to arbitrary judgment. These restrictions are: 1. The application of purpose interpretation is mainly divided into four situations: (1) Purpose interpretation based on legislative intention. (2) Interpretation for achieving justice in individual cases. (3) Interpretation based on the purpose of social effect. (4) Interpretation based on social situations and public opinion. The first two are safer, while the latter two are easy to fall into the pit of arbitrary adjudication. 2. "we should give enough warning to the methods of purpose interpretation: This is not only because, compared with other interpretation methods, purpose interpretation is easy to induce the interpreter's intention to 'rape' the legislator's purpose due to the integration of subjective choice with value judgment, so that the purpose of the law would become the existence of inconclusive; More importantly, when building the Rule of Law in countries that lack the Enlightenment of Governance by the Law, it is necessary to 'compete for territory' among law, politics and morality. When political guidance and moral public opinion can influence the conclusion of legal interpretation at will, and then slide to unrestrained substantive interpretation, the systematic restriction painstakingly constructed by the dogmatics of law seems to be an empty word." [21] 3. When judging the filed claims of PCPIL punitive damages, judges often resort to "interpretation for achieving justice in individual cases". In this regard, it should be noted that "it can only be considered substantively within the scope permitted by the law, the accommodation of the parties in a specific case is not a justifiable reason to violate the general requirements of the law." [22] 4. The purpose interpretation based on legislative intention can be further divided into subjective purpose interpretation and objective purpose interpretation. Subjective purpose interpretation emphasizes to seek out the real purpose of the legislator, so it is safer. But "the goal of objective purpose interpretation is to find the meaning of law and emphasize to determine its reasonable purpose according to the backdrop of current situation the legal text is in. The purpose of legislators is irrelevant in the application of this interpretation method." [23] In order to prevent the objective purpose interpretation from being abused, we should pay attention to the following two restrictions when this method is used: (1) "The role of objective purpose interpretation is implicit and supplementary, which must be carried out within the possible scope of law." [24] (2) "A case can not be solely decided by resorting to objective purpose interpretation." [25]

Thirdly, some proponents specially pointed out: "although SPC's Certain Interpretations on How to Apply Laws to the Trials of the Public Interest Lawsuits Concerning Customers' Rights & Interests does not say that the procuratorial organ has the right to file claims of punitive damages in PCPIL, it uses the phrase 'and so on' after listing four ways of bearing civil liability, leaving room for other ways of claim. The sale of food that does not meet the food safety standards will damage the public interests enjoyed by unspecified number of citizens, and that damage can not be compensated through private interest litigation, but can only be solved through PCPIL. Therefore, the phrase 'and so on' in the above judicial interpretation should be understood as 'list not exhaustive/*Deng Wai Deng*', that is, it should include the right to claim damages, which is in line with the purpose of protecting public interests." [26]

This author believes that from the perspective of legal interpretation, this understanding is sensible, so as to include the claim for actual damages. However, many relevant academic works point out that there are multiple differences between the claim for actual damages (compensation for losses) and the claim for punitive damages. From the perspective of interpretation logic, including the claim for actual damages does not necessarily mean that claims of two punitive damages can also be covered by the phrase 'and so on'. scholars should do further in-depth research on this subject. However, so far, this author has not seen any detailed satisfactory elaboration on this puzzle.

5.2. The Two Theories of Litigation Entitlements Should Not Be the Theoretical Basis for PCPIL Punitive Damages

In order to find a legal basis for the establishment of PCPIL punitive compensation system, some scholars alleged that: "from the perspective of procedural law jurisprudence, the theoretical basis of punitive compensation claim in consumer PCPIL is the litigation entitlement. Litigation entitlement means that a third party who is neither the civil obligee nor a party of civil law relations exercises the suing right that arises from the said legal relations between others as a qualified litigator. Due to the fact that the third party is entitled to manage the rights or legal relations of others, the binding effect of the judgment is naturally expanded to the

parties of the related civil legal relations. Among them, the third party who exercises the right of litigation entitlement in accordance with the provisions of the law is called statutory litigation entitlement; where a third party exercises the suing right according to the authorization of the civil obligee or parties of the related legal relations, it is called random litigation entitlement. The theory of litigation entitlement provides a legitimate theoretical basis for the plaintiff's competency in PCPIL. If the statutory litigation entitlement is adopted, the procuratorial organ or consumer's association shall exercise the right of claiming punitive damages in line with the authorization of the law, and enjoy the suing right instead of consumers. If the random litigation entitlement is adopted, the procuratorial organ or consumer association shall exercise the transferred right of claiming punitive damages and the suing right based on the wishes of consumers." [27]

This paper holds that the said two theories of litigation entitlement can not provide strong support for the legislative creation of PCPIL punitive damages. The reasons are: first, in terms of the statutory litigation entitlement, those scholars also clearly admitted in their article: "based on the analyses of the provisions of valid laws and judicial interpretations, There is no explicit provision on the right of procuratorial organs or consumer associations to allege punitive damages in consumer PCPIL, and there is the difficult problem of legislative gap." [27] Therefore, there is no need for this author to argue that matter any further. Second, as far as the random litigation entitlement is concerned, if the people's procuratorate, as the suing party, needs to obtain the intended authorization of all related private interest victims in advance, it is very difficult to operate. The difficulties can be broken down as follows: 1. How many victims are there nationwide? What method is used for the related calculation, estimation and distribution analyses? 2. After these victims are identified, how to obtain their authorization? Is it necessary to obtain authorization from every victim? Or can it be authorized by certain percentage of victims? Why? If some victims disagree with that authorization, how can they protect their private interests through legal means? For those victims who fail to do so in a timely manner due to various reasons, can they sue separately to protect their rights and interests? If so, will the combination of claims of actual damages and claims of punitive damages put forward by the victim, as well as claims of punitive damages in the related PCPIL cause the problem of "disproportional punishment against unlawful acts"? When the same defendant is also subject to administrative fines or fine penalty of *the Penal Code*, will this "disproportional punishment against unlawful acts" get even worse? If not, will the procuratorial organ that files PCPIL punitive damages based on a presumed authorization fall into the embarrassing situation of illegally depriving the suing right of those victims who negatively reacted to the requirement of the intended authorization? 3. If the people's procuratorate handles the issue of obtaining the intended authorization by means of public announcement, can the victim who sees that announcement choose to opt-out by handing over a written declaration? How to protect the rights and interests of those victims who fail to see that announcement for sound reasons? 4. In terms of the two kinds of litigation entitlements advocated by the aforesaid scholars, does their theory violate a basic principle of conducting PCPIL in China - the principle that PCPIL and related private interest litigation shouldn't be handled and decided in the same trial procedure? 5. By resorting to those two types of litigation entitlements, if the procuratorial organ does acquire the right to claim two types of punitive damages, when the plaintiff prevails in the trial at last, there are bound to be a train of problems on how to distribute punitive damages among the vast number of victims represented. As part IV (4) of this paper has elaborated on this matter, it won't be repeated here. 6. If the people's procuratorate and other proper plaintiffs of PCPIL cases have obtained the right to claim two types of punitive damages through the usage of the theory of litigation entitlements, the next challenge to be dealt with is: What is the essential difference between those PCPIL that can allege two types of punitive damages and the two represented actions by Articles 53 and 54 in *CPL*?

5.3. When Demonstrating the Legitimacy of Establishing PCPIL Punitive Damages, Proponents' Views Are Unclear

Scholars in favor of PCPIL punitive damages often demonstrate their views in the following sequence: first, the paper will introduce the relevant cases and legislation of the Common Law System, which is the origin of the punitive damages system in the modern private law; it then briefly talked about the theoretical basis of punitive damages system in the sense of private law - protecting related public interests by private law enforcement, that is, "the trend of performing private law as public law"; after that, it concisely describes the relationship between the two punitive damages systems (or even totally ignoring this part), and directly jumps to the conclusion that the establishment of PCPIL punitive damages in China is rightful and sensible.

This paper holds that in terms of the above "three-step" approach, its defects mainly are:

First, when discussing the justification of China's establishment of PCPIL punitive damages system, it is either brushed lightly, or "jump to a conclusion" on the premise of lacking detailed discussion. For example, "Although *SPC's Certain Interpretations on How to Apply Laws to the Trials of the Public Interest Lawsuits Concerning Customers' Rights and Interests* does not directly provide that procuratorial organs can put forward punitive damages in their claims, based on the principle of safeguarding social and public interests and the special value of punitive damages system in terms of justice, efficiency and society, It does not exclude the procuratorial organ from advocating punitive damages." [28] For another example, "After investigating and comparing the development history and operation of punitive compensation system in consumer PCPIL abroad, it can be seen that the introduction of punitive damages system into China's consumer PCPIL has a theoretical basis, and a large

number of judicial practices in recent years have also provided rich practical materials." [29] Still another example, "the punitive compensation system is fully consistent with the system of PCPIL in terms of its purpose and functional value. Thus, while filing PCPIL cases to the court, the procuratorial organ certainly can claim punitive damages." [30] Those scholars then turned their attention to the discussion of other related technical issues (e.g. the determination method of the amount of PCPIL punitive damages, the scope of the qualified suing parties for raising such claims, the identification of the suitable manager and the supervisor for the use of such funds, the distribution and the final ownership of the fund, etc.).

Second, on the justification of transferring the punitive damages system for harmed private interests to the protection of public welfare, the proponents either did not elaborate in details, or there was a lack of logical coherence in the context. For instance, in one article, the author reasonably indicates in the first half: "Consumer PCPIL and the tort action for consumers' private interests have different nature and belong to different litigation types, which determines that their operation procedures and logic are different. The punitive damages formulated in private law are more in line with the procedural jurisprudence of the tort action for consumers' private interests. For example, the party autonomy principle or the principle of disposition followed by those two are consistent with the goal of private interests' protection, but it has many conflicts with the basic concept and operation logic of PCPIL." [31] However, in the following second half, the author does not "seek out the corresponding remedies for the identified symptoms", but falls into the cliché expounding track, discussing the justification of establishing PCPIL punitive damages system in China from the perspective of comparative law studies. This argumentation is not only lack of pertinence, but also lack of persuasion.

Third, as far as the rightness of the reference of comparative law is concerned, the arguments of the advocating scholars are not convincing. The manifestations are as follows: 1. When learning from the relevant systems and jurisprudence of Common Law System, they only pay attention to the aspects similar to China's legal system and jurisprudence, while ignoring the differences. This can be further divided as: (1) China's national conditions are different from those of the UK, the USA and other countries. For example, is China's court a suitable organ for adjudicating PCPIL punitive damages? The answer is a definite No. The reason is that Chinese courts are in a dependent subordinate position in the political and legal framework of China. "The integration mechanism of contemporary Chinese society takes the Party and Government branches as the core, and the judiciary is only a link in the chain of Party and Government branches' social governance. In line with this social integration mechanism, China has actually formed an Omnipotent System (although this System shows signs of loosening at present, it is far from being completely eliminated), and the Party and Government branches completely monopolize the allocation of social core resources. This makes the establishment, finance and other key resources essential to the operation of the courts completely controlled by the Party and Government branches. Because the dependence of organizations on external resources is inversely proportional to their autonomy, courts rely heavily on the Party and Government branches for core resources such as staffing and finance... As we all know, for a long time, China's courts, together with public security and procuratorial organs, have been regarded as the 'killing power/*Dao Ba Zi'* of proletarian dictatorship and need to obey the leadership of the Party committees at various levels absolutely. Even now, the courts also need to serve 'the Pivotal Work/*Zhong Xin Gong Zuo'* of the Party and Government branches, and needs to have a clear 'Consciousness of the Overall Situation/*Da Ju Yi Shi*'." [32] In contrast, the United States is located at the opposite end of the spectrum: on the one hand, "In a highly decentralized American society, the judiciary is more responsible for social integration." On the other hand, "in the context of Western Rule of Law, out of respect for judicial independence, an isolation mechanism is often established between judicial power and judicial administrative power". [33] As a result, the US court often plays an important role in the redistribution of various social resources. For another example, China's social organizations can not be simply equated with those in the UK, the USA and other countries. Taking the filing of environmental PCPIL as an example, "according to the survey data, only 4% of over 700 social organizations that meet the legal conditions for exercising the right of suing in China indicate they are able and willing to undertake this function, while the vast majority of social organizations are unable to afford it." [34] Against this backdrop, when we decide to learn from foreign systems and legal principles, how could we try to bridge these huge political and legal system gaps? The proponents of PCPIL punitive damages are apparently vague on that subject. (2) Traditionally, punitive damages in countries of the Common Law System are only used for the protection of harmed private interests. In this regard, advocating scholars failed to fully discuss the justification of directly "grafting" it into China s civil public welfare protection; (3) China belongs to the family of Romano-Germanic Law System. Advocating scholars have insufficient discussion on how to smoothly "embed" the punitive damages derived from the Common Law System into China's law system. 2. A scholar argues: "In essence, the 'punitive nature' of punitive damages is to distribute the illegal income of the law violator by making the suing party get additional compensation exceeding his losses, so as to make it unprofitable for the offenders, as well as to reduce the latter's motivation for breaking the law again. The system 'takes private law enforcement as the way of its implementation, uses the so-called punishment in individual cases to compensate the external social costs that cannot be internalized, so as to maintain the balance of the whole social efficiency system', and realizes the purpose of public welfare relief by means of private interest litigation." [35] "Punitive damages are regarded as public law liabilities in the countries

or regions of traditional Romano-Germanic Law System, while scholars of Common Law System regard them as special civil liabilities. However, it is indisputable that punitive damages have the function of preventing damage from happening again and encouraging private 'law enforcement'. The right of the interested parties to claim private punitive damages is essentially public welfare. And the procuratorial organs' claim for punitive damages in PCPIL is based more firmly on the pure purpose of public welfare protection." [36] "The purpose of environmental PCPIL is to safeguard environmental public interests, and should be characterized as 'private law enforcement 'litigation." [37] In this regard, how can the people's procuratorate that brings PCPIL be included in the category of 'private law enforcement parties' under the 'private law enforcement theory' to protect public interest pursuant to the related private law? Advocating scholars are mentioned but vaguely.

Fourth, "In order to break through the dilemma that the filed punitive damages claims are legally baseless in PCPIL, some domestic scholars even proposed to formulate a separate 'law of public interest litigation'." [38] This author believes that even if the 'law of public interest litigation' should be enacted. The 'law' must also have a sensible and persuasive theory to support the PCPIL punitive compensation system in its contents. In addition, the 'law' will not be a truly isolated 'departmental law', it will also face the daunting task of coordinating its relationship with other adjacent departmental laws. In order to perfectly accomplish the said coordination task, each specific system in that 'law' should also have corresponding theoretical support, and those theories should be compatible and harmonious with each other and with the justified arguments of establishing PCPIL punitive damages system. In this regard, advocating scholars are failed to talk in detail, too.

5.4. When Demonstrating Theories for Related Law Institutions, Advocating Scholars Are Ambiguous Too

Even if the demonstration of the legislative justification of PCPIL punitive damages has been perfectly completed, the relevant theoretical research is but half accomplished. The remaining half of the tasks involve finding legal bases for their specific systems and coordinating their relationship with each other. A scholar mentioned that the task is mainly reflected in the following aspects: "In PCPIL, the applicable conditions of punitive compensation, the ways of determining the amount of punitive compensation, the connection with the private interest litigation launched by individual consumers, and the management issue after the payment of punitive damages have become difficult problems in its specific implementation." [39]

Currently, those unsettled but hot-debated specific system problems mainly are: (1) as an observation of the principle of suitable responsibility for damage, can PCPIL punitive damages be offset against the relevant fine punishment of *the Penal Code*? Meanwhile, can PCPIL punitive damages offset the relevant administrative fines? Furthermore, assuming that it can be offset, how to properly adjust the relationship between PCPIL punitive damages related to public welfare, administrative fines and fine punishment of *the Penal Code*? (2) After the suing party of a PCPIL prevailed in the lawsuit, who should be paid the punitive damages by the case-losing defendant? Why? Will the nature of PCPIL punitive damages change after the said money payment? Why? How to manage and use the paid money legally? Who oversees all of the related activities? (3) Can PCPIL punitive damages be used to satisfy the compensation claims raised by victims of private losses? Why? How to solve the dispute between the managing entity of the paid PCPIL punitive damages and the related victim of private losses applying for a suitable compensation? For example, when the paid PCPIL punitive damages are used up while compensating the losses of private victims, but a lot of related victims have yet to compensated or fully compensated what should we do about it? In this case, should the legally certified government organ or organization file a follow-up claim against the same defendant once again (a second related PCPIL case)? Or alternatively, do victims who have not been compensated for their private losses seek judicial relief by means of filing individual civil litigation, a model litigation, a party joinder action or a represented action? What is the theoretical basis of that institutional arrangement? If the paid PCPIL punitive damages can not be used for the compensation of the related victims who have suffered private losses, what is the theoretical basis for that arrangement? In addition, in this case, can a large number of related victims with private losses file separate civil lawsuits for their personal relief? And so on.

6. Conclusions

To sum up, we can draw the following two basic conclusions: first, so far, the legal bases for filing punitive damages for harmed public welfare are certain administrative regulations or judicial explanatory documents with vague and abstract contents. On the one hand, because of their vague meaning and lack of specific details, they have a low rank in the law hierarchy of China, so they are incompetent for their originally assigned job. On the other hand, because the function of those administrative regulations or judicial explanatory documents is to "patch the loopholes existing in basic systems of civil law", they are susceptible to the accusation of committing *ultra vires* in the area of legislative affairs. 2. This topic is constantly plagued by a paradox: "If we stick to the developing trend of merely filing claims of inaction, it will negatively affect the realization of the deterrent and punishing effects of PCPIL, and further hinder the progress of the practical activation of the system of PCPIL, which obviously deviates from the needs of judicial practice; on the other hand, if the claims of damages is introduced into PCPIL, it will certainly cause the confusion of public interest litigation and private interest litigation, which will not only adversely affect the current mechanism of civil litigation, but also constitute a direct attack against

the traditional jurisprudence and legal concepts." [40]

The paradox in the preceding paragraph shows that the theoretical research on the system of PCPIL punitive damages is anything but perfect, and a series of entangled theoretical questions need to be reasonably deciphered in the coming days. Before the completion of this formidable mission, this author opposes the establishment of the so-called PCPIL punitive damages in China. This paper only accomplished the task of "deconstructing/*Po*". As the old saying goes, there 's no making without breaking (*Bu Po Bu Li*). After "deconstructing", this author should undertake the assignment of "making/*Li*" alternative systems. Due to space constraints of this paper, the task of "making" will be left to another related article.

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