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Coordination of Multiple Mechanisms for Addressing Eco-Environmental Damage in China's Ecological and Environmental Code

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Abstract. China's existing regime for eco-environmental damage remedies is beset by prominent practical dilemmas, including fragmented avenues of redress, conflicting normative provisions, and a poorly integrated theoretical framework. In this context, the legislative formulation of the Ecological and Environmental Code provides a systematic institutional opportunity to standardize and integrate the scattered eco-environmental remediation mechanisms in place. A comprehensive analysis of the theoretical bottlenecks and normative deficiencies embedded in China's diversified environmental remedy mechanisms shows that clarifying the meaning of eco-environmental damage and affirming its private-law orientation in the Civil Code are of crucial theoretical and practical importance for constructing a coherent and standardized system of environmental remedies. To further refine the coordination and consultation mechanisms between different types of environmental litigation, it is essential to achieve effective integration between eco-environmental damage compensation actions and civil public interest litigation.

A tiered eco-environmental litigation system should be built on the basic logic of prioritizing administrative remedies, treating procuratorial public interest litigation as a supplementary judicial avenue, and enabling social organizations to participate in related cases on a parallel basis. In addition, it is crucial to clearly affirm the civil-contractual nature of eco-environmental consultation agreements, to delineate in a systematic way the boundaries between public-law and private-law modes of redress, to optimize the procedural sequencing of different types of environmental litigation, and further standardize the pre-litigation consultation procedures.

Keywords: Ecological and Environmental Code; environment damage; litigation for eco-environmental damage; public interest litigation; People's Republic of China.

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Introduction

In March 2026, the Fourth Session of the 14th National People's Congress formally adopted and promulgated the Ecological and Environmental Code, marking an important legislative milestone in China's systematic efforts to construct a comprehensive and sound environmental legal governance framework. This landmark legislative development marks the beginning of a new phase in ecological governance, characterized by an integrated approach that replaces a fragmented regulatory framework with a unified, codified system of environmental law. A defining and pivotal feature of this pioneering code lies in its comprehensive integration of the system of remedies for eco-environmental damage, which serves as the core institutional pillar and legislative focus of the entire codification project. The Section 5 of the Ecological and Environmental Code, entitled "Legal Liability and Supplementary Provisions," establishes a multifaceted relief system centered on the eco-environmental damage compensation system and the public interest litigation system. It also clarifies the rules governing the relationship between private-interest infringement litigation, administrative enforcement, and criminal liability. This framework facilitates the coordination of public and private law relief, links administrative accountability with judicial relief, and balances damage compensation with ecological restoration, ensuring the coherent integration of public law responsibility and private law relief.

Article 32 of the Ecological and Environmental Code provides that the state shall refine the institutional framework for eco-environmental damage compensation and public interest litigation, thereby safeguarding public interests. This legislative provision highlights that eco-environmental damage primarily infringes upon public interests rather than individual rights, thereby necessitating a specialized remedy mechanism that goes beyond the scope of traditional private tort litigation. In 2017, China launched the Reform Plan for the Eco-Environmental Damage Compensation System, which endows provincial and municipal governments with the authority to conduct pre-litigation consultations with liable parties on matters of ecological restoration or compensation payment. In situations where such consultations fail to yield a consensual agreement, the government is entitled to initiate judicial proceedings to claim compensation for the incurred ecological damage.

In 2020, Articles 1234 and 1235 of the Civil Code empowered the designated state authorities or legally authorized organizations to demand that infringers assume dual liability for ecological restoration and damage compensation for environmental harm. In 2022, the Ministry of Ecology and Environment, along with 11 other central departments, including the Supreme People's Court and the Supreme People's Procuratorate (public prosecutors' office), issued the Regulations "On the Administration of Eco-Environmental Damage Compensation," elaborating on the compensation system's operational details, defining the scope of compensable

ecological damage, and establishing the hierarchical application order of public-law and civil liability regimes. The Supreme People's Court's Several Provisions "On the Trial of Eco-Environmental Damage Compensation Cases (Trial)" set a key procedural rule that gives priority to eco-environmental damage compensation litigation over civil public interest litigation for identical eco-environmental damage. This principle governing the sequence of litigation is formally codified and reinforced by Article 1073 of the Ecological and Environmental Code.

Since the Civil Procedure Law introduced the "environmental civil public interest litigation system" in 2012 and the pilot program of eco-environmental damage compensation system began in 2015, China has developed a tripartite relief framework. This multi-dimensional institutional framework covers three core litigation modes, including public interest litigation filed by social organizations, public interest litigation initiated by procuratorial organs (public prosecutors' offices), and government-led eco-environmental damage compensation litigation. Practical judicial experiences across China have verified that this multi-subject remedy mechanism can effectively improve the protection level of public interests. Nevertheless, the legal positioning of eco-environmental damage still faces prominent institutional and theoretical dilemmas within the existing legal system. There are intense academic disputes over how eco-environmental damage relates, in doctrinal terms, to traditional civil law concepts of damage, to environmental tort liability regimes, and to mechanisms of civil public interest litigation. The most prominent controversy lies in the procedural coordination rules between eco-environmental damage compensation litigation and conventional public interest litigation, which have long remained a core contentious topic. The Ecological and Environmental Code clarifies basic normative rules concerning qualified enforcement subjects, initiation preconditions, and procedural standards for connecting eco-environmental damage compensation proceedings with other forms of litigation, for example, eco-environmental public interest litigation. These legal provisions establish a coherent, standardized framework for coordinating diverse mechanisms of environmental remedy. However, the provisions of the Code remain relatively general and largely principle-based. Multiple practical issues still require detailed doctrinal clarification and institutional refinement. These include the procedural sequence for rights exercised by relevant actors, the legal effect of pre-litigation consultation on public interest actions, the extended scope of *res judicata* of judicial decisions, and the functional role of public interest litigation brought by social organizations. Such improvements are essential to ensure that the institutional designs of the Ecological and Environmental Code can be fully and effectively implemented.

Existing research acknowledges the integration of public and private law in addressing eco-environmental damage. However, discussions of specific mechanisms have led to the development of both private-law and public-law models. In the private law model, scholars adhering to the traditional "rights-damage" logic argue for the private-law nature of eco-environmental damage compensation. They base their

arguments on three grounds: state ownership of natural resources, environmental rights, and the public interest in the environment. Nevertheless, eco-environmental damage differs significantly from personal injury and property damage in traditional civil law. Consequently, the “rights-damage” framework of the private law model is insufficient to fully justify the private law attribute of such compensation, though it does offer insights for the public law model.

Within a public-law analytical framework, many legal scholars argue that litigation seeking compensation for environmental harm should be classified as public-property litigation arising from the exercise of public authority.¹ This perspective is based on the public-interest nature of public law control inherent in state ownership of natural resources. Other scholars, focusing on the protection of public environmental interests, argue that the regulatory goals of state ownership of natural resources and the eco-environmental damage compensation system are incompatible.² The legitimacy of the government as the right holder for such compensation lies in its obligation to protect the natural environment and safeguard public interests. Accordingly, the institutional mechanism for remedying eco-environmental damage requires systematic interpretation and further optimization from the theoretical standpoint of public law.

The fundamental character of eco-environmental damage lies in its inherent impact on public environmental interests. In a mature institutional paradigm that distinguishes between public and private law, different legal actors are entitled to initiate tailored remedial procedures in accordance with the relevant legal norms and procedural frameworks. Nevertheless, eco-environmental damage in real-world scenarios embodies intertwined dual characteristics of public and private law. This hybrid legal nature ultimately results in prominent functional overlaps and institutional redundancies within the existing system of environmental remedies, undermining the overall efficiency of environmental governance. Environmental tort litigation, civil public interest litigation, and eco-environmental damage compensation litigation coexist, creating conflicts within the governance system. Challenges include ambiguous legal attributes, uncertain negotiation agreements, and unclear litigation relationships. Seeking to preserve coherence within the private-law system, this article uses doctrinal legal reasoning to examine the relationship between eco-environmental damage compensation and traditional civil damage compensation. It clarifies the legal foundations of eco-environmental damage compensation system and proposes pathways for its improvement.

¹ Gong, G. (2022). Research on the relationship between natural environmental damage compensation litigation and environmental civil public interest litigation: Concurrent analysis of the ecological compensation provisions of the Civil Code. *Legal Forum*, 37(1), 129–139. (In Chinese).

² Cheng, Y. (2022). Theoretical basis and institutional improvement of China's ecological environmental damage compensation system. *Journal of China University of Political Science and Law*, 16(1), 75–90. (In Chinese).

1. Theoretical Challenges to Mechanisms Remedying Eco-Environmental Damage

1.1. Normative Conflicts in Diversified Mechanism of Remedies for Eco-Environmental Damage

Eco-environmental damage fundamentally impacts public interests rather than individual rights. This foundational understanding has led to a discrepancy between theoretical ideals and practical realities in addressing eco-environmental damage.

Eco-environmental damage, as a matter of public interest, necessitates that public authorities impose public-law obligations on violators to ensure both remediation and prevention. For example, administrative penalties like mandating corrective actions and levying fines can be applied to producers and operators who illegally discharge pollutants. When personal injury or loss of personal and collective property arises from ecological damage, affected parties may seek compensation through tort claims for infringement. This has led to the establishment of a distinct mechanism for both public and private legal relief. In legal theory, the interaction between the political state and civil society underpins the rule of law, with civil society's autonomy being central to modern civil society theory.³ Thus, to ensure the proper functioning of public power and the protection of public interests and individual rights, public law must regulate the exercise of public power. Public authorities are obligated to act in accordance with public law to protect public interests when they are threatened. Specifically, the public interest in the natural environment, characterized by integrity, non-exclusivity and non-specificity, is affirmed by Article 9, Paragraph 2 of the Constitution of the People's Republic of China, which confirms the state's duty to protect the environment⁴. Consequently, public authorities must safeguard citizens' fundamental environmental rights and foster a green, safe, and healthy environment.⁵ When an infringer damages the natural environment, it harms the public interest. Since public authorities, not individual civil entities, defend public interests, ecological damage does not constitute harm to civil rights. Therefore, public authorities should enforce public law liability on offenders according to public law standards, without requiring infringers to assume civil liability.

Currently, the mechanism of relief for eco-environmental damage includes not only administrative law enforcement and criminal prosecution under public law but also a private law system for compensation. This system features two specific litigation mechanisms: eco-environmental damage compensation litigation and

³ Ma, C. (2015). *State, civil society and the rule of law* (p. 213). The Commercial Press. (In Chinese).

⁴ Wang, K. (2022). Constitutional basis for the codification of the Environmental Code. *Law Review*, 40(5), 174–186. (In Chinese).

⁵ Xin, F., & Symaniuk, N. (2021). Sustainable development in China and Russia: Comparative legal research. *BRICS Law Journal*, 8(2), 152–167.

public interest litigation. However, two conflicting systems have emerged in practice. Two major institutional conflicts have been identified in relevant environmental litigation mechanisms. The first discrepancy exists between administrative public interest litigation and civil public interest litigation. In contrast, the second type of conflict emerges in the juxtaposition of eco-environmental damage compensation litigation and civil public interest litigation.

To resolve the prominent deficiencies in the nation's eco-environmental public interest protection framework, China has pioneered the institutional practice of civil public interest litigation. Yet, in practice, this has led to an expansion of judicial power into legislative and executive domains, with judicial bodies assuming substantive law enforcement roles.⁶ The power to make public policy decisions, typically reserved for legislative or executive bodies, has been transferred to judicial organs through legal application. In order to address the aforementioned issues arising from civil public interest litigation, China established administrative public interest litigation. The core of this system is to affirm the dominant role of administrative power in environmental public affairs. When eco-environmental public interests are harmed, the rule of law suggests that the primary solution should not rely on the discretion of judicial bodies on a case-by-case basis but should instead strengthen administrative law enforcement and innovate within administrative law.⁷ Therefore, if administrative bodies are inactive and fail to provide timely relief, procuratorial organs should file an administrative public interest lawsuit. However, civil public interest litigation still persists, creating redundancy and conflict with administrative public interest litigation.

To address the shortcomings of civil public interest litigation, China has additionally introduced a new mechanism for eco-environmental damage relief: the eco-environmental damage compensation negotiation system and the corresponding litigation. While both this new mechanism and administrative public interest litigation emphasize the leading role of administrative power, the former ensures compensation through judicial power, whereas the latter relies entirely on administrative law enforcement activities.

Current mechanisms for addressing eco-environmental damage in China encompass administrative law enforcement, criminal prosecution, a consultation system for compensation, and various forms of litigation, including compensation, public interest, and tort litigation. This framework reveals a complex and often redundant system. Even within the civil law system, the relationships among these mechanisms are challenging to delineate. At its core, the expansion of judicial power

⁶ Liu, J. (2022). The boundary of environmental civil public interest litigation. *Studies in Law and Business*, 39(3), 187–200. (In Chinese).

⁷ Wang, M. (2016). On the development direction of China's environmental public interest litigation: An analysis based on the theory of the relationship between administrative power and judicial power. *China Legal Science*, 1, 49–68. (In Chinese).

is a central theme in these relief efforts. The intersection of judicial authority with eco-environmental damage relief is where conflicts often arise, with the key entry point being the recognition of eco-environmental damage as a concept within private law.

1.2. Challenges to Ownership-Based Justifications for Natural Resource Protection

From the perspective of private-law theory, eco-environmental damage compensation models can be divided into two core theoretical paradigms: the “rights-based damage model” and the “public interest-based damage model.” The former takes state ownership of natural resources as the legal premise, substantiates the private law attribute of damage acts, and qualifies damage compensation actions as civil litigation. In contrast, the latter focuses on social public attributes of environmental benefits. Although it is theoretically grounded in public ecological interests, it nevertheless endorses the view that eco-environmental damage can be characterized as a private-law matter. It is crucial to assess whether the “rights-damage” model can support the private law specifics of eco-environmental damage.

In the “civil litigation theory” concerning state ownership of natural resources, the private law nature of this ownership categorizes ecological damage as private law damage. The Constitution stipulates that natural resources are collectively owned by the people, with the State Council acting on behalf of the state to manage this ownership. The Ministry of Natural Resources is authorized to perform the duties of the owner of these assets. Some responsibilities are directly handled by the Ministry, while others are delegated to provincial and municipal governments. Under the Civil Code, state ownership of natural resources is considered a civil right. Consequently, litigation for eco-environmental damage compensation is a civil lawsuit filed by the entity exercising ownership of national natural resources to protect its ecological functions or values. Administrative authorities have the right to initiate such lawsuits as directly interested parties.⁸

This perspective overlooks two critical issues. First, is there an inherent conceptual link between infringements of natural resource ownership and the occurrence of ecological damage? Second, given that eco-environmental damage affects public interests, can natural resource ownership, as a purely private right, adequately support such arguments? Regarding the first issue, the “civil litigation theory,” which is based on state ownership of natural resources, has led to confusion by conflating “damage to natural resources” with “damage to the natural environment.”⁹ Natural resources are distinct from the natural environment. When assessing ecological

⁸ Luo, L. (2020). Empirical research on the relationship between ecological environmental damage compensation litigation and environmental civil public interest litigation. *Law Application*, 4, 134–144. (In Chinese).

⁹ Gong, 2022.

damage, the focus is on the harm to the natural environment as a whole caused by the destruction of resources like forests and rare species, rather than merely the damage to the resources themselves. Concerning the second issue, since ecological damage differs from typical civil rights damage and clearly involves public interests, the ownership of natural resources faces a dilemma: if viewed as a property right under civil law, it is challenging to use it as a basis for arguing the private law nature of ecological damage. Conversely, if it is used to argue the private law nature of ecological damage, it contradicts the Civil Code's classification of natural resource ownership as a civil property right. Fundamentally, the resolution of the second core institutional dilemma demands a systematic re-assessment of the current private-law-based compensation paradigm for ecological damage, which indicates a necessary institutional transition toward public law-oriented remedial mechanisms.

Scholars who uphold the private-law nature of natural resource ownership as a property right also highlight the constitutional environmental protection obligations borne by the state. They contend that administrative authorities not only have the statutory right to exercise state ownership of natural resources on behalf of the nation but also undertake corresponding legal fiduciary duties in the standardized governance, maintenance and protection of the natural environment.¹⁰ The right of administrative authorities to claim compensation for eco-environmental damage, based on the ownership of natural resources and environmental protection obligations, encompasses both public-law and private-law aspects. This perspective aligns closely with the public law model centered on the state's environmental protection responsibilities. In this model, as reflected in foreign legal theories and practice, German law provides a clear example: rather than developing a comprehensive civil compensation regime for eco-environmental damage, it predominantly allocates responsibility for addressing such harm to administrative enforcement mechanisms under environmental legislation.¹¹

The argument against categorizing the ownership of natural resources as a property right under civil law reflects the recent understanding that such ownership is a civil right. It is suggested that state ownership of natural resources essentially represents public control over these resources, embodying a form of public power.¹² Consequently, when state-controlled natural resources are harmed, administrative authorities can exercise public power to hold offenders legally accountable. However, the Civil Code explicitly includes the legal framework for eco-environmental

¹⁰ Cao, M. (2022). Legal analysis of the natural environmental damage compensation provisions of the Civil Code. *Law Science (Journal of Northwest University of Political Science and Law)*, 40(1), 58–72. (In Chinese).

¹¹ Feng, J. (2020). Theoretical construction of ecological environmental damage compensation from the perspective of public-private law coordination. *Chinese Journal of Law*, 2, 169–189. (In Chinese).

¹² Cheng, Y. (2022). Legal nature and normative adjustment of the right to claim for ecological environmental damage compensation. *Law and Social Development*, 28(5), 144. (In Chinese).

damage compensation within civil legal relations. Furthermore, if negotiations fail, a government-initiated lawsuit for eco-environmental damage compensation is clearly a civil lawsuit and does not involve the legality of administrative actions. If responsibilities for eco-environmental restoration and compensation are defined purely as matters of public law, the boundary between administrative enforcement and judicial relief risks becoming blurred, with administrative authorities effectively imposing sanctions through judicial proceedings. In both theoretical and practical contexts of Chinese law, state ownership of natural resources struggles to fully embody the private law aspects of eco-environmental damage, often leaning towards a public-law framework. If compensation liability for such damage is classified under public law, then remedies are confined to administrative law enforcement and criminal prosecution. Consequently, it is crucial to affirmatively establish eco-environmental damage as a private law concept, considering its impact on public interests.

2. Concept and Positioning of Eco-Environmental Damage in Private Law within the Code Frameworks

2.1. Legal Definition of Eco-Environmental Damage

The starting point for the entire relief system is eco-environmental damage and its legal definition which directly influences the boundaries of the relief mechanism. Prior to the adoption of the Ecological and Environmental Code, definitions of eco-environmental damage in China's legislation and judicial interpretations were scattered across separate instruments, such as the Regulations "On the Administration of Compensation for Eco-Environmental Damage" and the "Supreme People's Court's Several Provisions on the Trial of Natural environment Damage Compensation Cases (Trial)." Existing studies generally define eco-environmental damage as adverse variations in core environmental components, including atmospheric conditions, surface water, groundwater, soil, and forest resources, as well as biological elements (flora, fauna, and microorganisms).

Such detrimental changes stem from environmental pollution and ecological destruction, ultimately triggering functional degradation of the overall ecosystem structured by these environmental and biological elements. Although the Ecological and Environmental Code fails to deliver a unified definition of eco-environmental damage in its general provisions, it constructs a complete and standardized conceptual framework through specific chapter provisions and legal liability clauses. Specifically, Part II "On Pollution Prevention and Control" and Part III "On Ecological Protection" explicitly enumerate specific acts that constitute environmental pollution and ecological impairment. Furthermore, Article 1052 of Part V establishes environmental pollution and ecological damage as the fundamental benchmark for legal accountability, while Article 1073 further limits the scope of judicial remedy to illegal acts of environmental pollution and ecological destruction that incur

state property and ecological losses. From the perspective of systematic legal interpretation, the eco-environmental damage stipulated by the Code refers to detrimental alterations of environmental components and ecosystem functions arising from illegal human acts of pollution and destruction, which pose potential threats to national ecological security and public environmental interests. The legally defined concept of eco-environmental damage exhibits three distinctive core characteristics.

First, eco-environmental damage primarily impinges on public ecological interests rather than the private legitimate rights and interests of individual citizens, enterprises, or unincorporated entities. This fundamental feature distinguishes it from traditional environmental infringements that mainly target private civil interests. Guided by the ecological restoration theory, both the Ecological and Environmental Code and the Civil Code prioritize public interest protection in the adjudication of ecological damage cases, achieving a clear institutional separation between public interest remedy and private interest relief.¹³

Second, the adverse consequences induced by such damage are essentially ecological in nature. Tortious environmental conduct not only alter the physical, chemical, and biological properties of regional environmental systems but also trigger the degradation or even permanent loss of critical ecosystem service functions, including water conservation, soil and water retention, climate regulation, and biodiversity preservation. Accordingly, the ultimate objective of environmental remedy systems lies in comprehensive ecological restoration, rather than mere monetary compensation for economic losses.

Third, eco-environmental damage is commonly characterized by extensive coverage and irreversible consequences. Most ecological harms exhibit cross-regional diffusion, cumulative aggravation, and latent outbreak features, making simple financial compensation insufficient for effective remediation. Severe ecological damage may even be irreversible, thereby requiring a multi-functional remedy system that integrates preventive governance, restorative rectification, and punitive sanctions.¹⁴ In essence, eco-environmental damage transcends the scope of conventional individual right infringement. Therefore, whether interpreted from a public law or private law perspective, the governance of eco-environmental damage essentially centers on the construction and optimization of public interest remedy mechanisms.

¹³ Lyu, Z., & Li, X. (2026). Reconstruction of the natural environmental damage compensation system from the perspective of the Natural Environmental Code. *Journal of Gansu University of Political Science and Law*, 1, 2–18. (In Chinese).

¹⁴ Wei, D., & Rafael, A. P. (2023). Influencing companies' green governance through the system of legal liability for environmental infractions in China and Brazil: Lighting the way toward BRICS cooperation. *BRICS Law Journal*, 10(2), 37–67.

2.2. Establishing Eco-Environmental Damage as a Private-Law Concept

The incorporation of eco-environmental damage into the private law normative system poses a fundamental theoretical challenge rooted in statutory provisions. As stipulated in Article 2 of China's Civil Code, civil law governs personal and property relations arising between equal civil subjects, which inherently excludes public interest relationships from the scope of civil legal regulation. This creates a core theoretical paradox: how can eco-environmental damage—which predominantly impairs public ecological interests—be legitimately incorporated into the private law remedy framework? To resolve this institutional contradiction and clarify the theoretical basis for private law application in ecological damage relief, two pivotal questions require in-depth theoretical and empirical exploration. First, do public ecological interests fall within the scope of protectable legal interests under the normative system of the Civil Code? Second, whether judicial procedural remedies serve as an indispensable approach to enforce the protection of public ecological interests in legal practice?

In response to the first question, it should be noted that public interests are also protected under the Civil Code, even though its core structure and remedies are primarily designed to safeguard individual rights. Civil law maintains a complex stance toward public interests. In China's Civil Code, freedom is the core value of private law, serving as the foundational principle of society and civil law, and the essence of the Civil Code.¹⁵ This implies that civil law primarily secures negative freedom, enabling individuals to ward off unjustified interference with their legally protected interests. In the tort liability section, the law balances protecting victims' rights with the perpetrator's freedom of action. Public interest does not justify sacrificing personal interests. In liberal political philosophy, individual needs and preferences are complex and diverse, with values constantly evolving. An individual's values exist in personal pursuits and should not be constrained or replaced by government actions in the name of public interest. The Civil Code's normative structure is based on this principle. Within the civil legal system, public interest is often an abstract political and moral value. The uncertainty of its content and beneficiaries contributes to the ambiguity of the concept of public interest. This uncertainty is a direct result of the Civil Code prioritizing the protection of civil rights and interests.

In this perspective, the civil law's role in serving the public interest involves over-seeing the validity of civil legal acts by regulating their content and purpose. This is reflected in the principle of public order and good customs as outlined in Article 820 of the Civil Code.¹⁶ A situation where public interests are harmed arises only when

¹⁵ Xie, H. (2014). The life world, value system and legislative expression of China's Civil Code. *Tsinghua Law Review*, 8(6), 17–33. (In Chinese).

¹⁶ Zhu, Q. (2014). The civil law significance of public interest: Centered on Article 7 of the General Principles of the Civil Law. In Y. Zheng et al. (Eds.), *Public interest in Chinese law* (p. 40). Peking University Press. (In Chinese).

civil subjects breach the principle of good customs while exercising their rights. However, this understanding of the public interest remains confined to a liberal paradigm in which public interest operates primarily as a ground for restricting individual rights. In fact, the relationship between public interest and individual rights exceeds this restrictive framework.

Beyond the political ideology of liberalism, public and private interests exhibit an inherent consistency, characterized by a relationship that is both conflicting and unified. In a conflict scenario, as liberalism describes, public interests are satisfied at the expense of private interests. Ideally, satisfying private interests can also fulfill public interests, and public interests should not justify infringing on private interests. According to the extreme theory of public choice, public interests do not exist as an independent category to prevent harm to private interests.¹⁷ In a unified relationship, satisfying one party's interests does not harm the others. Under certain conditions, private interests can transform into public interests. Rather than viewing them as opposing concepts, they should be seen as parallel and complementary ones. In this parallelism, three types of private interests can be elevated to public interests: those of an uncertain majority, private interests with special characteristics, and special private interests that have undergone democratic procedures.¹⁸

With regard to public interests in the natural environment, individual rights align with public interests and are not mutually exclusive. When an infringer damages the local ecosystems, three scenarios may occur: first, no harm is done to the civil rights and interests of individuals; second, there is a threat to these rights and interests; third, actual harm is inflicted on them. In the first two scenarios, compensating and remedying eco-environmental damage directly protect private interests without limiting individual rights. In the third scenario, while pursuing an ecological damage compensation lawsuit or an environmental public interest lawsuit may prevent individuals from filing an environmental tort lawsuit, the protection of public interests does limit individual rights. However, from the perspective of litigation outcomes, as long as individuals benefit from the results, the protection of public interests and individual rights remains unified.

Second, judicial procedures must safeguard public interests. The Civil Code embodies the persistent separation of political state and civil society, rooted in the tension between public interests and self-generated spontaneous order. This core tenet of liberal political philosophy presupposes an Adam Smith-style self-regulating market that forms an ideal spontaneous social order. This order is insufficiently rational given the inherent limits of individual rationality in social evolution. As the order's evolutionary rather than designed rule system, civil law regulates relations centered on civil

¹⁷ Zhang, F. (2016). *Mirror narrative of the common good: Western political philosophical considerations of public interest* (p. 201). Nanjing Normal University Press. (In Chinese).

¹⁸ Chen, X. (2010). *Basic theory of German public law* (pp. 252–253). Law Press China. (In Chinese).

subjects' will autonomy; under this private law order, civil subjects exercise legitimate rights autonomously free from undue administrative or judicial intervention. Public interest mechanisms break this spontaneous logic: through exogenous institutional intervention, they rectify inherent private order defects including structural inequality and inadequate interest protection, to build a standardized balanced social order unattainable by autonomous civil conduct alone.

From this theoretical perspective, civil law constitutes a self-operating, spontaneous normative order rooted in autonomous civil conduct. As stipulated in Article 8 of the Civil Code, the principle of public order and good customs acts as a key institutional channel to incorporate public interest demands into this private law order. This institutional arrangement clearly delineates the functional division of state organs: judicial bodies are principally responsible for normative legal application, while administrative authorities bear the statutory obligation to protect the public interest. Accordingly, the protection of public interests mainly relies on standardized administrative law enforcement practices. In contrast, judicial institutions and their legal application procedures are not positioned to directly implement public interest protection functions under such a normative framework.

In the current situation, it is entirely possible for the government to prioritize its own improper interests over the public good. The hierarchical nature of these organizations divides government interests into institutional, departmental, and individual member interests. Notably, departmental and individual interests are often covertly internalized as institutional interests of government bodies. In this context, judicial authorities in administrative litigation can only assess the legality of specific administrative actions, underscoring the limitations of public law remedies for environmental harm. When eco-environmental damage occurs, administrative authorities typically resort to penalties such as warnings, fines, detention, and confiscation. However, these measures often fail to compensate for the damage already inflicted and do not effectively restore the natural environment.¹⁹ If administrative institutions prioritize their own interests over the public good, addressing ecological damage becomes even more challenging. Unlike administrative actions, judicial processes involve impartial adjudication based not only on established legal norms but also on legal reasoning. In judicial proceedings, adjudicators base their decisions on legal rationality to address unlawful or disorderly conduct by individuals. In addressing environmental damage, judicial activities can effectively bridge the gap left by administrative measures and overcome their limitations.

The Civil Code does not preclude the direct protection of public interests through judicial activities. Environmental harm, as a form of public interest damage, can be conceptualized within private law because the notion of damage evolves with the

¹⁹ Li, H. (2019). On the construction of tort liability for ecological damage: Taking the damage fiction provision as the approach. *Journal of Nanjing University (Philosophy, Humanities and Social Sciences)*, 56(1), 49–60. (In Chinese).

changing social functions of civil law. With modern societal developments, the role of tort liability in civil law is evolving, leading to shifts in the concept of damage. Initially focused on punitive measures, tort liability has expanded to include compensatory, preventive, and deterrent functions, reflecting a broader understanding of damage.²⁰ The challenges posed by eco-environmental damage are not new legal issues but have been inherent since the inception of civil law theory and its normative framework. As civil law increasingly emphasizes preventive functions, the concept of damage continues to expand, allowing eco-environmental damage to be recognized as a private law concept.

3. Regulation and Coordination of Mechanisms for Remedying Eco-Environmental Damage

3.1. Integrating the Litigation Mechanisms for Eco-Environmental Damage

The Ecological and Environmental Code prioritizes litigation for eco-environmental damage compensation. Analyzing the relationship between eco-environmental damage compensation litigation and public interest litigation, scholars have generally converged around three main models: (1) the sequential model, (2) the combined model, and (3) the parallel model. Supporters of the sequential theory differ significantly on the order of these litigations. Some argue that the procuratorial organs should prioritize eco-environmental damage compensation due to their legal oversight roles, followed by administrative public interest litigation, and supplemented by civil public interest litigation.²¹ Others, distinguishing between ownership and oversight rights of natural resources, classify eco-environmental damage compensation as natural resource damage litigation, suggesting public interest litigation as a supplementary measure.²²

Advocates of the combined theory assert that there is no fundamental difference between the eco-environmental damage to the public interest addressed by both types of litigation, suggesting they should be merged.²³ They propose a sequence where natural resource damage compensation litigation addresses ownership damages, followed by environmental administrative and public interest civil litigations. Some scholars within this theory also suggest that when conditions allow,

²⁰ Li, L. (2020). The civil law construction of ecological damage in France and its enlightenment: Taking the expansion of the concept of damage as the approach. *Research on Rule of Law*, 2, 99. (In Chinese).

²¹ Wang, S., & Li, H. (2018). On China's ecological environmental damage compensation litigation. *Study and Practice*, 11, 68–75. (In Chinese).

²² Li, X. (2021). Type reshaping of ecological environmental damage compensation litigation: From the perspective of the distinction between ownership and regulatory power. *Administrative Law Review*, 2, 134–152. (In Chinese).

²³ Guo, W. (2022). On the integration strategy of China's environmental litigation types. *Oriental Law*, 6, 149–161. (In Chinese).

lawsuits can be consolidated, or courts may involve the other party as a co-plaintiff during trials.²⁴

In contrast, the parallel theory views eco-environmental damage compensation litigation and civil public interest litigation as differing mainly in their practical roles. Given that eco-environmental damage relief is primarily an administrative responsibility, this theory posits that when administrative bodies have effectively acted to prevent or mitigate damage, or when national policy mandates protection, priority should be given to eco-environmental damage compensation litigation.²⁵ In other situations, both forms of litigation should proceed concurrently.

This article argues that the above-mentioned theories have been uncritically incorporated into the legal design of eco-environmental damage compensation litigation and public interest litigation. In doing so, they obscure the underlying root cause of the problem and lead to a conclusion that unjustifiably excludes environmental tort litigation, without providing a sufficiently rigorous justification. When it comes to addressing eco-environmental damage, no significant difference exists among eco-environmental damage compensation litigation, environmental civil public interest litigation, and environmental tort litigation. In essence, integrating these types of litigation means determining who is entitled to claim compensation for eco-environmental damage and who may stand in court as the representative of the natural environment's public interest. In this context, the relationship between protecting public interests and individual rights should be evaluated within the core value of freedom as outlined in the Civil Code. Additionally, attention must be given to the institutional functions of various systems and the potential social effects they may generate.

In eco-environmental damage compensation, the core focus is on the consultation mechanism for compensation. A hierarchical framework is established with administrative claims taking priority, public interest litigation as a supplement, and parallel participation of social organizations.

First, under this approach, claims for eco-environmental damage filed by governmental authorities are prioritized. Article 1073 of the Ecological and Environmental Code explicitly outlines the government's pre-consultation obligation and claim right. Relevant legal provisions endow administrative authorities with priority status in initiating and advancing ecological damage remedy procedures, which can be elaborated from three core institutional dimensions. Primarily, governments have procedural priority in launching eco-environmental damage remediation proceedings. As the primary responsible subject for addressing ecological pollution

²⁴ Wang, X. (2019). On several basic relationships of natural environmental damage compensation litigation. *Law Application*, 21, 11–22. (In Chinese).

²⁵ Li, S. (2021). The third solution to the concurrence of ecological environmental damage compensation litigation and environmental civil public interest litigation. *Journal of China University of Geosciences (Social Sciences Edition)*, 21(5), 45–57. (In Chinese).

and destruction incidents, competent administrative departments are authorized to preside over the entire pre-litigation remedy process, covering damage investigation, technical appraisal, comprehensive impact evaluation, and out-of-court compensation negotiation. Once the government initiates such consultation procedures targeting specific ecological violations, procuratorial organs and social organizations are prohibited from filing separate civil public interest litigation based on the same tortious act. For cases already accepted by courts, ongoing trials must be suspended pending the completion of governmental consultation procedures. This institutional priority mechanism originates from the government's dual legal status: as the statutory representative of state-owned natural resources and the primary subject responsible for safeguarding regional environmental quality. Equipped with professional technical teams and comprehensive administrative resources, governmental agencies are capable of delivering more efficient and targeted ecological restoration outcomes. Meanwhile, administrative bodies' procedural priority effectively avoids repetitive judicial proceedings and optimizes the multi-tiered environmental remedy system's overall operational efficiency.

Meanwhile, administrative authorities possess exclusive claim rights in eco-environmental damage remediation practices. Where parties reach a legally valid consultation agreement that is fully performed and achieves complete ecological restoration, procuratorial organs and social organizations are prohibited from initiating public interest litigation in respect of the same tortious conduct. Judicial courts shall either reject such incoming cases or dismiss pending litigation that has already been accepted. In scenarios where administrative departments fail to conclude a valid consultation agreement and subsequently file official compensation litigation, other qualified subjects are not permitted to launch independent lawsuits targeting the same ecological damage facts. In such circumstances, people's courts shall dismiss duplicate claims or guide alternative claimants to participate in the ongoing administrative litigation as third-party participants. Notably, this exclusive procedural arrangement does not deprive procuratorial institutions and social organizations of their statutory litigation qualifications. Instead, it adheres to the fundamental legal principle of *non bis in idem*, namely the prohibition of repeated adjudication on the same matter. This institutional design prevents redundant legal accountability for identical ecological violations and substantively safeguards the procedural priority of administrative claim subjects in environmental remedy systems.

From the normative perspective of administrative legal obligations, the Ecological and Environmental Code clearly defines the mandatory nature of governmental consultation procedures in ecological damage remediation. Rather than serving as an optional procedural choice, pre-litigation consultation constitutes a statutory obligation imposed on competent administrative authorities. In response to any confirmed environmental pollution or destruction incidents, relevant governmental departments must strictly initiate standardized consultation procedures in

accordance with legal provisions. If legitimate consultation efforts fail to reach a binding compensation agreement, administrative bodies are obligated to file formal compensation litigation without arbitrary omission or dereliction of duty. In essence, the governmental procedural priority in eco-environmental damage compensation claims is fundamentally grounded in the performance of its statutory duties. Where administrative authorities neglect or improperly perform their legal obligations, their procedural priority status will be legally forfeited. In such cases, public interest litigation mechanisms led by procuratorial organs or social organizations may be activated to fill the remedial gap and safeguard unimpaired public ecological interests.

Second, Paragraph 2 of Article 1073 of the Ecological and Environmental Code formally defines the auxiliary institutional role of procuratorial public interest litigation, clarifying the statutory supplementary function of procuratorate-initiated civil public interest litigation within the multi-subject environmental remedy system. This auxiliary role is conditional and relative, and it reflects a core institutional principle: administrative authorities are expected to perform their duties as a priority, while procuratorial supervision serves as the fundamental institutional backstop for protecting ecological public interests. In accordance with such normative design, procuratorial civil public interest litigation serves only as a remedial fallback mechanism, which can be activated only in cases of administrative nonfeasance in ecological governance. Two statutory prerequisite scenarios are specified for procuratorial intervention. First, competent administrative authorities fail to launch statutory pre-litigation consultation procedures for confirmed ecological damage incidents within the legally prescribed time limit and unreasonably delay the performance of their environmental remediation obligations without legitimate grounds. Second, administrative organs initiate the required consultation procedures but fail to conclude a valid compensation agreement with the responsible parties, and then, without justifiable grounds, refuse to file ecological damage compensation litigation within the statutory time limit, procuratorial organs are thereby authorized to bring subsequent public interest civil litigation to remedy the resulting ecological losses.²⁶ Only in case when the government fails to act after being urged through administrative litigation procuratorial organs can file a civil lawsuit as a last resort. Consequently, Article 1076 of the Ecological and Environmental Code systematically connects with Articles 1073 and 1074, establishing a procedural order where administrative public interest litigation takes priority, and civil public interest litigation serves as a last resort.

Third, social organizations can participate in public interest litigation in parallel with the government. Distinct from administrative and procuratorial litigation mechanisms, the Ecological and Environmental Code does not set statutory pre-

²⁶ Lyu, M. (2021). Research on the connection of multiple remedy mechanisms for ecological environmental damage. *Journal of Comparative Law*, 1, 133–151. (In Chinese).

procedural requirements for social organizations initiating public interest litigation, nor does it make their litigation capacity contingent on administrative duty performance. Based on textual legal interpretation, qualified social organizations are endowed with independent litigation standing in public environmental interest cases. Such independent procedural rights follow the normative principle of parallel participation without conflicting with administrative remedy proceedings, with specific institutional rules set out below. Social organizations are eligible to independently initiate public interest litigation against conduct causing eco-environmental damage without prior administrative consultation or procuratorial intervention. However, once competent administrative authorities have launched formal consultation procedures or instituted ecological compensation litigation targeting the same tortious act, social organizations are prohibited from filing separate duplicate litigation. For ongoing administrative cases, courts shall guide social organizations to participate in the existing administrative compensation litigation as third-party participants. This institutional arrangement fully respects the Code-stipulated independent litigation qualifications of social organizations while effectively preventing repetitive judicial adjudication. Furthermore, the third-party participation mechanism preserves the supervisory and participatory functions of social organizations in natural environmental governance, forming a diversified and collaborative multi-subject remedy system alongside administrative and procuratorial litigation.

Notwithstanding the general principle of parallel participation, public interest litigation initiated by social organizations shall enjoy priority in case acceptance and trial under two exceptional yet critical scenarios. Priority applies where both administrative authorities and procuratorial organs fail to perform their statutory remediation duties, resulting in continuous and persistent ecological damage. Second, such priority is warranted when environmental harm is entangled with local protectionism, which hinders competent administrative departments from exercising their duties independently and impartially to rectify environmental violations. In these specific circumstances, public interest litigation initiated by qualified social organizations serves as a vital remedial supplement and institutional safeguard for defective public interest protection systems. Courts shall prioritize the acceptance and trial of such cases to curb ongoing ecological deterioration in a timely manner. Meanwhile, procuratorial organs are obligated to provide comprehensive legal support for social organizations through supportive litigation mechanisms, delivering professional legal assistance to facilitate the effective exercise of social organizations' independent litigation rights.

Regulating social organizations' public interest litigation right is essential to prevent misuse. Where the government has fully compensated ecological damage through consultation or litigation, courts shall reject social organizations' filings on the same matter, or dismiss already accepted cases. If social organizations seek improper benefits under the pretext of public interest litigation or collude with

defendants to harm public interests, courts shall dismiss their claims, impose legal penalties, and issue judicial recommendations to civil affairs and natural environment departments for oversight.

In eco-environmental tort litigation, the initiation of such cases by private individuals should be limited, with procuratorial organs taking the lead in filing environmental civil public interest lawsuits. Compensation for eco-environmental damage paid by the responsible party should be distributed to affected individuals based on the extent of the damage. When eco-environmental damage occurs, it often results in both individual civil rights violations and public interest damage. This creates a scenario where collective rights and pure public interest damage coexist. The primary goal of the public interest litigation system is to affirm, restore, and protect public interests. Depending on the focus, public interest litigation can be categorized into pure public interest litigation, collective public interest litigation, and litigation aimed at protecting vulnerable groups.²⁷ When considering whether individual civil rights are affected, litigation for vulnerable groups can be integrated into the first two categories. In terms of substantive damage, it is classified as either pure public interest damage or collective public interest damage. Typically, civil public interest litigation addresses either pure or collective public interest damage. In cases where ecological harm affects both civil rights and public interests, the procuratorial organ can file a single environmental civil public interest lawsuit. The compensation for collective public interest damage should then be returned to the relevant individuals.

3.2. Enhancing the Consultation Mechanism for Eco-Environmental Damage Compensation

Understanding the legal nature of the consultation mechanism for eco-environmental damage compensation is crucial. When negotiations on such compensation fail or the obligor does not fully meet the obligations, determining who has the right to file a lawsuit depends on whether a collective public interest is involved. Scholars who support the public law model argue that agreements on eco-environmental damage relief and restoration, reached by administrative authorities in their role as public power entities, are administrative agreements.²⁸ Some researchers believe that these consultation agreements effectively replace administrative decisions and hold the same authority.²⁹ Conversely, supporters of the private law model assert that the legal nature of these negotiation agreements is dictated by the nature of the dispute. Since disputes over eco-environmental

²⁷ Wang, F. (2022). The jurisprudential basis of public interest litigation. *Law and Social Development*, 28(2), 59–81. (In Chinese).

²⁸ Cao, 2022.

²⁹ Dai, J. (2020). Institutional positioning and rule reconstruction of natural environmental damage compensation litigation. *Seeker*, 6, 126–133. (In Chinese).

damage are of a civil nature, the resulting settlement agreements are civil in character and governed by civil law norms.³⁰ Amid this debate, some scholars propose a two-stage legal structure for such agreements. In the first stage, activities such as damage investigation, assessment, and the formulation of compensation plans by administrative bodies are classified as administrative acts under public law. In the second stage, the negotiated agreement between the administrative body, acting as the holder of the compensation claim, and the liable party is treated as a civil agreement. If negotiations fail, any ensuing claim for eco-environmental damage compensation is brought as a civil lawsuit.³¹

Once eco-environmental damage is classified as private law damage, any negotiation agreement reached with the compensation obligor is deemed a civil agreement. According to law, parties can apply to the people's court for judicial confirmation after reaching a consultation agreement. If a party fails to fulfill the court-confirmed consultation agreement, they can request compulsory enforcement from the people's court. Should the consultation agreement be classified under a public law model as an administrative agreement or decision, its enforcement would fall under an administrative law mechanism, not the current civil agreement framework.³² Thus, negotiation agreements concerning eco-environmental damage compensation are classified as civil agreements.

The consultation mechanism for eco-environmental damage compensation is not limited to administrative authorities. According to the Ecological and Environmental Code, provincial and municipal governments, authorized by the State Council, hold the rights to natural environment damage compensation within their jurisdictions, with administrative bodies responsible for environmental protection participating in these consultations. Article 11 of the Regulations "On the Administration of Natural Environmental Damage Compensation" states that the consultation agreement directly impacts the public law liability of the compensation obligor. As a form of damage compensation under debt law, eco-environmental damage compensation can incorporate the principle of autonomy of will. Although this type of compensation involves public interest damage, which typically conflicts with the principle of autonomy of will, the negotiation agreement's content extends beyond merely determining the compensation amount. There remains scope for applying the principle of autonomy of will in areas such as payment methods, liability division for multiple torts, and guarantee methods. The compensation amount is usually based on an appraisal and assessment report, limiting the principle's application. Thus, the

³⁰ Chen, J., & Xu, L. (2022). Nature determination and judicial effect of the consultation agreement on ecological environmental damage compensation. *Contemporary Law Review*, 36(6), 68–78. (In Chinese).

³¹ Liu, L., & Hu, P. (2019). Explanatory theory of the two-stage structure of the ecological environmental damage compensation consultation system. *Journal of Gansu Political Science and Law Institute*, 1, 37–46. (In Chinese).

³² Cheng, 2022, pp. 132–154.

consultation mechanism relies on identifying the compensation right holder. Even when eco-environmental damage compensation litigation and environmental public interest civil litigation occur simultaneously, procuratorial organs can still negotiate a consultation agreement with the obligor during environmental civil litigation. Similarly, administrative authorities can reach a consultation agreement with the obligor when initiating a lawsuit for eco-environmental damage compensation.

Conclusion

Optimizing eco-environmental damage remedy systems lies at the core of constructing and upgrading China's modern ecological governance system. The current environmental remedy framework integrates three pivotal mechanisms: government-led ecological damage compensation litigation, procuratorial public interest litigation, and social organization-initiated public interest litigation. However, the long-term coexistence of multiple remedy channels has caused normative frictions, procedural disorder, and inconsistent application sequences in judicial practice. The traditional rationale grounding governmental claim priority solely in natural resource ownership fails to build a clear, standardized procedural hierarchy for multi-subject remedy mechanisms. The Ecological and Environmental Code's institutional innovations fill these normative gaps. By standardizing the connotation and legal attributes of eco-environmental damage and clarifying its private-law normative basis, the Code establishes a systematic unified paradigm for coordinating diverse environmental remedy mechanisms. This design respects the statutory authority, institutional positioning and functional boundaries of different remedy subjects, eliminates institutional redundancies, prevents repetitive legal accountability, and reduces inefficient consumption of judicial and administrative resources. It significantly enhances the operational efficiency and practical effectiveness of ecological damage remediation, provides normative support and procedural guidance for comprehensive, systematic and rigorous protection of China's environmental public interests, and offers a Chinese model for improving eco-environmental damage relief regimes in other jurisdictions.

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