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Proper Substitutions of Punitive Damages Involving Public Welfare -- On the Improved Administrative Fine & Its Offsetting Mechanism with Criminal Fine

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Abstract: For the purpose of enhancing sanction and deterrence effects, many scholars support the establishment of punitive damages involving public welfare in china. Because this legislative proposition involves a paradox and many conundrums yet to be resolved, this paper holds a negative attitude towards it. As an alternative, China can use the improved administrative fines and the criminal fine penalty to fully protect public welfare. Theoretically, civil public interest litigation (CPIL) should be divided into two categories: the pure civil public interest litigation (PCPIL) and non pure civil public interest litigation (Non-PCPIL). The former consists of CPIL involving indivisible public interests and CPIL involving unspecified large number of harmed private interests; The latter consists of diffusive CPIL and composite CPIL. In terms of law application, there is an "overlapping relationship" between CPIL involving unspecified large number of harmed private interests and composite CPIL. Only PCPIL involves the question of whether to use the proposed system of punitive damages for harmed public interest, or the improved administrative fines and the criminal fine penalty to attain the legal effects of sanction and deterrence. The so-called improved administrative fines is actually an administrative penalty combination composed of large sum fines, continuously calculated daily fines, the system of double fines, the system of both fines and confiscation as well as other administrative penalty measures. As the premise of offsetting administrative fines and criminal fine penalty, the connecting mechanism between administrative laws and criminal laws is actually a two-way lane - administrative punishment before the related criminal proceedings and administrative punishment after the related criminal proceedings. In terms of those two ways, their offsetting of administrative fines against the related criminal fine penalty must follow different principles and specific requirements. In order to fully protect the related public welfare, there should be exceptions to the principle of severe punishments absorbing the light punishments. In China, the legal protection of public welfare is extremely complex. In terms of the identification of the legal liabilities of the law-breakers, legislators and law enforcers should comprehensively consider the relationship and coordination among civil liabilities, administrative liabilities and criminal liabilities.

Keywords: Substitutions for PCPIL Punitive Damages, Grouping of CPIL, Improved Administrative Fine, Set-off Between Administrative, Criminal Fine

1. Introduction

1.1. Domestic Research Literature Review

The author searched the relevant Chinese literature on the website of CNKI (China National Knowledge Infrastructure) arranging from 2001 to January 2022. The search keyword is "civil public interest litigation". It is found that, in the past 21 years, 1760 related articles published on newspapers, journals and collection of conference papers respectively, and the studies on China's civil public interest litigation focuses on five fields: 1. The qualification of the plaintiffs or lawsuit initiators. Among them, especially the lawsuit initiating qualification of the people's procuratorial organs is the top priority; 2. Issues concerning the incidental civil public interest litigation attached to criminal cases; 3. Construction and improvement of trial system and evidence system of civil public interest litigation; 4. Comparative law studies for the

establishment of civil public interest litigation in China; 5. Investigation and research on the daily practice of civil public interest litigation. These five fields account for the vast majority of all available literature. At the same time, a small portion of literature has discussed the following five related problems: 1 The relationship between civil public interest litigation and administrative public interest litigation; 2. Jurisdiction arrangement of civil public interest litigation; 3. The assumption of joint tort liabilities in civil public interest litigation; 4. The reinforcement and expansion of the *res judicata* of the effective judgments of civil public interest litigation; 5. Whether punitive damages can be raised in civil public interest litigation.

By inputting the keyword "punitive damages in civil public interest litigation" on CNKI, in addition to one Master dissertation, a total of 30 relevant articles published in those 21 years were obtained. Of those articles concerning punitive damages in civil public interest litigation, 13 (about 43.3% of all published literature) were published by journals and newspapers associated with Chinese procuratorial organs (such as *the Chinese Procurators*, *People's Procuratorial Semimonthly*, *Procuratorate Daily*, etc.). In terms of this research, the features and limits of the domestic studies are mainly reflected in the following three aspects: first, from the above data, it can be seen that compared with the research on other issues in China's civil public interest litigation, the research on whether punitive damages should be established is still in a very preliminary stage, its literature is seriously insufficient (30 articles only account for about 0.018% of 1760 articles involving civil public interest litigation). Second, so far, Chinese academic circles have failed to make a reasonable division of the types of civil public interest litigation, and there is a lack of strong generally accepted theory in this regard. Third, in recent years, in order to enhance its sanction and deterrence effect, some scholars advocate the establishment of punitive damages system in civil public interest litigation. On this issue, this paper holds a negative attitude. The bases supporting the author's view mainly include: 1. The legal bases for filing punitive damages for harmed public welfare are certain administrative regulations or judicial explanatory documents with vague and abstract contents.[1] 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", [2] therefore, it obviously violates Article 8[3]and paragraph 1 of Article 104[4]of *the Lawmaking Law of China*. In other words, they are susceptible to the accusation of committing *ultra vires* in the area of legislative affairs. 2. This advocacy is constantly plagued by a paradox: "If we stick to the developing trend of merely filing claims of inaction (Unterlassungsklagen), it will negatively affect the realization of the deterrent and punishing effects of civil public interest litigation, and further hinder the progress of the practical activation of the system of civil public interest litigation, which obviously deviates from the needs of judicial practice; on the other hand, if the claims of damages is introduced into civil public interest litigation, 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. " [1] 3. Setting punitive damages involving public interests will inevitably confuse the boundary between public interest litigation and private interest litigation. Its specific manifestations are: (1) What are the differences between civil public interest litigation and the represented litigation without a fixed class members provided by Article 57 of *the Civil Procedure Law of China* (hereinafter refers to as *the CPL*)? (2) What are the connections and differences between punitive damages involving private interests and their counterparts involving public welfare? 4. How should the claims for punitive damages involving public welfare be raised, judged and compensated? How will this fund be spent after the money is paid? Who will supervise the spending and

1 These normative documents mainly include: the Opinions on Comprehensively Strengthening the Trial of Environmental Resources & Providing Strong Judicial Guarantee for Promoting the Construction of Ecological Civilization issued by the Supreme People's Court in 2014; Notice of the Supreme People's Procuratorate on Strengthening the Handling of Public Interest Litigation Cases in the Field of Food and Medicine in 2018; 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 in 2019; Opinions on Deepening Reform and Strengthening Food Safety Work jointly issued by the CPC Central Committee and the State Council----------the author's note.

2 This is reflected in two aspects: first, most scholars who support the establishment of public welfare related punitive damages agree with the following view, that is, the punitive damages system originates from the Common Law System. According to the traditional civil law theory of the Romano-Germanic Law System, whether it is tort compensation or breach of contract compensation, the compensation of the perpetrator to the infringed can only be actual damages, not punitive damages. There are two theoretical bases for this argument: (1) a basic starting point of law studies in the Romano-Germanic Law System is the division of public law and private law; (2) the traditional civil law theory holds a negative attitude towards the punishment imposed by one civil dealer against its counterpart. Therefore, both punitive damages for harmed private interests and punitive damages for harmed public welfare have squarely challenged the basic legal principles of civil law in the Romano-Germanic Law System, so that the damage compensation in civil law acquires the effect of punishment and deterrence in public law. This is typically demonstrated by the punitive damages for harmed public welfare: most scholars believe that system has both private law nature and public law nature. Therefore, the system of punitive damages for harmed public welfare should be a basic system of civil law in essence. It can only be set by law. Second. Even most scholars who advocate the establishment of public welfare related punitive damages admit that the system is not clearly provided in China's valid laws. In this case, the practice of filling that loophole through administrative regulations, judicial interpretation or judicial explanatory documents is susceptible to the accusation of committing *ultra vires* in the area of legislative affairs----------the author's note.

3 Article 8 of the Lawmaking Law of China: "Only laws can be enacted for the following matters:... (VIII) basic systems of civil law."

4 Paragraph 1 of Article 104 of the Lawmaking Law of China: "the interpretation of the specific application of law in judicial and procuratorial work made by the Supreme People's Court and the Supreme People's Procuratorate shall mainly focus on specific law articles and comply with their purposes, principles and original intentions of legislation."

use of that fund? And why? 5. How to coordinate the relationship between punitive damages related to public welfare, administrative fine and criminal fine against the same law violator, so as not to violate the doctrine of imposing proportional penalty against unlawful acts? 6. How to fully demonstrate the justification and feasibility of China's learning from similar western systems (such as those of the UK and the USA, etc.)? 7. As far as public welfare protection is concerned, we have at least two optional paths: first, we can work out a new system with great effort, and "embed" it into China's existing legal system with difficulty; second, on the premise of China's unique national conditions, use the improved administrative fine and criminal fine to achieve the same or similar sanction and deterrence effect. From the perspective of legislative efficiency and legal effectiveness, which way is more desirable?

Before academic circles demonstrate reasonable and coordinated answers to all the questions in the preceding paragraph, this author opposes the idea of setting up punitive damages for harmed public welfare in China. As the old saying goes, there 's no making without breaking (*Bu Po Bu li*). After "deconstructing/*Po Jie*", this author should undertake the assignment of "making/*Li*" alternative systems. The so-called "making" is to find alternative institutional schemes for the protection of related public welfare. Based on China's unique national conditions, we can make full use of the improved administrative fine and criminal fine to achieve the same effect of sanction and deterrence. Since the application of both administrative fine and criminal fine penalty for the same behavior harmed the public welfare might violate the doctrine of imposing proportional penalty against unlawful acts, and because there may be the problem of either "inappropriately replacing criminal penalties with administrative penalties (*Yi Xing Dai Fa*)" or "inappropriately replacing administrative penalties with criminal penalties (*Yi Fa Dai Xing*)" when actually punishing relevant law violators, it is necessary to study and explore whether the relevant administrative fine and relevant criminal fine penalty can offset each other? What is the academic basis for this offset? The specific system design of this offset and its feasibility?

In order to find out the status quo of the literature related to the said offset mechanism, the author did some searches on CNKI arranging from 2001 to 2022 with "offset" as the keyword. The results show that there are only 8 articles in this field in that period. Furthermore, by taking "administrative fine" and "criminal fine" as the key words, the author searched the literature concerning "the relationship between administrative fine and criminal fine penalty" in the same period of time. The former shows that there are only 7 articles and 1 case analysis in this area in those 20 plus years. The latter shows that there are only 9 articles in this field in that period.

In line with the above data, the theoretical research on the relationship between administrative fine and criminal fine penalty (mainly whether and how they can offset each other) is very insufficient in China. The author believes that this phenomenon is at least caused by two factors: first, because the problem is an interdisciplinary subject, it is hard to investigate. Second, from the perspective of China's legislative provisions, the mutual offsetting mechanism between administrative fine and criminal fine penalty is anything but perfect, which affects its effective application in our judicial practice. Those situations will be fully discussed in the later parts of this paper, so they won't be further explored here.

From the analyses in the preceding paragraphs, the question of whether and how administrative fine and criminal fine penalty can offset each other is one of the rarely debated topics in the field of Chinese jurisprudence. From this point of view, as a feasible alternative to the advocated punitive damages in the civil public interest litigation, the issue of whether and how relevant administrative fine and criminal fine penalty can offset each other is an "academic untapped opportunity" to be explored in the future. Because this topic involves triple departmental laws of *the CPL*, *Administrative Laws* and *Criminal Law*, it is necessary to make a rational theoretical classification of civil public interest litigation at the initial moment. Then, by using this grouping as a starting point, this paper will further discuss how to use improved administrative fine and criminal fine penalty to achieve the above-mentioned alternative law enforcement effect.

1.2. The Summary of Research Data and Methods

The data of this paper are collected from CNKI of China. Although not unique, CNKI (website: https://www.cnki.net/) is the most authoritative, comprehensive and timely updated online academic literature learning and downloading platform in China. In addition, the decided cases quoted in this article (such as the Administrative Procedural Ruling issued by the People's Court of Shu Lan city, Ji Lin Province, for the disputes between Shulan Forestry Bureau and Wang Feng Jie ((2018) Ji 0283 Xing Shen No. 198, etc.) are collected from China Judgments Online (https://wenshu.court.gov.cn/). That is an official website set up and operated by the Supreme People's Court of China. Its content is authoritative, authentic, comprehensive and timely updated. Based on the collected data, literature and cases, discussions in this paper mainly use the research methods of theoretical analyses, law article analyses, comparative law studies and case analyses.

2. The Classification of Civil Public Interest Litigation in China

2.1. The General Descriptions

Theoretically, all civil public interest litigation in China can be called civil public interest litigation in a broad sense (CPIL in a broad sense). CPIL in a broad sense has two components: non pure CPIL and pure CPIL (hereinafter refers to as PCPIL).

The so-called non pure CPIL is brought by individual

citizens. Its superficial aim is to protect the damaged private interests, but its indirect and essential purpose is to protect the harmed public welfare. Theoretically, non pure CPIL is also known as "private litigation based on public rules". Non pure CPIL can be further divided into two sub-types: 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. The other is the case in which the plaintiff's claims are of private nature, but the case is typical among a vast number of harassed citizens. It can be named as the Diffused CPIL. The former refers to the claims influencing the future in the traditional private interest litigation. For example, in a lawsuit filed by an individual for infringement, in addition to requesting the defendant to compensate for the loss and apologize, the defendant can also be required to bear the responsibilities of stopping the infringement, removing the obstruction, eliminating the danger and restoring the original status of the civil interests enjoyed by the plaintiff, which are all future impacting claims. For the plaintiffs in such litigation, the main motivation for their symbolic private interest claim is to achieve their ultimate goal of protecting related public welfare by "applying" the form of traditional civil litigation. That is, "be beneficial to oneself formally but altruism in essence". In contrast, the claims in the diffused CPIL are all private interests, but the case is representative among a large number of victims, so its judgment have a diffusive impact on other similar cases. "Subjective for oneself, objective for others" and "similar personal interests" are the generalization and description of the basic characteristics of this kind of CPIL.

The so-called PCPIL is also called civil public interest litigation in a narrow sense. It refers to a lawsuit filed by a suing party who has no direct interest in the alleged infringement in order to safeguard the social and public interests. [5] According to Article 58 of *the CPL*, relevant laws and judicial interpretations, only legally certified government organs and organizations have the right to file PCPIL to the courts. Theoretically, the rights and interests protected by PCPIL can be further divided into two categories: One is PCPIL involving indivisible public interests. In this regard, public welfare disputes involving air and environment are typical. The other is PCPIL involving unspecified vast number of private interests. Online and offline public welfare cases for the protection of the rights and interests of unspecified large number of consumers are typical.

As far as the cases involving the overall and indivisible public welfare are concerned, the content of its claim is not directly related to the private interests of the victims. It is characterized by the public welfare nature of the litigation protected object, the integrity of the protected interests and the indivisibility of the winning result. On surface, such cases are packed as a kind of judicial proceedings, but in essence they are political or policy issues that are related to the protection of public welfare. Generally speaking, the claims of pure public welfare mainly include the right to clean air, the right to clean water, natural ecological rights such as maintenance of forests and grasslands, the right to protect endangered animals and plants, the right to protect key cultural relics, etc. In line with Article 58 of *the CPL*, the suing parties of PCPIL involving indivisible public interests is limited to "legally certified government organs and organizations", and individual citizens are not allowed to file it. By comparison, for PCPIL involving unspecified private interests, there is an "overlapping relationship" with the Composite CPIL filed by citizens (as shown in Figure 1 below).

This paper holds that whether it is a Composite CPIL with the basic characteristics of "being beneficial to oneself formally but altruism in essence", or a Diffused CPIL with the basic features of "subjective for oneself, objective for others" and "similar personal interests", because they essentially belong to the category of traditional civil litigation to protect private interests, if necessary, their plaintiffs can file claims of punitive damages for harmed private interests on the bases of paragraph 2 of Article 179 of *the Civil Code of China* (hereinafter refers to as *the CCC*), its Article 1185, its Article 1207, its Article 1232, Article 55 of *the Law of China on the Protection of Consumers' Rights & Interests*, Article 82 of *the Law of China on Employment Contracts*, Article 148 of *the Food Safety Law*, paragraph 3 of Article 144 of *the Pharmaceutical Administration Law* and paragraph 1 of Article 70 of *the Tourism Law*, as well as 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).

As mentioned above, the rights and interests protected by PCPIL can be divided into two categories: one is the overall and indivisible public interest. The other is the collection of scattered private interests of unspecified majority. In terms of the former category, the government organs and organizations designated by Article 58 of *the CPL* can only file injunction claims and claims of inaction, which will merely have the binding force pointing to the future. In other words, for the former category, the qualified suing parties shall not file claims of punitive damages for harmed public welfare. This author has explained the reasons behind it in the first part of this paper, so it won't be repeated here. As for the latter category, because it is in the overlapping state with the Composite CPIL, the related public welfare can be protected either by the authorized suing parties in Article 58 of *the CPL* through filing a PCPIL, or by filing a Composite CPIL. It should be noted here that: 1. If the organs and organizations certified in Article 58 of *the CPL* protect the scattered private interests

5 In terms of the eco-environmental damage compensation litigation filed by the authorized provincial, municipal and prefecture governments or their designated branches in line with the Eco-environmental Damage Compensation System Reform Plan issued by the General Office of the CPC Central Committee and the General Office of the State Council in December 2017, this paper believes that it is an ordinary civil litigation in essence. Therefore, in the process of such litigation, the plaintiff has the right to file claims of actual damages and related punitive damages for harmed private interests pursuant to the provisions of relevant substantive laws----------the author's note.

of unspecified majority by filing a PCPIL case, those suing parties shall not file punitive compensation claims involving public interests. The reasons behind them have been expounded in the first part of this paper, so they wont' be further argued here. 2. If the relevant public interests are protected by filing a Composite CPIL, the plaintiff can fully claim punitive damages for harmed private interests in the lawsuit in accordance with the Articles of *the CCC* and other laws. Of course, the amount involved in those private punitive claims is often small and symbolic.

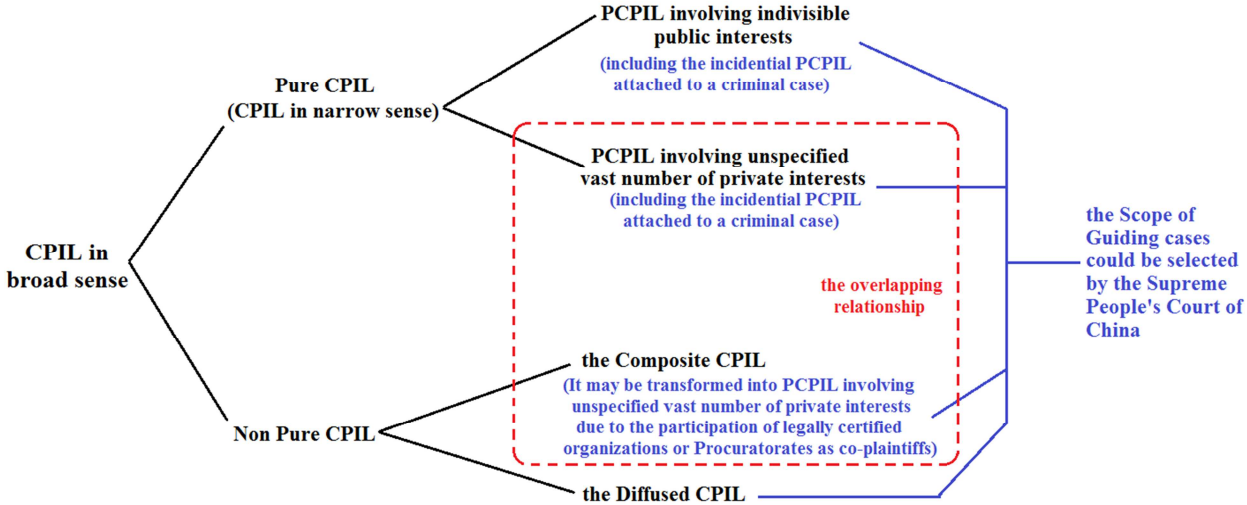

Figure 1. *The Grouping of CPIL.*

2.2. Research on the Mechanism of Dealing with the "Overlapping Relationship" Between Composite CPIL and PCPIL Involving Unspecified Private Interests

As mentioned in the preceding paragraphs, PCPIL and Composite CPIL are in the state of overlapping. In that case, how to deal with the overlapping situation reasonably has become a problem that must be tackled. This author believes that the related multiple reasonable mechanisms are as follows: 1. When a legally certified organization or government organ brings a PCPIL involving unspecified private interests, it is considered as the chief plaintiff. After that case is officially accepted by the court, citizens shall be prohibited from filing Composite CPIL on the same dispute once again, so as to implement "the injunction against filing the same subject matters of a case once again". However, if willing, relevant citizens can participate in the trial of the case as secondary co-plaintiffs. 2. In the trial, the secondary co-plaintiffs enjoy the following litigation rights: to hire lawyers to assist in the litigation; to provide evidence to the court and participate in debate and the examination of evidence; They can participate in trial mediation or reconciliation activities with chief plaintiffs. Meanwhile, without the consent of the chief plaintiff, the secondary plaintiff shall not withdraw the filed claims, admit the claims of the opposing party, and shall not abandon or change the claims filed on the its own side. Furthermore, as the chief plaintiffs, the authorized organization or government organ has the right to decide whether to appeal and whether to apply for the commencement of civil retrial (or whether to initiate that retrial by filing a civil protest). As secondary plaintiffs, the participating citizens provide their own opinions on those matters, but they cannot make such decisions alone. 3. Although there are chief and secondary differences between the aforesaid co-plaintiffs, their relationship with each other as that between the analogous inseparable co-plaintiffs (*Lei Si Bi Yao Gong Tong Su Song Yuan Gao*), that is, because their claims and factual allegations against the same defendant have great commonality, they ought to be "determined in the same trial proceeding". 4. After the public interest infringement occurs, citizens can hand over case-filing suggestions to the legally certified organization or government organ to launch PCPIL, with relevant evidence attached. If those qualified suing parties file PCPIL within the statutory period (e.g. within the next 30 days), the citizen can join in as a secondary co-plaintiff according to the "1" design above. If those qualified suing parties refuse to file the lawsuit, the citizen has the right to file a Composite CPIL instead. In terms of Composite CPIL, the plaintiff's case-filing acts should comply with Article 122 of *the CPL*. In addition, the suing party is the single qualified plaintiff in that lawsuit. Accordingly, the plaintiff's litigation rights and obligations shall be subject to the provisions on private interest litigation in *the CPL*. 5. After a citizen brings a Composite CPIL, if other proper suing parties (legally certified organizations or government organs) are interested in the case and apply to participate in the lawsuit as a co-plaintiff, the citizen who brings the lawsuit will become a secondary co-plaintiff, and the later participants will become the chief co-plaintiffs. In another situation, if the suing parties authorized by Article 58 of *the CPL* does not apply to participate as the chief co-plaintiffs, the case-filing citizen himself/herself is a single proper plaintiff in this pending case. In addition, because the Composite CPIL filed by citizens is an ordinary private rights dispute in essence, if the suing party who is entitled to file a PCPIL wants to be a co-plaintiff in this pending case, the court should first suspend the trial sessions by issuing a procedural ruling. Then, in line with Articles of

the CPL, *SPC's Interpretations on How to Implement the Civil Procedure Law of China* (Fa Shi [2015] No. 5, as revised by Fa Shi [2020] No. 20) and the judicial interpretations concerning the trials of PCPIL, the participant to be shall be subjected to the examination of proper legal standing. After passing that examination, the court shall render a written procedural ruling on it. The ruling has two functions: one is the performance of procedure transformation, that is, the case is essentially changed from the Composite CPIL to PCPIL involving unspecified huge number of private interests. The second is to resume the trial sessions of that case. 6. In principle, if the citizen plaintiff's disposing acts violated the prohibitive requirements mentioned in the aforesaid "2" before the procedural ruling suspending the litigation was issued, his/her disposing acts will neither bind the court nor the chief co-plaintiffs to be. In addition, when the chief co-plaintiffs decided to join in and based on "the doctrine of separate trials for public interest litigation and related private interest litigation", if the defendant in this case has filed a counterclaim before the suspension of that litigation, the court shall inform the defendant to withdraw the counterclaim and sue it separately. If the defendant refuses to withdraw the filed counterclaim, the court may dismiss it procedurally. 7. In terms of the Composite CPIL, the plaintiff's claims can be divided into symbolic claims for compensation to private losses (including claims for actual damages and punitive damages involving private interests), as well as injunction claims pointing to the future. Under this situation, when the plaintiff wins the lawsuit, the funds obtained for restoring the damaged public welfare will either be paid to the State Treasury or to specific public welfare protection funds and other appropriate institutions. Meanwhile, based on the discussion in the first part of this paper, in this kind of PCPIL transformed from the Composite CPIL, the legally certified suing parties are still not allowed to file the claims of punitive damages for harmed public interest.

2.3. The Incidental PCPIL Attached to Criminal Cases Are Components of PCPIL

When the incident or dispute that infringes public interest occurs, if the perpetrator is investigated for criminal responsibility, the procuratorial organ that probes into the criminal responsibility of the suspect can (but not necessarily) bring a incidental PCPIL attached to criminal cases. The incidental PCPIL attached to criminal cases brought by the procuratorial organ is actually a new type of litigation in which PCPIL claims involved in the criminal trials are put forward and judged by the same panel of adjudicators while the procuratorial organ brings the criminal charges against the same accused.

On March 2, 2018, SPC and the Supreme People's Procuratorate (hereinafter refers to as SPP) jointly issued *SPC & SPP's Joint Interpretation on Certain Matters Concerning the Law Implementation in the Civil Public Interest Litigation Filed by People's Procuratorate* (Fa Shi [2018] No. 6). Its Article 20 is the legal base to launch this newly created incidental PCPIL attached to criminal cases. Since then, procuratorial organs have begun to explore the implementation of this institution in judicial practice.

The value of incidental PCPIL attached to criminal cases is, "PCPIL can be integrated into criminal proceedings, tried, solved and executed together. This is not only conducive to the judicial relief of the harmed national interests and social public interests at the same time, but also avoids the problems such as waste of resources, repeated labor, low efficiency, judicial conflicts and execution dilemma caused by 'two related lawsuits filed mutual-independently'. It is the best litigation form to realize the aim of criminal laws and PCPIL at the same time. " [2] "Since the establishment of the PCPIL system initiated by procuratorial organs, incidental PCPIL attached to criminal cases has developed rapidly, and the number of cases has increased year by year. incidental PCPIL attached to criminal cases account for an increasing proportion of PCPIL cases, becoming the 'main body' of PCPIL cases and an important force to safeguard public welfare." [3] For example, "The work report delivered by the Procurator General Zhang Jun in 2019 pointed out that among PCPIL cases launched by procuratorial organs, incidental PCPIL attached to criminal cases accounted for 77.82%, PCPIL accounted for 6.52%, and administrative public interest litigation accounted for 15.66%." [4]

As far as the theme of this paper is concerned, three details of incidental PCPIL attached to criminal cases should be notified by the scholars and practitioners: firstly, incidental PCPIL attached to criminal cases should belong to the category of PCPIL mentioned in "*2.1*" of this part. Essentially, incidental PCPIL attached to criminal cases can either be a PCPIL involving indivisible public interests or a PCPIL involving unspecified vast number of private interests. Secondly, from the paradox and a series of tangled problems listed in the first part of this paper, the people's procuratorates shall not file punitive compensation claims involving public welfare in those criminal proceedings, too. Thirdly, When the incidental PCPIL attached to criminal cases is essentially a PCPIL involving unspecified huge number of private interests, it is also necessary to coordinate the overlapping relationship between that lawsuit and the Composite CPIL initiated by citizens. The specific contents of that coordination mechanism include: 1. When the procuratorial organ first launches such incidental PCPIL attached to criminal cases, based on the adherence to "the injunction against filing the same subject matters of a case once again", citizens should be prohibited from bringing Composite CPIL once again in this regard. Meanwhile, due to the lack of related unequivocal legal authorization, it is objectively impossible for interested citizens to participate in the trials of relevant incidental PCPIL attached to criminal cases as secondary plaintiffs. 2. When the procuratorial organ initiates the incidental PCPIL attached to criminal cases only after some citizens have filed the related Composite CPIL in the first place, the law should provide that during the trial of the incidental PCPIL attached to criminal cases, the trial of the parallel Composite CPIL shall be suspended. When the incidental PCPIL attached to criminal cases is supported by

the court, the court hearing the parallel Composite CPIL shall reject that parallel case by rendering a civil judgment. The goal of this arrangement is to strictly observe the principle of *non bis in idem* and the doctrine of imposing proportional penalty against unlawful acts; However, when the incidental PCPIL attached to criminal cases is turned down by the court or the procuratorial organ withdraws its filed claims in that case, the trial of the parallel Composite CPIL will resume accordingly. 3. When the procuratorial organ has prosecuted the criminal responsibility of the perpetrator, but has not filed an incidental PCPIL attached to criminal cases, interested citizens are permitted to separately file a related but separate Composite CPIL instead. 4. If the acts of the law violator committed a civil infringement upon relevant public interests but has not constituted a crime, or after investigation, the procuratorial organ makes a decision on criminal non prosecution, the relationship coordination between the related Composite CPIL and PCPIL involving unspecified large number of private interests shall be handled according to the mechanism described in "*2.2*" of this part.

To sum up, under two circumstances, the legally certified suing parties cannot claim punitive damages involving public welfare: 1. When those authorized litigators brings a PCPIL for the overall and indivisible public interest (including the related incidental PCPIL attached to criminal cases); 2. When the legally certified suing parties launches PCPIL involving unspecified vast number of private interests (including the related incidental PCPIL attached to criminal cases). In addition, based on the reasons demonstrated in the first part of this paper, the relevant suing parties shall not file claims for punitive damages involving public welfare in the following three situations. They are: (1) After investigation, the procuratorial organ made a decision on criminal non prosecution; (2) When the court considers that the law violator's acts do constitute a crime but does not need to be sentenced to any criminal punishment and subsequently is acquitted after hearing; (3) Although the procuratorial organ has prosecuted the criminal responsibility against the law-violator, it fails to file an incidental civil public interest litigation simultaneously.

All the situations shown in the preceding paragraph demonstrate that the harmed public welfare cannot be fully protected by means of civil litigation. How to patch this loophole? "In China, about 80% of laws, 90% of local regulations and all administrative regulations and rules are mainly implemented by administrative organs." [5] At the same time, Article 129 of *the Constitution of China*, paragraph 1 of Article 2, Articles 20 and Article 21 of *the Organizational Law of the People's Procuratorates* clearly confirm the legal supervisor status of people's procuratorates at all levels. Moreover, from the perspective of jurisprudence, "punitive damages and criminal penalties both share the function of punishing perpetrators." [6] In other words, "there are two main value objectives of using criminal fine penalty: to materialize the mitigation of criminal penalties and to achieve other special purposes. The so-called other special purposes are mainly to deprive greedy criminals of their financial ability to commit crimes again through the imposition of criminal fine, as well as to curb their criminal motivation. " [7] Isn't this the legal effect of sanction and deterrence that scholars who advocate the establishment of punitive damages related to public welfare have always emphasized?

This author firmly believes that based on China's national conditions and unique legal system, we can fully protect the public welfare with the help of improved administrative fine and criminal fine. In fact, a scholar has long pointed out: "Consumer PCPIL is not the only channel for the relief of damage to the rights and interests of 'unspecified number of consumers' and 'social public interests'. Administrative law enforcement or means of criminal punishment can more professionally and efficiently curb the illegal acts of tortfeasors and form a scale effect." [1]

3. Using Improved Administrative Penalty to Correct Defects Showed by PCPIL in Public Welfare Protection

Compared with the punitive damages for harmed public welfare advocated by some scholars, administrative fine have six advantages: Firstly, "administrative fine is located between civil compensation with limited function and too severe criminal sanctions. It can be flexibly combined with other means of administrative legal liability to achieve better law enforcement effect." [8] Secondly, as far as the role of sanctions and deterrence is concerned, administrative fine can completely replace the proposed system of punitive damages involving public welfare. On the one hand, "as a property penalty with the highest frequency of usage and the widest range of application in the field of administrative penalties, administrative fine plays a role of sanctions, warning, deterrence and prevention." [9] Specifically speaking, "in the legislative setting stage of administrative fine, the aim of prevention should be dominant; In the discretion stage of administrative fine, it focuses on the realization of the preset purposes of punishment. " [10] On the other hand, the so-called function of punitive damages for harmed public welfare is highly similar to that of relevant administrative fine. For example, "in judicial practice, there is a generalizing trend of the identification of the 'knowing' fact for punitive damages in the field of food sales, and the guiding cases publicized by SPC no longer take the 'knowing' fact as an independent element, which leads to its convergence with the elements of responsibility for administrative punishments. Therefore, as the target of the punitive damages claimed by procuratorial organs in food safety PCPIL, the related illegal acts can be covered by administrative penalties." [11] Thirdly, different from the proposed punitive damages involving public welfare, the use of administrative fine is more conducive to the improvement of law enforcement efficiency and benefit value. Specifically, "different from the case by case civil damage compensation, 'the advantage of administration is that it can be applied to

some typical cases on a large scale and at low cost in accordance with the unified and relatively specific standards formulated in advance'." [12] In other words, compared with the system of punitive damages for harmed public welfare, which is strictly limited to the base of case by case, the scope of application of administrative fine is much broader. For example, although *the Administrative Punishment Law* (hereinafter refers to as *the APL*) "defines the types of administrative punishment as seven, the administrators' preference for fine in legislative practice is undeniable. (1) As of July 2020, a total of 153 valid laws have set administrative fines, involving 907 articles; A total of 329 administrative regulations have set administrative fine, involving 1277 provisions. Compared with other types of administrative penalties, administrative fine have the widest scope of usage and the highest frequency of application. According to the provisions of *the APL*, laws, regulations and rules are all entitled to set administrative fine." [11] Fourthly, Compared with the problem ridden punitive damages involving public welfare, which is still in the state of overall theoretical ambiguity, administrative fine not only have a relatively intact system, but also have a set of relatively complete and self consistent theories behind it. Fifthly, the legal remedies of administrative law enforcement are readily available. The specific manifestations are as follows: 1. After imposing an administrative fine, if the law violator expresses dissatisfaction with it, he can easily use the provisions of valid laws, regulations and judicial interpretations to seek further legal relief by filing objection, administrative reconsideration and even by launching an administrative litigation. 2. As far as the protection of relevant public welfare is concerned, if the related authority is in the state of "administrative omission" (lazy in exercising its supervision and punishment responsibilities) or "abusing its administrative discretion", the procuratorial organ may first serve written procuratorial suggestions to the related administration in accordance with the law. If necessary, the procuratorial organ may also launch administrative public interest litigation in line with the law, supervise and correct it. Sixth, From the perspective of comparative law studies, administrative fine has the function of compensation for damaged interests similar to civil compensation. "Although scholars generally believe that fine is different from compensation because the latter is compensatory and the former is punitive like other administrative penalties, more and more scholars home and broad directly or indirectly admit that administrative fine has the function of damage compensation. For instance, some scholars believe that 'many provisions on fine in China include indemnification or compensation for damage done to public interests, the fine in this case belongs to the compensatory claims with sanctions...'. In the above statement, the view of administrative fine to compensate social damage is quite obvious. Gary S. Becker, an American scholar, bluntly pointed out that compared with other forms of legal liability, fine has some unique advantages. For example, in addition to the function of punishing violators, it can also protect resources and compensate for the loss of the overall interests of society." [13]

After systematically analyzing the multiple advantages of administrative fine over punitive damages for harmed public welfare, the next problem to be solved is: for the consideration of fully realizing the effect of sanctions and deterrence, is it appropriate to impose large sum fine on perpetrators for infringed relevant public welfare? This author believes that the answer is yes. The main reason behind this is that the number of existing administrative fine is too low to achieve the preset effect of sanctions and deterrence. "Taking river sand mining without a license as an example, most areas set the upper limit of the fine to about 300,000 RMB yuan, and certain places even set the maximum amount of fine less than 20,000 RMB yuan. At present, the sand mining capacity of large jet sand dredgers can reach 4,000 cubic meters per hour. Even if it is calculated at 50 RMB yuan per cubic meter, the illegal profit in an hour will reach 200,000 RMB yuan. A fine of mere 20,000 RMB yuan, even if the fine is imposed at the upper limit of 300,000 RMB yuan, compared with the huge profits acquired from illegal sand mining, that fine just like a drop in the water bucket, and the punishment standard has no deterrent at all." [14] For another example, "in Songhua River water pollution incident in 2005, the State invested a total of 7.84 billion RMB yuan in pollution control, while the enterprise causing the incident only paid a fine of 1 million RMB yuan and 'donated' another 5 million RMB yuan to the local government; In 2007, Hangzhou Municipal Bureau of land and resources imposed a fine of 33,519,922 RMB yuan on three real estate companies with idle land, with an average fine of 95,000 RMB yuan per *Mu.* However, the price for the said idle land increased by about 5.52 million RMB yuan per *Mu*, and the fine charged was merely 1 / 50 of the increase in price; In the Bohai oil spill incident of 2011, according to relevant laws, authorities can only impose a maximum fine of 200,000 RMB yuan on the enterprise causing the accident." [13] For a third example, "In some areas, the discretion of administrative punishment is too light, and the profit seeking nature of enterprises makes them prefer to accept administrative fine, and even calculate fines as the cost of its daily operation. For instance, a large number of Internet illegal click farming platforms have emerged lately, and the annual profit of a single platform may reach millions of RMB yuan. However, as demonstrated by the case of Hangzhou Jianshi Network Technology Co., Ltd., in line with *the Provisions of the Measures for the Administration of Online Transactions*, the click farming gang headed by a Mr. Yang was only fined 80, 000 RMB yuan. Alibaba can only protect its legitimate rights and interests by filing civil proceedings on its own." [15] An intermediate people's court hearing the case held that the defendant "Jianshi company's behavior violated the principles of fairness, good faith and business ethics, seriously infringed on the interests of consumers and disrupted the business order of e-commerce platform. According to the judgment of first instance, Jianshi company was ordered to compensate Alibaba for the economic loss of

202,000 RMB yuan." [15]

Lord Belford, a famous British diplomat, once said: "Let's don't expect too much from 'human nature'." [16] For the market traders living in the so-called "disenchanted world" defined by Max Weber, moral preaching is useless and obviously lacks restraint effect. Under that situation, in order to prevent the repeated infringement of public interests and prevent the "tragedy of the commons" from happening over and over again, we do need to increase the severity of administrative punishment. As far as the theme of this paper is concerned, China's recent legislation on administrative fine obviously tinged with the trait of "heavy punishment".

In terms of legislation, "taking securities law enforcement as an example, the distinctive characteristics of securities administrative sanction are wide range of punishable objects, large punishment scope and high fine amount. There are 44 Articles in Chapter 13 'legal liabilities' of *the Securities Law of China*, which came into effect on March 1, 2020, including 36 Articles involving administrative fines. 16 provisions on administrative fines have increased the multiplying rate of administrative fines and become one of the highlights of *the revised Securities Law*. Among the provisions that the law adopts the formula of interval magnification, 17 provisions provide that 'a fine of more than one time and less than ten times of the illegal income shall be imposed together'; Among the provisions adopting the interval numerical formula, 11 provisions provide that 'if there is no illegal income or the illegal income is less than 1 million RMB yuan, a fine of more than 1 million RMB yuan and less than 10 million RMB yuan shall be imposed', and the maximum amount of fine is 10 times the minimum amount. Objectively, in many cases, illegal acts in the securities and futures market will bring huge illegal gains to the law violators. According to the 1-10 times rate range stipulated in *the new Securities Law,* the perpetrator may face astronomical administrative fines." [10] As for the field of ecological environment administrative law enforcement that is closely linked to PCPIL, the flavor of "heavy punishment" is more distinct and prominent. On April 29, 2020, the National Legislature revised and adopted *the new Law of China on Prevention and Control of Environmental Pollution by Solid Waste* (hereinafter referred to as *the new Law of Solid Waste*). The law came into force on September 1 of that year. "Judging from the fines set in *the new Law of Solid Waste*, the amount of fines has increased significantly. The increased multiples are as of the follow: (1) increased by 10 times. Compared with Articles 68, 74, 70 and 79 of the old law, Articles 102, 111, 113 and 116 of the new law have increased the upper and / or lower limit of fines by 10 times. (2) Increased by 5 times. Compared with Articles 73 and 78 of the old law, Articles 110 and 115 of the new law have increased the upper and / or lower limit of fines by 5 times. (3) Increased by 2.5 times. Article 111 of the new law provides a 'fine of more than 100 RMB yuan but less than 500 RMB yuan' for illegal acts such as dumping, throwing and stacking domestic garbage at will. Compared with the 'fine of less than 200 RMB yuan' provided in the old law, the upper limit of the fine is increased by 2.5 times. (4) For the illegal acts of large-scale livestock and poultry breeders who fail to collect, store and dispose of livestock and poultry feces in time, Article 107 of the new law provides that 'a fine of less than 100,000 RMB yuan can be imposed', which is twice as high as the 'fine of less than 50,000 RMB yuan' stated in Article 71 of the old law." [17]

In short, "taking a comprehensive view of China's current pollution prevention and control law system, the maximum fine provided in *the Marine Environment Protection Law of China* (revised in 1999 and in 2017), *the Law of China on Prevention and Control of Water Pollution* (revised in 2008 and in 2017) and *the Law of China on Prevention and Control of Atmospheric Pollution* (revised in 2015) is 1 million RMB yuan, and *the Law of China on Prevention and Control of Soil Pollution* promulgated in 2018 is 2 million RMB yuan. It can be seen that since the dawn of the 21st century, the maximum fine in China's pollution prevention and control legislation has gradually increased, which has experienced three stages: 1 million RMB yuan → 2 million RMB yuan → 5 million RMB yuan, while the maximum fine of 5 million RMB yuan provided in *the new Law of Solid Waste* has ushered in a new era of huge fines in China's environmental protection legislation." [22]

This author believes that the establishment and implementation of huge administrative fines contribute to the realization of two objectives: first, to minimize the possibility for tortfeasors to profit from their illegal acts by damaging the related public welfare, which is a typical embodiment of the concept of "making the illegal cost higher than the law-abiding cost"; Second, giving full play to the effect of general deterrence can not only better curb possible harm against public welfare in the future, but also make up for the chronic symptom of low implementation rate of administrative law enforcement to a certain extent.

Besides increasing the amount of fines, the strengthening of the sanction and deterrent effect of the administrative fine also depends on the cooperation of other relevant administrative law enforcement measures. In recent days, these supporting measures mainly include the following:

First, some administrative laws in China have created "the system of double sanctions". It refers to imposing a certain amount of administrative fine on natural persons such as the legal representatives or the persons in charge according to law after punishing the related law-breaking entities in the first place. For example, "*the 2018 revised Law of China on Prevention and Control of Water Pollution* was the first to provide 'the system of double sanctions' for administrative fines in the field of China's environmental protection. Article 83 of the law provides that enterprises and institutions that cause water pollution accidents in violation of the law, in addition to punishing the said enterprise or the institution (including imposing fines), The persons directly in charge and other persons directly responsible may be fined not more than 50% of the income obtained from their employers in the previous year." [22] So far, Article 122 of *the Law of China on Prevention and Control of Atmospheric Pollution*

amended in 2015, Article 94 of *the Law of China on Prevention and Control of Water Pollution* amended in 2017, as well as Articles 103, 108, 114 and 118 of *the new Law of Solid Waste* amended in 2020 all set up their own system of double sanctions for administrative fines. Overall, "at present, China's system of double sanctions is mainly applicable to the fields of ecological environmental protection, food and drugs, public safety, financial supervision and so on." [17] In terms of the fields involved, those Articles largely coincide with PCPIL cases filed by the legally certified suing parties according to Article 58 of *the CPL*.

Second, in order to strengthen the crackdown on violations of public welfare, some administrative laws also establish the system of continuously calculated daily fines. For example, "Article 59 of *the new Environmental Protection Law of China* sets a daily accumulating punishment system for continuous illegal sewage discharge, which is further provided by Article 95 of *the Law of China on Prevention and Control of Water Pollution*, Article 73 of *the Marine Environment Protection Law of China*, Article 123 of *the Law of China on Prevention and Control of Atmospheric Pollution* and Article 119 of *the new Law of Solid Waste*." [17]

Third, when it is really necessary, the related administrative organ can impose both administrative fine and confiscation of illegal income against the law violators, that is, the application of the system of both fines and confiscation. The necessity of applying measures of both fines and confiscation is that: "from the perspective of quantitative comparison, simply confiscating the illegal income of the offender should be the best way to achieve equivalent retribution. However, if only the illegal income is confiscated, the perpetrator has not actually received any substantive sanctions. He has only returned the illegally acquired interests that do not belong to himself. Meanwhile, the perpetrator himself does not suffer any losses." [18] Consequently, it is difficult to achieve the effect of sanctions and deterrence set by legislators when only confiscating illegal income. Therefore, in the practice of China's administrative punishment, "confiscation is combined with fines, and the total amount of retribution is often greater than illegal acts, which is also a common text in legislation." [18]

To sum up, the so-called improved administrative fine is actually an administrative penalty combination composed of large sum fine, continuously accumulating daily fines, the system of double sanctions, the system of both fines and confiscation, as well as other administrative penalty measures. The combination of large fines and other administrative punishment measures is not fixed, but is more suitable for the specific circumstances of individual cases according to the Articles of *the new APL* and other related laws. This author firmly believes that it is theoretically justified and practically feasible to use improved administrative fines to fully protect the relevant public welfare. This idea is reflected in the following two points: 1. Because the administrative punishment is public law in essence, after imposing a large fine or confiscation, the collected money should be paid to the State Treasury. 2. Since both administrative penalty and criminal property penalty are public law in nature, after the imposition of the large fine or confiscation, if the offender damaged the public welfare is investigated for criminal responsibility, the administrative penalty can be offset against the ensuing criminal fine. Those two said points are beyond doubt.

4. Expounding on the Mutual Set-off Mechanism of Administrative Fine and Criminal Fine

4.1. Theoretical Bases of Mutual Offsetting Between Administrative Fine and Criminal Fine

As for the same law violator who accepts the punishment of the state's public power, the mechanism that administrative penalty and criminal punishment can be offset against each other stems from the principle of against double jeopardy. That principle "originated from ancient Rome. During the period of the Republic of Rome, the court implemented the system of first instance as the final one, so it practiced the principle of *non bis in idem*, that is, for cases in which the judgment has taken legal effect, it shall not be sued and judicially handled once again unless otherwise provided by the law. This principle is generally applicable to the trial of civil cases as well as criminal cases. This principle has been inherited by the legal systems of Civil Law countries and Common Law countries. It should be pointed out that the ancient Roman trials exercised the system of the integration of criminal litigation and civil litigation. In modern society, criminal litigation and civil litigation are different and strictly separated from each other, which leads to certain differences in the specific meaning of the principle of *non bis in idem* in different types of lawsuits." [19] As far as China is concerned, the content of the principle of against double jeopardy can be specifically divided into the following four points: first, in essence, administrative penalties and criminal punishments are both public legal sanctions. Second, in curbing and punishing illegal acts, so as to protect social public welfare, administrative penalties and criminal punishments cooperate closely. "The quantitative thinking in China's criminal legislation and the legislative model of both qualitative and quantitative crime constitution lead to the inexhaustible containment of socially harmful illegal acts. As the residues of the constitutive elements of crimes, a large number of administrative illegal constitutive elements have been created to realize the seamless containment of socially harmful acts by the State power." [9]

Third, Chinese Taiwan's "academic circles believe that both administrative penalties and criminal punishments belong to the sanctions against illegal acts, which jointly belong to one of the links of the sanctions law system." [10] In other words, "criminal fine is an supplementary penalty applied by the court, whereas administrative fine is a penalty applied by administrative organs. Although they are different in nature, they are the same in content and purpose. They

both order the perpetrator to pay a certain amount of money and make him subject to economic sanctions. After the court has imposed a criminal fine against the offender, the goal of imposing sanctions on his property due to his illegal act has been achieved. If the administrative organ imposes a fine on him again, it will undoubtedly be a repeated punishment." [30]

Fourth, "for the research on the principle of against double jeopardy, the focus of academic circles is whether to impose both administrative penalties and criminal punishments for the same illegal act violates this principle or not. In this regard, except that some scholars in early research proposed to violate this principle, the vast majority of scholars, especially in recent years, almost all scholars believe that the dual punishments of administrative and criminal nature for the same illegal act does not violate the principle of against double jeopardy." [19] In other words, "that is, when administrative fines and criminal fines are concurrent, the principle of severe punishments absorbing the light punishments is generally adopted to reflect the modesty of punishment and avoid excessive penalty." [21]

By comparison, there is a great controversy among scholars on whether the punitive damages for harmed public welfare decided by the court can be offset against administrative fine or criminal fine. In essence, the root of this dispute is the ambiguous definition of the innateness of punitive damages for harmed public welfare. On this issue, most scholars argue that this punitive compensation system should have a mixed nature, that is, it has the nature of both public and private interests simultaneously. For instance, "Xiao Jianguo, a professor at the law school of Renmin University of China, believes that the right to seek punitive compensation enjoyed by the consumer associations should be different from a similar one enjoyed by consumers. The consumer's right to seek punitive damages belongs to the suing right for civil disputes, which aims to compensate the property losses of the victim. It is the adjudicating interest enjoyed by the consumer himself. The claimant and the beneficiary are the same; The punitive compensation right enjoyed by the consumer association is different from private law rights, and should not be considered as public rights either, but should be an independent claiming right between the two." [22]

If we think that punitive damages for harmed public welfare have mixed nature, it will lead to controversy whether it can be offset against administrative fines and criminal fines because the latter two are purely public law sanctions in nature. Within the scope of the literature collected and studied by this author, no jurist have shown a detailed and convincing elaboration on this puzzle. Furthermore, China's judicial practitioners also have doubts about this. For example, "There are decided cases that affirm the offset between criminal fine and civil punitive damages, but also demonstrate the worry that its application may lead to some problems. For instance, the Guangzhou Intermediate People's Court of Guangdong Province pointed out in its judgment of (2020) Yue 01 Xing Zhong No. 130 that 'strictly speaking, civil punitive damages, administrative fines and criminal fines belong to different legal relations. There is no clear legal basis for offsetting criminal fines against civil punitive damages, which still belongs to the scope of judicial discretion. And under complex circumstances, the judgment method of offsetting criminal fines against civil punitive damages... may reduce the civil punitive damages liability of the offender in a disguised form. Therefore, this judgment method is debatable and should not be used as a general rule." [21]

4.2. Legal Bases of Offsetting Administrative Fine Against Criminal Fine

"In *the Penal Code of China*, there are no articles on the circumstances in which administrative fines can be offset against criminal fines." [35] Up to now, the laws, administrative regulations and judicial interpretations related to the offsetting between administrative fines and criminal fine penalties mainly include: 1. Article 22 of *the old APL*, and its counterpart in *the new APL* is Article 27. In addition, the second paragraph of Article 35 of *the new APL* also clearly states that: "If an illegal act constitutes a crime and the people's court imposes a criminal fine, and if the administrative organ has imposed a fine on the party concerned, the administrative fine shall be offset against the criminal fine within the same amount." 2. Paragraph 3 of Article 11 of *the Provisions on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs* (Guo Ling No. 730) of the State Council provides: "In accordance with Articles of *the APL*, if the administrative law enforcement organ has imposed a fine on a party concerned according to law before transferring the suspected criminal case to the public security organ, the people's court shall lawfully offset the administrative fine against the imposed criminal fine within the same quantity range." 3. paragraph 2 of Article 523 of *SPC's Interpretation on the Application of the Criminal Procedure Law* (Fa Shi [2021] No. 1) provides: "If the administrative organ has imposed a fine on the defendant for the same fact, the people's court shall offset the fine against the criminal fine in the declared judgment, and deduct the part of the administrative fine that has been executed."

This paper holds that when handling the actual offsetting between administrative fines and criminal fines against the same offender, the following three details should be faithfully observed:

First of all, "in combination with articles on the system of offsetting in *the APL* and *the Provisions on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs*, it can be seen that the principle of against double jeopardy is applicable to the same type of sanction measures of administrative penalties and of criminal punishments, and there is no so-called the principle of against double jeopardy for different types of punishments. Therefore, this principle only enjoys a limited application." [19]

Secondly, the criminal property confiscation cannot be offset by administrative fines. "Among the supplementary

punishments, the criminal fine is similar to the criminal confiscation of property, which is aimed at the rightful property owned by the defendant. Among the administrative penalties, the fine also targets the lawful property of the administrative counterpart. According to *the APL*, the administrative fine can be offset against the related criminal fine, but this does not mean that the administrative fine can be offset against the criminal property confiscation. The main reason is that when making the judgment of confiscation of property, in addition to retaining some necessary expenses and paying off lawful debts, the defendant's legitimate property will be forfeited by the State. At this time, even if the fine can be offset, it has little impact on the actual amount of confiscated property. In addition, the criminal property confiscation seems to be the same as the administrative confiscation of illegal income or administrative confiscation of illegal property, but the confiscated property is the lawful property owned by the convicted beyond the scope of criminal special confiscation (*Xing Shi Mo Shou*), and there is no need to prove the illegal nature of the property to be forfeited or its relevance to the crime. In contrast, the latter is aimed at the property illegally acquired by the administrative counterpart. Those illegally acquired properties should be regarded as stolen goods and specially confiscated in criminal proceedings, which cannot be offset against the confiscated property once lawfully owned by the convicted." [35]

Thirdly, the offsetting mechanisms for entities and natural persons must be strictly distinguished. "According to the Articles of *China's Penal Code*, for crimes committed by entities, the criminal punishment of an entity and its employees mainly adopts the dual punishment system, supplemented by the single punishment system, that is, most crimes committed by entities not only need to punish the entity itself, but the persons in charge and other persons directly responsible of the operation of that entity needed to be punished, too. Under that situation, if the said entity or natural person has previously been subject to administrative penalties, given that the entity actually reflects the will of some natural persons, or the natural person actually carries out activities on behalf of the entity, should the offsetting of natural persons' previous administrative penalties against the ensuing criminal penalties assumed by the entity the said natural persons are working for be legally permitted? or vice versa? The answer for this question a definite No. Just imagine: if the administrative punishment of an entity can be offset by the criminal punishment of a related natural person, or the administrative punishment of a natural person can be offset by the criminal punishment of an entity, it is obviously suspected of one being punished in place of others, which violates the principle of 'bearing responsibility solely for one's own crime'. Therefore, when handling the penalty offsetting concerning crimes committed by entities, we should strictly distinguish whether the subject of punishment is an entity or a natural person, and pay attention to the consistency of the actor of previous behaviors and the actor of subsequent behaviors." [35]

4.3. The Premise of Offsetting Administrative Fine Against Criminal Fine -- A Study on the Two-Way Lane Between Administrative and Criminal Procedures

As noted in preceding paragraphs, administrative fines and criminal fines can be offset. Generally, the administrative organ first imposes a fine on the law violator, and then finds that it is suspected of committing a crime. At this time, the administrative organ should transfer the case to the public security organ for criminal prosecution. In the subsequent criminal trial, if the court decides the imposition of criminal fines, that property penalty shall be offset against the previous administrative fine. According to this description, this is a one-way transfer mechanism for sending cases from administrative organs to judicial organs (i.e. administrative punishment before the related criminal proceedings). For a long time, the biggest defect of that one-way transfer mechanism is that its provisions are too simple and vague. "For example, Article 219 of *the new Securities Law of China* and Article 149 of *the Law of China on Securities Investment Fund* both provide that "those who violate the provisions of this Law and constitute a crime shall be investigated for criminal responsibility lawfully." [9] This kind of simplified provisions only make it clear that the administrative law enforcement procedure and the criminal prosecution procedure need to be connected. As for the details of that connecting mechanism, there is nothing in sight.

If there is a legal loophole, we have to figure out ways to "patch it". Theoretically speaking, the details of connecting mechanisms between those two procedures are as follows: authorizing the administrative organ to make the preliminary determination on the matter that whether an act is suspected of a crime or not. The administrative organ shall send the case directly to the public security organ if the former is fully aware of the fact that an illegal act is suspected of a crime. If a crime is found to be committed only after an administrative fine has been imposed, it shall be transferred to the public security organ and that administrative fine shall be offset against the subsequent criminal fine. In criminal proceedings, the administrative organ cannot impose a fine. When making a judgment of criminal fine, the court does not need to consider the previously imposed administrative fine. the part of the administrative fine exceeding the amount of a later criminal fine will not be executed, and the administrative organ cannot impose a fine after the court declared a judgment of criminal fine.

To be fair, the procedure connecting design in the above paragraph is generally reasonable, but it has two deficiencies: first, "the part of the administrative fine exceeding the amount of a later criminal fine will not be executed". The third part of this paper points out that there is an obvious trend of enacting more and more large sum fines in China lately. In contrast, there is no similar development in the fines provided in *the Penal Code*. In this context, the number of administrative fines in a case is likely to exceed (or even greatly exceed) the number of criminal fines. Under that

situation, if the part of the administrative fine exceeding the amount of a later criminal fine will not be executed, then the sanction, containment and deterrence effect of relevant punishment measures on the law violator will be significantly weakened. In the long run, this is obviously not conducive to the full protection of public welfare. Second, the design of "the administrative organ cannot impose a fine after the court declared a judgment of criminal fine" is also unreasonable. In fact, it omits the opposite track of "administrative punishment after the criminal proceedings", that is, whether to send the case back to the administrative organ for administrative penalties for those who do not need to be investigated for criminal responsibility or exempted from criminal punishment after trials? In this regard, *the old APL* said nothing. This will inevitably bring difficulties to the implementation of the aforesaid procedure connecting system. "In view of this problem, Article 27 of *the newly revised APL* adds the following requirements: for those who do not need to be investigated for criminal responsibility or exempted from criminal punishment according to law, but should be given administrative punishment, the judicial organ shall transfer the case to the relevant administrative organ timely. In other words, if administrative punishment is needed after the conclusion of the criminal procedure, the judicial organ shall transfer the case to the relevant administrative organ." [24] This provision of *the new APL* brings two benefits: 1. It actually changes the past one-way transfer mechanism and transforms it into a more flexible two-way case-sending mechanism. This amendment is of great benefit to improving and strengthening the sanctions and deterrent effect of the law. 2. This amendment fully reflects the concerted connection between *the Penal Code* and *the APL*. "Article 37 of *the Penal Code* states that: 'if the circumstances of the crime are minor and do not need to be sentenced to criminal punishment, they may be exempted from criminal penalties, but they may be admonished or ordered to sign a confession, make an apology, compensate for losses, or be subject to administrative punishments or administrative disciplinary sanctions by the competent authorities according to the different circumstances of the individual case.' Therefore, after the court exempts the perpetrator from criminal punishment according to law, the administrative organ should impose administrative punishment on the perpetrator lawfully. Because if there is no administrative punishment, not only can't the disciplinary role of the law be brought into full play, but also may lead to the consequences of ineffective prevention." [30]

This paper holds that the basic operating details of the traditional track of administrative punishment before the criminal proceedings are as follows: 1. authorizing the administrative organ to make the preliminary determination on the matter that whether an act is suspected of a crime or not. 2. The administrative organ shall send the case directly to the public security organ if the former is fully aware of the fact that an illegal act is suspected of a crime. 3. If a crime is found to be committed only after an administrative fine has been imposed, it shall be transferred to the public security organ and that administrative fine shall be offset against the subsequent criminal fine. 4. In criminal proceedings, the administrative organ cannot impose a fine. 5. When making a judgment of criminal fine, the court does not need to consider the previously imposed administrative fine. 6. As a principle, penalties of the same nature should avoid repeated application. 7. As an exception, penalties of similar nature will inevitably be applied repeatedly in practice, but they should be offset appropriately and lawfully according to law. 8. Penalties of different nature may be applied concurrently or sequentially. Two problems to be noted here are: (1) the implementation rate of criminal fine and criminal confiscation of property in China's judicial practice is comparatively low, (2) under current circumstances, the amount of money of criminal fine may be significantly less than the amount of relevant large sum administrative fines, so it is not appropriate to rigidly implement the "principle of severe punishments absorbing the light punishments". As for its details, please refer to the contents of section *4.4* of Part 4 of this paper. 9. "At present, there is little theoretical research on how to transfer multiple illegal acts or a large number of law violators in a single case, but it is a difficult problem in practice. For example, the China Securities Regulatory Commission (CSRC) rendered 428 administrative punishment decisions from 2001 to 2011, of which 10 contain the expression of 'transferring suspected crimes to public security organs for criminal responsibility'. Those 10 administrative punishment decisions generally follow two ways of thinking. The first one is to screen and divide multiple illegal acts and the large number of law violators involved in the case either into the group of administrative illegal acts or into the group of criminal acts respectively. Then transferring the criminal acts to the judicial organ for criminal prosecution, and declare administrative punishment according to specific situations, while for the general illegal acts that do not constitute crimes, make administrative punishment directly." [19] 10. Traditionally, under the joint influence of the thought of top to bottom mandatory administration (*Gao Quan Xing Zheng*) and the no freely disposing nature of the administrative power, administrative illegal acts can only be dealt with through rigid sanctions, such as administrative punishment and criminal sanctions. Until the rise of administrative discretion theory and the gradual change of administrative non contractual concept, the reconciliation system in administrative law enforcement tinged with the color of flexible law application was created. For example, "In February 2015, CSRC issued *the Measures for the Implementation of Pilot Administrative Reconciliation*, which officially gave legitimacy to the reconciliation system concerning securities administrative law enforcement." [9]

As for the track of administrative punishment before the criminal proceedings, when the administrative reconciliation system has been used to deal with illegal acts and the related law violators have paid the agreed reconciliation fee, it should be offset against the later criminal fine. Apparently, it is necessary to make a clear amendment to the law or at least give corresponding legislative interpretation as its operation

basis. In addition, when the administrative reconciliation system has been used to deal with illegal acts, but the related law violators have not paid the agreed reconciliation fee, the administrative organ can unilaterally revoke the settlement agreed by both parties on the grounds that the case is suspected of a crime and replace it with administrative fine or the imposition of both fines and confiscation.

Similarly, items 4, 6, 7 and 8 of "the basic operating details of the traditional track of administrative punishment before criminal proceedings" in the paragraph before the preceding paragraph are also applicable to the handling of the newly established track of administrative punishment after criminal proceedings. In addition, the specific operation of that newly created connecting mechanism mainly involves the following six specific situations:

First, a scholar points out that, "if the perpetrator constitutes a crime and is punished accordingly, if the relevant administrative organ needs to punish that person once again through the administrative punishment procedure, the court may suggest the relevant administrative organ to render the related administrative penalty." [20] In this regard, *the new APL* holds the opposite attitude. Paragraph 2 of its Article 35 provides that: "If an illegal act constitutes a crime and the people's court imposes a criminal fine, and if the administrative organ has imposed a fine on the party concerned, the administrative fine shall be offset against the criminal fine within the same quantity range; if the administrative organ has not imposed a fine on the party concerned, it shall no longer impose a fine." In order to fully protect the related public welfare, this author agrees with the viewpoints expressed by the above scholar. Accordingly, paragraph 2 of Article 35 of *the APL* should be revised as: "If an illegal act constitutes a crime and the people's court imposes a criminal fine, if the administrative organ has imposed a fine on the party concerned, the administrative fine shall be offset against the criminal fine within the same quantity range; if the administrative organ has not imposed a fine on the party concerned, it may impose a fine when it sees fit." As for its reasoning, please refer to the contents of section *4.4* of Part 4 of this paper.

Second, if the perpetrator constitutes a crime but is exempted from criminal punishment according to law, the judicial organ shall inform the relevant administrative organ of the nature of the crime and the adjudicating results, so that the said administrative organ can impose administrative punishment on the perpetrator when it is necessary.

Third, if the party concerned who is not guilty of crime needs to be punished by the related administrative organ, that is, when the public security organ decides not to register the illegal acts done by the party concerned as a criminal case or cancel that registered case at last, it may suggest the relevant administrative organ to render administrative punishment accordingly.

Fourth, if the acts of the perpetrator does not constitute a crime, but violates or may violate the related administrative laws, it shall be transferred to the competent administrative organ, and that administrative organ shall impose administrative punishment according to law. In other words, the decision of the procuratorial organ not to prosecute is one of the legal reasons for the termination of criminal proceedings. The people's procuratorate that made the aforesaid decision may send written corresponding procuratorial suggestions to the related administrative organ. It should be noted that: "It can be seen from the provisions of the law that not all non-prosecution cases out of procurators' free evaluation need further administrative punishment. According to Articles of *the Criminal Procedure Law*, only those cases that need administrative punishment can be transferred, that is, the case handling procurators need to weigh and consider it according to the law and case facts. Cases cannot be all transferred, but should be distinguished in the first place. As a part of his discretion for that issue, the prosecutor should consider certain facts including the suspect has been detained, fined, and the victim has been compensated before the non prosecution decision is made, etc." [25]

Fifth, when the judicial organ concludes that the actor's behavior does not constitute a crime for the case transferred by an administrative organ, if the actor's behavior actually constitutes a justifiable self-defense, or emergency avoidance or others, the said judicial organ shall timely send its opinions to the administrative organ that previously transferred the case for its reference.

Sixth, an administrative organ has transferred criminal clues to the public security organ, and the latter has registered a case for criminal investigation accordingly. That situation shows that both the administrative organ and the public security organ believe that the acts of the party concerned constitutes a crime. In that instance, the criminal suspect's behavior can not constitute an administrative violation simultaneously, and the administrative organ certainly are not allowed to impose a concurrent administrative punishment on the aforesaid acts. Supposing the administrative organ did make such kind of administrative penalty during this period, it undoubtedly constitutes an administrative decision out of an improper procedure. However, "from the perspective of legal stability and trust protection, administrative acts have the binding force of the public law, and even illegal administrative acts should be presumed to be effective before they are officially confirmed by the competent authorities." [43] When "the administrative organ imposes a fine on the defendant during the period of criminal prosecution, and the defendant's behavior does constitute a crime, we should pay attention to the fairness of the related criminal punishment, that is, when the suspect is punished by two forms of penalties, we should realize the fairness of the punishment substantively. The defendant should not suffer dual punishments against his substantive interests, that is, try to avoid 'two penalties for one illegal behavior' in the sense of substantiveness." [43] Therefore, in this case, this author believes that: first, the court should consider this inappropriate administrative fine when judging whether to impose a criminal fine; Second, the corresponding part of the inappropriate

administrative fine can be offset against the subsequent criminal fine.

4.4. Is There Any Exception to the Principle of Severe Punishments Absorbing the Light Punishments

As for the connection between the administrative and criminal procedures, "when an act constitutes both a crime and a violation of administrative laws, criminal penalties should be considered first, followed by administrative penalties. The two are primary and secondary in essence, which can not be equated, let alone reversed. The reason behind this setting is that the criminal penalty is more severe than the administrative penalty, and it is obviously irreplaceable. That is the expression of the principle of severe punishments absorbing the light punishments." [30] This principle is clearly expressed in paragraph 2 of Article 35 of *the new APL*.

For the purpose of fully protecting the public welfare related to the ecological environment and protecting the rights and interests of unspecified vast number of consumers, China's administrative law has continually strengthened its punishment measures for the infringement of such public welfare. As mentioned previously, one of the most obvious signs is the trend of dramatically increasing the amount of administrative fines. At the same time, the amount of fine in *the Penal Code* has not underwent a similar development. In this context, the principle of severe punishments absorbing the light punishments has become loose in application, too. The root cause of this loosening is that in many cases, it is often a situation of "the severe punishment is not actually severe, the light punishment is not really light". For example, "judging from the amount of criminal fines for the crime of polluting the environment in some cases, the amount is far less than the amount of imposed administrative fines against some environmental law violating acts. For instance, in the case of a Mr. Shen's crime of polluting the environment, Mr. Shen was fined 100,000 RMB yuan by the Environmental Protection Bureau for setting up a concealed pipe to directly discharge untreated production waste water, while the applicable criminal fine in this case is only 10,000 RMB yuan." [7] For another example, "in the case of a Mr. Shi and a Mr. Gao's crime of polluting the environment, the criminal fine imposed on the two defendants was merely 2,000 RMB yuan respectively, while the actual costs expended by Keqiao District Environmental Protection Bureau of Shaoxing City to eliminate the pollution to the environment and restore the normal use of soil amounted to more than 570,000 RMB yuan. The amount of the criminal fine in this case is far from enough to make up for the damage to society caused by the said crime of polluting the environment." [45] For a third example, "in the environmental pollution crime committed by a Mr. Jin and a Mr. Xiang, the two defendants set up a small electroplating factory and directly discharged the electroplating waste water without any treatment, making a profit of about 200,000 RMB yuan, and were just criminally fined 5,000 RBM yuan and 1,000 RMB yuan respectively. In this case, the amount of criminal fine imposed on two defendants are far lower than the benefits obtained from their criminal acts, and the deterrent force to environmental criminals is also insufficient. Criminals may still obtain economic gains due to their environmental polluting acts after suffering criminal property punishment. In addition, the empirical research conducted by judge Yang Di of the SPC shows that in the judicial practice of other regions in China, the fine for environmental pollution crimes is generally low. The amount of actually imposed fine is not high in most judgments of environmental pollution crimes, and the amount of criminal fine in most cases is less than 50,000 RMB yuan, the average amount of fines imposed for environmental crimes committed by entities is 281,400 RMB yuan, which is generally lower than the amount spent on environmental remediation." [45]

In the backdrop of "the severe punishment is not actually severe, the light punishment is not really light", if the principle of severe punishments absorbing the light punishments is rigidly implemented, it is likely to make the legislative purpose of various large administrative fines fail, at least the extent to which they are implemented will be greatly reduced. In addition, "there has always been a contradiction between 'the high application rate' and 'the low implementation rate' in the operation of criminal fine in China's judicial practice." [7] For example, "each crime in the Chapter of 'crimes of impairing the protection of environment and resources' in *China's Penal Code* provides for a criminal fine, which could be used singly or jointly with other criminal penalties, but the criminal fine as an 'effective declared punishment' often falls into the dilemma of 'execution difficulty' or 'an empty promise' due to the fact that it cannot or should not be enforced, which not only violates the inevitability of the imposition of criminal punishments, but also fails to satisfy the consistency requirements among specific crimes, its corresponding responsibility and its corresponding punishment. Meanwhile, 'insufficient ecological restoration' also makes the criminal fine against environmental crimes fall into the dilemma of 'focusing on punishment and neglecting restoration', which can not really meet the new requirements of the construction of ecological civilization." [27] When being put together, these defects will trap public welfare protection into a 'worse' dilemma, or even literally become a lip service.

This paper holds that, besides the external influencing factor mentioned above (the trend of dramatically increasing the amount of administrative fines), another reason responsible for this phenomenon of the separation of name and reality is that the calculation and sentencing methods of criminal fines in *SPC Provisions on Several Matters Concerning the Application of Criminal Property Punishments* (Fa Shi [2000] No. 45) (hereinafter referred to as *the Provisions on Criminal Property Punishments*) have obviously lagged behind the development of the times. *the Provisions on Criminal Property Punishments* was promulgated on December 18, 2000. "Under the social background at that time, the lower limit of the criminal fine was set to 1,000 RMB yuan, because the national income was

generally not high at that time, and the problem of environmental protection was not as serious and urgent as today. However, after more than 20 years, China's national income has increased several times, but the lower limit of criminal fines in *the Provisions on Criminal Property Punishments* is still 1,000 RMB yuan, which can no longer give play to the effect of monetary punishment as well as the effect of crime prevention by sentencing criminal fine." [45]

In order to prevent the occurrence of the phenomenon that the relevant public welfare may not be fully protected due to the rigid implementation of the principle of severe punishments absorbing the light punishments, this author suggests taking the following two countermeasures:

First, paragraph 2 of Article 35 of *the new APL* is advised to be amended as: "If an illegal act constitutes a crime and the people's court imposes a criminal fine, and if the administrative organ has imposed a fine on the party concerned, the administrative fine shall be offset against the criminal fine within the same amount; if the administrative organ has not imposed a fine on the party concerned, it may impose a fine when it sees fit." The purpose of this amendment is to provide more sufficient protect for the relevant public welfare. Of course, in terms of the track of administrative punishment after the criminal proceedings, before making a subsequent decision on a fine, the administrative organ should consider the early imposition and implementation of the related criminal fine, and offset them within the same amount, so as to implement the principle of against double jeopardy.

Second, when making use of the track of administrative punishment before the criminal proceedings, if the administrative penalty is not enough to offset the criminal punishment, the defendant should be responsible for different part. That is a thing beyond doubt. When the administrative penalty is enough to offset the criminal penalty and there is still a residue after that subtraction, how to deal with the residual administrative penalty has become an issue that must be taken seriously. In China's judicial practice, there are indeed cases in this regard. In the case of *Shulan Forestry Bureau Applying for Enforcement of the Fine against Wang Feng Jie*, Shulan Forestry Bureau issued the decision on forestry administrative punishment of Shu Lin Fa [2018] No. 076 against Wang Feng Jie who illegally fell trees. The fourth item of the punishment decision is "to impose a fine of 10 times the value of illegally felled trees... 61,504.20 RMB yuan." Shortly afterwards, Wang Feng Jie was also "sentenced to criminal detention for 5 months, which is suspended for 6 months, and a criminal fine of 5,000 RMB yuan (the fine has been paid) by the relevant court on suspicion of the crime of illegal logging." [28] In that lawsuit, the amount of administrative fine is far larger than the amount of the related criminal fine. Under that situation, if the execution of the remaining administrative fine is automatically exempted, the actual sanctions and deterrent effect of public law punishment measures will be greatly and negatively affected.

With regard to the issues raised in the "Second" of the preceding paragraph, based on the following two considerations, the remaining administrative fines should to be enforced continually: 1. as far as the part of administrative fines exceeding the amount of criminal fine is concerned, criminal fines and administrative fines belong to two closely related but mutual-independent departmental laws, so the former can not positively or negatively affect the validity of the latter (including the remaining part after the completion of offsetting). 2. Even if the remaining part of the administrative penalty could be revoked judicially, the results of the related administrative litigation obviously lacks the legitimate bases for announcing such a revocation. Specifically, the following ways can be considered for short-term problem solution: since the residual administrative penalty is still lawful and effective, the relevant administrative organs can seek ways to enforce it continually. The aim of this design is to inflict the uttermost monetary penalty against the law violators who have infringed upon the related public welfare in the first place. Since the part completely overlapping with the related criminal fine has been successfully offset, this design apparently will not violate the principle of against double jeopardy. Of course, as far as its long-term solution is concerned, the most ideal way should be to establish a clear and complementary hierarchical connecting mechanism between administrative fines and criminal fines for the same illegal act, that is, the following conclusion reached at the first group meeting of the 14th International Congress on Criminal Law held in Vienna in October 1989 when discussing the differences between administrative law and criminal law: "the maximum amount of administrative fines, in the same country, should not exceed the maximum amount limit for the criminal fine." [29]

5. Conclusions

"The essence of national governance modernization is system modernization. System modernization requires to be based on China's basic national conditions, adhere to the approach of problem-orientation, constantly optimize and improve various legal systems, and finally achieve the goal of good law and good governance." [10] In China, the legal protection mechanism for public welfare is extremely complex. In terms of the legal liability identification of relevant law violators, legislators and law enforcers should fully consider the correlation and coordination among civil liability, administrative liability and criminal liability. In this regard, if we stick to the narrow perspective of departmental law and carry out our researches with the attitude of "live within hail but never visit each other", it will not only fail to provide timely and sufficient legal protection for the harmed public welfare, but will cause more and greater conflicts and contradictions among those three legal relief mechanisms.

As far as the discussion on the legal protection of the damaged public welfare is concerned, this paper is only a very shallow beginning. Combined with all discussions listed above, the following problems need to be further studied by criminal law experts and administrative law

experts: (1) how to effectively resolve the contradiction between "the high application rate" and "the low implementation rate" in the usage of criminal fine in China's judicial practice? (2) For the purpose of fully protecting relevant public welfare, whether and how to establish and apply the interchangeable penalty system of *the Penal Code* (*Xing Fa De Yi Ke Zhi Du*) and its counterpart in administrative laws? (3) In terms of administrative fines and criminal fines, should the objects of their respective evaluations be exactly the same? Or there can be some differences between them? (4) In terms of the application of criminal fine and administrative fine, how to effectively increase their law implementation rates severally? (5) How to cure the judicial chronic diseases existing in the connecting mechanism between those two departmental laws, such as inaction in transferring cases, difficult obstacles in transferring cases, inappropriately replacing criminal penalties with administrative penalties, inappropriately replacing administrative penalties with criminal penalties, and so on? (6) If the system of double sanctions is applied to the law violators pursuant to law, should it be treated differently according to various types of law violators? And why? (7) Paragraph 2 of Article 33 of *the new APL* establishes the principle of presumption of fault in the area of administrative punishments. Then, if the system of double sanctions is to be applied, should the said principle also be applied to the legal representative or persons in charge of the law violator (e.g. a legal person or an unincorporated organization)? (8) How to reduce and control the abuse of administrative fines through the application of the principle of proportionality? (9) Is the "net amount principle" applicable to the deprivation of "illegally acquired income" involving administrative confiscation? Or should "the principle of total amount" be applied in that scenario instead? And why? (10) What impact does the marginal deterrence theory have on the differential setting of administrative fines or criminal fines? And why? (11) How to reasonably set up administrative fines or criminal fines between the two extremities of insufficient or excessive deterrence? And why?……

The English proverb goes: *Devils are in the details*. Before the above puzzles have been systematically and reasonably explained, we can not convince ourselves that the relevant public welfare has been fully protected by legislation and law enforcement of this country.

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