

A Brief Discussion on The Punitive Damages System in China's Consumer Rights and Interests Protection Law

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Abstract

The system of punitive damages originated in the common law system is a private law concept that applies the punitive damages in the field of criminal law and administrative law to the field of civil law on the basis of the system of compensatory damages. China as the introduction of punitive damages earlier civil law countries, its earliest introduction in China in 1994, the Protection of Consumer Rights and Interests Act, Article 49, and the current Protection of Consumer Rights and Interests Act was revised in 2013, Article 55 in the original Protection of Consumer Rights and Interests Act, Article 49 of the basis of a great deal of progress, but nowadays, China's economic development is changing day by day, and the field of the consumer market and there is more However, nowadays, China's economic development is growing rapidly, and there are more problems in the consumer market, such as the applicable conditions of punitive damages, the determination of fraud, whether gifts are commodities, and the difficulties of consumers in proving their cases. This paper analyzes the problems of punitive damages system in the implementation of the current "Consumer Rights and Interests Protection Law", and puts forward corresponding recommendations, in order to expect the punitive damages system and China's national conditions, the social situation is more integrated, ushering in a better development.

Keywords

Consumers; Consumer protection; Punitive damages.

1. Development of the Punitive Damages System in China's Law on the Protection of Consumer Rights and Interests

1.1. Initial establishment of the punitive damages system in the Consumer Rights Protection Law

As a key link in economic and social development, honesty and credibility play an extremely important role and are an important guarantee for maintaining a fair social and economic order. With the emergence of production socialization, people in consumption, more and more attention to product safety and honesty in transactions, punitive damages system is a good medicine to solve this series of problems^[1], as a severe economic compensation system, illegal operators can be effectively curbed, their illegal acts play a certain warning role, so that the unequal position of operators and consumers in actual trading is relatively balanced.

With the development of economic globalization, civil law countries have gradually adopted the punitive damages system that has been increasingly developed in common law systems. Today, punitive damages system has become an indispensable part of the modern legal system. China's first in the Protection of Consumer Rights

and Interests Act introduced punitive damages system began in 1994, according to the provisions of Article 49 of the Act, which is what we usually call "return one for one", that is, double compensation. Since the Consumer Rights and Interests Protection Law came into effect in 1994, by giving full play to the system's preventive and punitive functions, thereby strongly

safeguarding social justice in China, the development of China's economic law has added a colorful touch.

As the first law to introduce the punitive damages system in China, it has had a series of impacts on the relevant regulation of punitive damages that has emerged since then, laying the foundation for its subsequent development in the Contract Law, Food Safety Law, Tort Liability Law and other relevant laws. However, because of the realization of different policy objectives, these punitive damages normative group between the normative system clearly produced an imbalance or normative competing problems^[2], and the 1994 Protection of Consumer Rights and Interests Law only provides for punitive damages in the case of fraud, the subject of the request for punitive damages can only be due to the purchase of goods needed for life and suffered from fraudulent facts of the consumer, for the purchase of real estate, automobiles, luxury goods, etc., the consumption of the consumer is not in the Its scope. At the same time, the subject of the consumer's identification, usually that the consumer must be a natural person, if the unit for the purchase, can not be applied to the Protection of Consumer Rights and Interests Act, such as the occurrence of disputes, can only be applied to other laws. With regard to the amount of compensation, according to its Article 49, the total compensation received by the consumer from the operator shall be twice the amount of the goods or services purchased. This method of calculation is simple and clear, easy to calculate, but precisely because of its provisions are too concise, to the reality of the operation of the judicial workers left a hidden problem. Such as consumers to buy goods amount is too small, "twice the compensation" is difficult to achieve punitive damages of punishment, prevention and incentive role^[3], for consumers, is likely to be too little compensation for the process of trouble, do not want to move to labor and ultimately give up. For the operator is also because the amount is too small, can not reduce the recurrence of fraudulent behavior, can not play a warning role. On the other hand, if the consumer to buy the price is too high ordinary goods, although the previous statement of high-grade consumer goods is not in the "Consumer Protection Law" adjustment category, but I think there is a daily life of the amount of value is too high ordinary goods, in this case, the operator will face high compensation, and the operator of the punishment is too serious, will lead to the legal scale imbalance.

1.2. Punitive damages system in the current Consumer Rights and Interests Protection Law

In the revised Consumer Rights and Interests Protection Law (hereinafter referred to as the Consumer Protection Law) in 2013, Article 55 on the punitive damages system stipulates that this provision is a significant advancement compared to the original Article 49 of the Consumer Protection Law, and symbolizes a new development of the punitive damages system in China.

Article 55 of the Consumer Protection Law not only increases the compensation multiplier, which makes the punishment of the operator heavier, which is conducive to improving the disadvantageous position of consumers in the transaction; it also specifically adds the minimum compensation amount, which is used to solve the problem mentioned by the author that the amount of the goods purchased by the consumer is too low, and the consumer lacks the enthusiasm for claiming his own rights, and fails to achieve the incentive function of the punitive damages system. At the same time, Article 55 also added for the operator product liability provisions, for the operator knows that the goods or services have defects, may cause harm to consumers or other people, but still ignore the results of the occurrence, do not take action to prevent, if the consumer or other people have casualties, can be sued to the court, claiming not more than twice the loss of punitive damages. This kind of malicious goods causing harm or malicious service causing harm punitive damages, in fact, is the "Tort Liability Law" Article 47 complementary and development, because the "Tort Liability Law" Article 47 for the defective products of the malicious behavior of the punitive damages, but it only stipulates that

the malicious product producers or sellers in addition to bear the responsibility for damages, but also should bear "the corresponding punitive damages". Punitive damages". However, what kind of punitive damages liability should be borne, how to calculate, Article 47 lack of specific provisions. The second paragraph of Article 55 of the Consumer Protection Law not only provides a specific calculation method, but also stipulates that punitive damages should be applied to the malicious service causing harm, expanding the scope of the subject of punitive damages in the Tort Liability Law. Finally, the second paragraph of Article 55 takes the actual loss of the consumer or other people as the standard of compensation, rather than the price paid by the consumer or the cost as the standard, the author believes that the actual loss as the standard of calculation can better reflect the relief of damages, punish the illegal behavior, the purpose of consumer protection, and effectively solve the problem of competing issues mentioned above. The second paragraph of Article 55 of the Consumer Protection Law and Article 47 of the Tort Liability Law on punitive damages for product liability issues work together to solve the situation of the two competing in the past when the status of the situation is not clear, the two are now complementing each other, mutually reinforcing^[4].

2. Implementation of the Punitive Damages System of China's Existing Law on the Protection of Consumer Rights and Interests

2.1. Deficiencies in the implementation of the punitive damages system under the current Consumer Protection Law

Although the current Consumer Protection Law has made great progress compared with the 1994 Consumer Protection Law, and has been recognized and endorsed by scholars from all walks of life, it is indisputable that there is still much room for development in the practical application of the current Consumer Protection Law.

First of all, for punitive damages in the operator's "fraud" is insufficient, it can be affirmed that the current "Consumer Protection Law" Article 55 in the original "Consumer Protection Law" Article 49 of the breach of contract punitive damages on the basis of the increase of defective products and services to the personal injury of the punitive damages, which is the progress of the^[5]. However, it should be noted that the old and new "consumer protection law" only provides for punitive damages in the operator's intentional fraud, and our law does not make clear provisions for the composition of fraud. Then it leads to the trial of punitive damages case judge, because of its application of different standards, the judge in the exercise of discretion resulting in the same case some consumers can get punitive damages, some consumers do not get punitive damages. In practice, some scholars put forward the civil law sense of "fraud" of the four elements of the composition: subjective actor must have the intention of fraud; objectively, the actor made the behavior, such as intentionally informing, intentionally concealment; due to the actor's behavior caused by the injured person to make a wrong judgment; there is a causal relationship, that is, the damage is caused by the behavior of the actor. Is caused by the behavior of the perpetrator. However, the author believes that "fraud" in the field of consumer protection law should be a separate issue, the operator's fraudulent behavior should be placed in this special area to make specific provisions. If the determination of fraud is too harsh, it can not achieve the purpose of combating illegal operators, but also can not be too broadly defined fuzzy fraud, so that in the long run impede the stable and sustainable development of China's economic market. Thus, in order to properly balance the relationship between operators and consumers, should be developed and punitive damages system complementary to the composition of fraudulent behavior system, so that easy to implement the legitimate rights and interests of consumers, and then can be appropriate constraints on the operators so that they bear the necessary responsibility.

To the State Administration for Industry and Commerce in 2015 promulgated the No. 73 "infringement of consumer rights and interests of the penalties" as a column, from the law of Article 5, Article 6, Article 13 can be seen in the judicial practice on the "Consumer Protection Act" in the field of fraud determination, "infringement of consumer rights and interests of the penalties" Article 5, Article 6 lists some of the typical fraudulent behavior of the main focus on the objective behavior of the operator, and the subjective psychology of the consumer is weakened, especially for the operator to take an avoidance attitude. The subjective psychology of the consumer is weakened, especially on the subjective intention of the operator to take the attitude of avoidance. To Article 5, paragraph 7 of the substandard as a list, the case of the operator to sell dog food due to add different amounts of meat and different price standards, if the consumer to buy the meat content of 50 percent of the dog food, and received the goods found in the ingredient list of meat content is only 25 percent, the consumer with the substandard as a reason for claiming punitive damages, but the operator is only in the process of distribution due to staff inadvertence and carelessness in sending the wrong product. Is it regardless of the operator's subjective intent to impose penalties? This trial standard is too harsh on the operator. And in the law, article 13 of the service as fraud, and emphasized the subjective intent of the service industry operators. Although the "consumer protection law" punitive damages to the operator to punish the main, there are tilted protection of consumers, but excessive weakening of the operator's subjective state of mind, obviously unfair.

As fraud in the field of "Consumer Protection Law" has not been refined, which leads to the reality of the problem is endless. In recent years, the heatedly debated "know fake buy fake" case as a list, such as in accordance with the previous civil law on the determination of fraud, the operator's behavior should cause the victim made a wrong judgment, it is obvious that "know fake buy fake" group does not meet its composition Elements, does not meet the "consumer protection law" in article 55 of the subject of punitive damages. However, a large number of cases in reality, as well as the Supreme People's Court's No. 23 guiding case opinions, it is not difficult to find that it gives the "knowingly buying fake" people a legal basis and case guidance. This can be deduced from the current "consumer protection law" for the "know fake buy fake" group of consumers, is a positive attitude, but this is contrary to the determination of "fraud". Visible in practice for the identification of consumer identity and punitive damages system has a close connection with the determination of the elements, and therefore determine the definition of fraud and the elements is to determine whether punitive damages in our country to play an important part of its value. However, from the 23rd guiding case can be seen, China's economic market needs further development, which need to rely on the deterrent effect of punitive system, the number of "counterfeiters" and the degree of activity, as the development of the economic market as evidence of the state of development. Because of China's current economic market, the production and sale of counterfeit rampant, legal practitioners by guiding the "counterfeiter", is to improve the business market atmosphere of effective means, I believe that China's current situation, it is appropriate. Furthermore, the operator's fraudulent behavior should be unilateral behavior, according to people's daily thinking should not be linked to the subjective psychological state of consumers, consumers have the right to choose to buy. But even so the lack of clear provisions of the elements of fraud is still not conducive to the legal practitioners of the fair trial, as well as the stability of the relationship between operators and consumers^[6].

Secondly, the scope of application is also defective, "Consumer Protection Law" before and after the revision of the goods and services purchased by the consumer only to make provisions for the goods specifically which did not point out that the author believes that this provision does not keep abreast of the times, to keep up with the trend of the times. Because in real life, a large number of operators in the sales process often use gifts to lure consumers, consumers tend to buy is the actual sale of goods and gifts of the common value, if there is a quality problem is a

gift, whether consumers can get triple compensation, the current law in the field of consumer law there is a gap. There is currently a booming real estate market, the hot commodity housing transactions, then the commodity housing transactions are applicable to the field of "Consumer Protection Law", the current academic community holds a negative attitude, advocating this view of the judicial practitioners that the "Consumer Protection Law" applies to the field of life in the ordinary goods, and the amount of the transaction of the commodity housing, if the implementation of the triple damages, the penalty for the operator is too heavy, and the transaction of ordinary commodities is usually The transaction of ordinary commodities is usually oral, for ordinary commodities consumers are at a disadvantage, the application of the "Consumer Protection Law" is to protect the consumer tilt. And commodities such as housing such bulk consumption will often sign a written contract, disputes can be applied to the Contract Law, the Real Estate Law. Another viewpoint, such as Professor Yang Lixin supports the application of the Consumer Protection Law, because the commodities specified in the Consumer Protection Law does not explicitly exclude the commodity housing, not to mention the "judicial interpretation of commodity housing" also recognizes that fraudulent behavior in the transaction of commodity housing constitutes commodity fraud. Here, the author supports the views of Professor Yang Lixin, at the same time that today's commercial real estate market is much hotter than people's imagination, and more than ten years ago the number of people to buy commercial real estate has changed drastically, the commercial real estate market chaos emerge one after another, and many families is to raise the whole family to buy, such as the application of the triple damages for the operator's punishment is too heavy, then ask if there is a fraudulent behavior, for the purchase of commercial real estate. Fraudulent behavior, for the purchase of commercial housing consumers is not a fatal blow. In this economic market conditions, such as only the application of the contract law, and can not really protect the interests of home buyers, in the market environment of high prices, consumers can be said to buy a house is to pour all the money, and the face of the operator of such a bad lawlessness, from the point of view of the spirit and suffered actual losses, not less than the purchase of ordinary commodities consumer groups, more appropriate to be protected by the tilt of the Consumer Protection Act.

At the same time, the burden of proof in the current Consumer Protection Law is still flawed. Although compared to the original Consumer Protection Law, it has increased the six kinds of commodities involved in the reversal of the burden of proof, standing in the consumer's point of view, taking into account the evidence is more difficult for them, which does safeguard the consumer's rights, but it is precisely because of the provisions of the six kinds of commodities can only be applied to the reversal of the burden of proof when the consumer purchases these six kinds of commodities, in other words, in addition to the six kinds of commodities, the burden of producing evidence to prove that the goods sold by operators have defects falls on the shoulders of the consumer. In other words, apart from the six kinds of goods, the burden of proving that the goods sold by the operator are defective falls on the shoulders of consumers. Article 55 of the current Consumer Protection Law increases the amount of punitive damages for unscrupulous operators, from the original two times the amount of damages to four times the amount of damages, as well as setting a minimum amount of damages of 500 yuan. The increase in the amount of punitive damages can indeed effectively incentivize consumers' awareness of their rights, but the process of defending their rights, due to the operator is usually on the goods or services provided by the operator to provide a comprehensive monopoly on the existence of potential hazards or defects of information, the formation of the situation of asymmetric information between consumers and operators, resulting in a lack of information on the goods held by the consumer, and civil litigation in compliance with the "Who claims, who proves" the basic rules of evidence, even if there are six kinds of goods of the burden of proof reversal of the exceptions, its scope of application in the current commodity

society is only a corner of the iceberg^[7], according to the "Consumer Protection Law" Article 55 can be seen, the operators know that they provide goods or services have defects, and may cause consumer rights and interests Only under such conditions can consumers claim punitive damages. From the above, it can be seen that most of the operators have monopolized the information about the potential harm of the goods, which makes it difficult for consumers to collect evidence, and also need to confirm the subjective malicious psychological state of the operators, which is difficult to prove, so most consumers can only give up the claim for punitive damages, and apply the relevant provisions of the Product Quality Law on product defects^[8] instead.

Finally, there is still a big controversy about the setting of the amount of punitive damages, because punitive damages have the nature of appeasement of consumers, it should be set more strict and precise, the current Consumer Protection Law, article 55, with the upward adjustment of the amount of compensation and the addition of the minimum amount of standards, but after the test of practice has also exposed some problems. First, the minimum amount of compensation is low, triple the amount of compensation is still low, because the reality of consumers to buy ordinary goods is generally low, and cumbersome claims procedures, even if the amount of claims in accordance with the "return one for three" is still low phenomenon prevails, the consumer's rights is not high, and the operator is usually into a batch of selling goods Obtained as a result of fraudulent behavior brought about by the huge interests of consumers who are lax in defending their rights in fact condone the fraudulent behavior of unscrupulous operators. Second, the second paragraph of article 55 on the provisions of tort liability, the victim of defective products caused by the loss, the maximum can only get the actual loss suffered by twice the compensation, visible operators can be based on the provisions of this foresees the implementation of the highest cost of fraudulent behavior, when it is estimated to the wrongdoing after the disclosure of the maximum penalty, after weighing the implementation of fraudulent behavior, punitive damages, the deterrent effect of punitive damages, will be from what? Talk about. At present, the amount of punitive damages for the formulation of the controversy lies in the establishment of a ceiling, but I believe that the key to the amount of punitive damages and the actual losses suffered by consumers to grasp, there will inevitably be a gap between the two. If the amount of punitive damages is much lower than the actual damage suffered by the consumer's loss, the punitive damages will be like a sham; on the contrary, it will hinder the economic market activity.

2.2. Analysis of the reasons for the problems in the implementation of the punitive damages system under the current Consumer Rights and Interests Protection Law

According to the general description of the previous article, after the revision of the Consumer Protection Law, there are still many problems, and after analyzing, the author believes that there are several reasons as follows.

Firstly, the conflict of legal concepts should come first. In common law countries, punitive damages means that the tortfeasor's malice or gross negligence causes the victim to cause great losses, and the tortfeasor, in addition to compensatory damages, should also bear a considerable amount of punitive damages, which means that the amount of damages will be much higher than the actual amount of damage. But in civil law countries, private law strictly follow the principle of filling the damage, that private law can not exist "punishment" this concept, so the judge in the discretion is very difficult to break through the limitations of this thinking. In addition, in our country, punitive damages system set the amount of compensation is too high or the scope of application is too broad will increase the economic burden of enterprises, it is this kind of concept hinders the punitive damages system of incentive function and punitive damages system of perfect.

Second, the lack of deep legal underpinnings, the emergence of the system of jurisprudence based on the first is to make up for the lack of compensatory damages; Secondly, because consumers in the transaction process of commodity information is obviously not as comprehensive as the operator, and punitive damages incentives to alleviate this situation; Finally, punitive damages by means of an increase in the amount of compensation to motivate the consumer to defend their rights, reduce the operator's illegal behavior. But China's "consumer protection law" in the punitive damages provisions mimic the nature of obvious^[9], because the social harm of fraud is obvious, the "consumer protection law" has established punitive damages, but punitive damages in the identification of fraud, consumers and the concept of goods have not highlighted the social harm of fraudulent behavior brought about by the damage to the consumer, as well as the rationality of the punishment of the jurisprudence of the basis. The debate between the practical and academic communities on these concepts is also the reason for the bias in the application of punitive damages.

Thirdly, there is a lag in the examination of the current social and market conditions, and the relationship between the development of the economic market and punitive damages has not been fully considered. China's rapid economic development since the reform and opening up, punitive damages system in the bulk of consumer situations in the amount of compensation, the subjective malice of the operator and social harm and other aspects of the lack of development with the times, so that the survival of punitive damages system will be difficult.

Fourthly, the side effects of the system have not been taken into account. Through the development of punitive damages in the Anglo-American legal system, its application in the process, will cause the victim of excessive rights aggravate the burden of business operations and other such side effects, and therefore the need to establish preventive supervision and monitoring mechanism to mitigate this phenomenon, but China's punitive damages system of the current situation in the absence of regulatory mechanisms, in addition to the people's profit-seeking mentality, the high level of compensation induces the consumer to produce the use of counterfeiting for profit, and even lead to extortion and other illegal and criminal behavior. Even cause extortion and other illegal and criminal behavior.

3. Third, China's "Consumer Rights and Interests Protection Law" punitive damages system to improve the direction of the proposal

3.1. Modification of the conditions for the application of punitive damages

First of all, according to the aforementioned should be clear about the elements of fraud, because the Consumer Protection Law belongs to the market regulation law part of the law, and the market regulation law is the field of economic law, economic law adjustment and service to the civil and commercial law, so in the absence of a clear interpretation, can be applied to the "Civil General Opinion" Article 68 on fraud^[10]. It can be seen in the subjective elements of the "civil opinions" to the operator's subjective intent as the elements, this method of determination in practice has a positive significance, the previously mentioned "penalties" with the enumeration method of the determination of fraud, because it avoids the subjective intent of the operator, resulting in a number of fraudulent acts such as exaggerated propaganda, substandard in practice, in these circumstances, although it can not be excluded The operator's behavior does not belong to fraud, but can be determined by the operator's subjective factors constitute fraud, if the subjective negligence does not constitute fraud^[11].

Affirmation of the status of knowing the buyer of counterfeits to claim compensation, the Supreme Law No. 23 guiding document on knowing the buyer of counterfeits to be the legal basis of the way, the author is affirmative. According to China's current market state, counterfeit and shoddy goods trading is rampant, recognizing the consumer subject status of the know fake buyers, can form a counterbalance with the bad business situation, so as to gradually crack

down on the sale of counterfeit and shoddy goods merchants. As for individual consumers to profit from the psychology of only a few, and operators of fraudulent behavior of social harm by contrast, according to the "Consumer Protection Act" of the legislative purpose, the author believes that should pay more attention to its norms to purify the role of the market.

Expanding the scope of goods to include giveaways and merchandise. Because consumers in the purchase of promotional commodities containing gifts will obviously be the overall value of the goods and gifts to measure the purchase, many operators are precisely in this psychological state of consumers to improve sales, so it should be clear that gifts are also in the list of punitive damages^[12]. Commodity housing into the ranks of punitive damages, first of all, the "Consumer Protection Law" provides that consumers need to live for the purchase of goods or services can be applied to punitive damages, clothing, food, housing and transportation is the basis of life, in the real estate market unprecedented hot today, "live" and commodity housing why can not be equated? Indeed, some scholars believe that if the application of punitive damages for commercial housing, the amount of compensation is too large, then we can refer to Professor Yang Lixin's point of view, if the operator is only partial defects in the commercial housing to conceal the fraud, then only partial valuation of the commercial housing for punitive damages; such as if there is a fundamental breach of contract operator, the buyer only delivered the down payment, before the delivery of the house to find the fraudulent behavior, then for the down payment Punitive damages; if the buyer has already settled the payment, then the operator should refund the full amount of the loan, and at the same time, according to its damage to the buyer to carry out punitive damages^[13].

3.2. Complete reversal of the burden of proof

If the subjective elements of clear fraudulent behavior in the proposed operator's "intentional" basis, the consumer to prove the difficulty, the "Civil General" stipulates that the meaning of intentionality includes two layers: one is to make the relative fall into the error of intent, that is, the intention of the person who knows that their own expression is not true, but also know that the relative may fall into the error of the possibility of the second is to make the relative fall into the error of intentionality, the second is to make the relative fall into the error of making a statement of intent. The second is the willfulness of making the expression of meaning that puts the relative into error. These two kinds of willfulness fundamentally impede the freedom of the defrauded person's meaning formation. According to the above principle, if intent is the element of fraud, according to Article 64 of the Civil Procedure Law, which stipulates the allocation of the burden of proof, "the parties have the responsibility to provide evidence for the claims they make." If the operator wants to conceal or destroy the evidence, then the consumer to prove difficult, not to mention the existence of a large number of life operators do not intend to situation, if the salesman is just careless will be expired goods on the shelves, the consumer should be "intentional" how to prove^[14]. In fact, the legislator has also taken into account this series of problems, in the current "Consumer Protection Law," Article 23, paragraph 3, added six special commodities or decoration and other services, consumers from the acceptance of goods or services within six months of the discovery of defects, disputes arise, the operator bears the burden of proof of the relevant defects. The progress of this article lies in the tilted protection of consumers, but the six special commodities proposed by the legislator are actually not ordinary commodities in daily life, which can only constitute special protection and cannot achieve the purpose of substantive fairness advocated by economic law.

The author believes that in order to better realize the "consumer protection law" principle of legislation, in fact, consumers can be fraudulent damage, the implementation of the full reversal of the burden of proof, so as to avoid the consumer to the operator of the "intentional" proof of the situation, by the operation of the operation of the proof of their own is not "intentionally" This avoids the situation where the consumer has to prove the operator's "willfulness" and the

operator has to prove that he is not "willful". In this way, the Consumer Protection Law realizes the tilted relief for ordinary commodity purchasers.

3.3. Adjustment of the amount of punitive damages

The author believes that the amount of compensation can be set flexible, according to the previous narrative can be seen, set too high or too low penalties have their drawbacks, so can provide a specific range of punitive damages multiplier, according to what kind of penalties multiplier can be based on the operator's subjective malignant, the size of the damage to consumers, as well as fraudulent behavior of the social hazards to be determined. Such as consumers just buy goods in time to the defects of the goods, not its damage, and the operator is an ordinary individual traders do not have great social influence, then can take the lowest multiple punitive damages; such as if the consumer to bring personal injury or damage is not big, can take the middle multiple of the compensation; if the operator's fraudulent behavior is very serious, and the social influence of the enterprise's strong economic strength, then can be Take the highest multiple of punitive damages. This can maximize the solution to Professor Yang Lixin said, China is still in the primary stage of socialism, if the punishment is too harsh, the problem of market enthusiasm. At the same time, it also solves the situation that some experts think that the minimum compensation of 500 RMB is still too low to promote the active exercise of consumers' rights.

Moreover, China's vast land area and the great differences in economic development between the east, west, south and north regions are large, if the Consumer Protection Law sets a scope of punitive damages, it will also help the local legislature to formulate punitive damages multiples suitable for the region according to the economic market conditions in the administrative region, so as to achieve a true adaptation to local conditions.

4. Conclusion

The famous German jurist Radebruch once said that the legal norm of economic law is itself a sociological fact that may effectively intervene in the sociological movement. It can be said that economic law is gradually formed and developed in the sociological movement of law, so it is particularly important to form a clear and profound understanding based on the social foundation and background. As a key part of economic law, if the Consumer Rights Protection Law wants to achieve fuller and richer development, it requires China's economic law scholars and practitioners to conduct in-depth research on the application of the system that economic law should provide from real social life, so that China's economic law can be more fully applied in social life.

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