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Punitive damages in consumer public interest litigation in China: an empirical study

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With litigation socialisation development, an increasing number of civil litigation cases have taken on social functions. Against this background, a punitive damages system involving social interests has developed. Since the implementation of China's consumer public interest litigation system in 2013, the number of cases involving punitive damages filed by procuratorates or consumer associations has steadily increased. These cases have mainly concerned the fields of food and medicinal product consumption. Regarding punishment and deterrence, Chinese judges generally hold a positive attitude towards a plaintiff's request for punitive damages, which has no obvious correlation with plaintiff type, consumption type, or claim scale. In China, the calculation of punitive damages is related to the consumption field involved in the case. Most judges determine punitive damages in fields of food and medicinal product consumption as ten times the defendant's total sales amount, and in the general consumption field, three times the defendant's sales amount, but some judges choose to decide the specific amount at their discretion to avoid excessive punishment and ensure that damages are paid. Additionally, most judges believe that there is no relationship between punitive damages and administrative or criminal fines, or they only consider the defendant's criminal or administrative punishment as a discretionary circumstance for determining punitive damages. Only a few judges believe that there is a correlation among the three, and advocate punitive damages and administrative or criminal fines to offset each other. Chinese judges have two main tendencies in judging the ownership and management of punitive damages; that is, punitive damages are handed over to the state treasury or allocated to special accounts. In view of judges' understanding of the social attributes of punitive damages and the influence of the guidance of national documents in recent years, allocating punitive damages to special accounts for safekeeping and use, is becoming a growing trend.

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Introduction

In the era of complex commodities, the relationship between operators and consumers is no longer equal, but essentially a relationship of domination (Liang, 1997). Operators commonly infringe on consumer interests based on their dominant position, and not only on consumers' private interests but also society at large, hurting a large group of consumers in similar situations. When faced with a 'mass tort' (Scheuerman, 2008), individual compensation to consumers alone cannot address the total damage caused by the defendant's behaviour, nor can it sufficiently punish and deter the defendant. Moreover, individual consumers are likely to give up litigation against the infringer for reasons such as too low compensation for damages, too high litigation costs, and relatively hidden damages. In this context, a new type of 'awarding total harm punitive damages' (Colby, 2003) is necessary, focusing on the defendant's illegal behaviour, and not the personal damage of consumers. To punish the defendant and deter future wrongdoing (the dual purposes of punishment and deterrence, as punitive damages, have repeatedly been mentioned; see Levy, 2002), it is intended that the defendant bear all costs of their illegal behaviour (Polinsky and Shavell, 1998) or that the defendant's illegal behaviour becomes unprofitable (Hylton, 2007). For example, in the case of Mathias v. Accor Economy Lodging, Inc., the court not only required the defendant, Motel 6, to pay a compensation of $5,000 to each of the two plaintiffs, but also required the defendant to pay the plaintiffs punitive damages of $186,000 to remedy all the damage it had caused and limit the defendant's ability to profit from fraud (Shavell, 2007). In the case of State Farm Mutual Automobile Insurance Co. v. Campbell, the Utah Supreme Court upheld punitive damages of $145 million because the defendant's insurance fraud scheme not only harmed the interests of the Campbells, but also had a far-reaching negative effect on other insured people and society in general (Sharkey, 2003).

As the court has begun more frequently judging that the defendant bears punitive damages, the amount paid in punitive damages becomes increasingly conspicuous. This disproportionately high compensation, generated in a random and capricious manner (Quayle, 1992) has turned awarding total harm punitive damages into a ridiculous combination of lottery and pillory (Gardner, 2011), which has led to doubts about the legality and availability of punitive damages. Specifically, the anomaly (Morris, 1931) of punitive damage includes two main aspects. The first is the windfall of the plaintiff. Consumers often get rich because of high punitive damages, as if winning the lottery (Macario, 1995), which is likely to cause injustice to potential plaintiffs, because the first plaintiff will overdraw all the assets of the defendant and latter plaintiffs will be unable to get not only punitive damages, but even compensatory damages (Sales and Cole, 1984). The deeper problem is that the justice of individual consumers receiving punitive damages is questionable, because the purpose of awarding total harm punitive damages is neither to compensate nor reward consumers, but to punish illegal actors and deter future illegal acts. The public interest nature of punitive damages determines that social factors are the most important determining factors. What the judge really decides is whether and to what extent society should punish the defendant, and consumers whose interests are damaged play an accidental role in this process at best (Encarnacion, 2022). Thus, for deterrence, there is no evidence to prove that it is reasonable for punitive damages to be paid to consumers rather than to the state. The direct flow of punitive damages from operators to consumers leads consumers to obtain interests that should belong to the public (Encarnacion, 2022). The second is the excessive compensation undertaken by the defendant. Many consumers are eager to try a suit for new punitive compensation, not to mention that operators may also face administrative, criminal, and other economic sanctions for the same illegal act. The total burden of these multiple compensations on the defendant is likely not commensurate with the seriousness of their mistakes, leading to excessive deterrence. High punitive damages are, in a sense, equivalent to an economic death penalty imposed on the operator, which violates the principle of substantive due process (Redish and Mathews, 2004).

Courts and scholars are actively seeking remedial measures to alleviate the crisis of punitive damages, but meaningful measures and standards are still absent. For example, there is a view that the proportion of punitive damages should be limited; however, it is not clear whether the acceptable proportion is two, three, four, or more times (Mesulam, 2004; Perry and Kantorowicz-Rezinchenko, 2018). Some opinions suggest that judges or jurors can determine the amount of punitive damages by considering the nature of the wrong, character of the conduct involved, degree of culpability of the wrongdoer, situations and sensibilities of the parties concerned, extent to which such conduct offends a public sense of justice and propriety, wealth of the defendant, and other factors; however, it is unclear whether and how the court considers these factors when evaluating punitive damages (Perry and Kantorowicz-Rezinchenko, 2018; Encarnacion, 2022). Additionally, a split-recovery scheme is used to eliminate the plaintiff's windfall gains and indirectly prevent high punitive damages. The scheme only allows the plaintiff to obtain a certain proportion of rewards or remuneration, and most of the remaining punitive damages are distributed to funds administered by the state or court. However, the split-recovery scheme shows a wide range of percentages allocated to the state or fund, treatment of attorneys' fees, and designation of fund recipients (Sharkey, 2003). Some jurisdictions completely prohibit punitive damages in civil cases (Encarnacion, 2022).

Since the implementation of consumer public interest litigation in China on 1 January 2013, issues relevant to the award of total harm punitive damages have surfaced. However, China's consumer public interest litigation does not adopt a role of 'private attorneys general' (Coffee, 1986), but strictly abides by the 'public–private dichotomy' (Redish and Mathews, 2004). According to Article 55 of the Civil Procedure Law of the People's Republic of China (amended as Article 58 in 2022), consumer associations can bring a lawsuit for the benefit of unspecified consumers. In the absence of lawsuits filed by consumer associations, the procuratorate can file public interest litigation for violations of consumer rights in fields of food and drug safety. In any case, an individual consumer cannot claim rights from operators for the public interest. The strict distinction between the just claim of public interest and that of private interest has, to a certain extent, prevented plaintiffs from obtaining windfall gains and alleviated the impact of first plaintiffs on later ones, but more essential problems related to the excessive deterring of the defendant still exist in China.

First, can consumer associations or procuratorates whose interests have not been affected claim punitive damages from a defendant? Although for punishment and deterrence purposes, some scholars have supported the application of the new type of punitive damages in the consumption field (Liu, 2019; Huang, 2020; Yang, 2021), China's current law only stipulates that consumer associations or procuratorates can file consumer public interest litigation, and there is no law stipulating that consumer associations or procuratorates can claim punitive damages from a defendant. Therefore, it is unclear whether these consumer associations or procuratorates that have not suffered actual damage can claim punitive damages from the defendant and whether the punitive damages they can claim are related to the plaintiff's type, nature of behaviour, or scale of claims.

Second, how does the court determine the appropriate punitive damages for consumer public interest litigation? Presently, China's law on the calculation standard for punitive damages is only applicable to individual consumers. For example, according to the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, in the general field of consumption, if a business operator commits fraud in providing goods or services, it will increase compensation for the losses suffered by consumers according to their requirements. The amount of increased compensation is three times the price of goods purchased by consumers or the cost of receiving services. If the amount of increased compensation is less than ¥500, it is ¥500. Punitive damages in fields of food and medicinal product safety are more severe. According to the Food Safety Law of the People's Republic of China and the Medicinal Product Administration Law of the People's Republic of China, in addition to claiming damages, a consumer may require producers who produce food failing to meet the food safety standards and who manufacture counterfeit medicinal produce or medicinal products of inferior quality, as well as operators who knowingly deal in such food and medicinal products, to pay an increased compensation of ten times the price paid or three times the loss. If the increased compensation amount is less than ¥1,000, it will be ¥1,000. None of these standards will apply to cases where procuratorates or consumer associations are plaintiffs. In fact, in situations where a just claim for public interests is strictly differentiated from a just claim for private interests, it is difficult for consumer associations or procuratorates to grasp the actual damage to consumers themselves. Thus, how to calculate punitive damages in consumer public interest litigation and what factors the court has taken into account when determining such damages are still the core issues related to the legality and availability of punitive damages in consumer public interest litigation that need to be solved urgently.

Finally, how can punitive damages paid by the defendant be managed and used? Since individual consumers are strictly excluded from consumer public interest litigation in China, there is no need to consider splitting punitive damages between specific consumers and the state, unlike in countries that adopt the split-recovery scheme. However, the ownership and management of punitive damages in consumer public interest litigation remain unclear. Do the punitive damages paid by the defendant for consumer public interest litigation belong to the state or the public? Are they allocated to the general revenue fund in the state treasury or to a special fund? Although the solution to these problems in China is not to deal with the plaintiffs' windfall, it affects the realisation of punitive damages.

In general, on the issue of awarding total harm punitive damages, China has adopted distinct approaches between private and public interests, which provides a purer perspective for observing and studying the new type of punitive damages, enabling us to think more clearly about the legitimacy and predictability of punitive damages in consumer public interest litigation from the public interest perspective. As the country continues to emphasise and promote consumer public interest litigation, punitive damages for public interest are emerging in China, providing the possibility for empirical research on the above three issues. This article first empirically demonstrates and analyses the practical characteristics of punitive damages in consumer public interest litigation in China, then discusses core concerns such as the attributes, calculations, owners, and use of punitive damages in consumer public interest litigation, and finally arrives at a conclusion. China's perspective on punitive damages in consumer public interest litigation is of great significance to the legislative, judicial, and academic research on punitive damages in consumer public interest litigation, which is in a widely controversial state.

Methods and data analysis

The judicial documents used in this research were obtained from China Judgements Online (https://wenshu.court.gov.cn), an open-access database established by the Supreme People's Court of China. This database is used to archive judgement documents from mainland China. Since 2013, except for judgement documents that are explicitly stipulated by law not to be published online, judgement documents made by mainland Chinese courts should be uploaded to this database. China Judgements Online has become the official authoritative database for obtaining and studying mainland Chinese judgement documents (Ahl and Sprick, 2018). Considering that China's consumer public interest litigation system has been implemented since 1 January 2013 and the court had not finished uploading the judgement documents from 2022, when the author retrieved them, this study selected a judgement date range from 1 January 2013 to 31 December 2021; the last retrieval date was 16 October 2022. This study set the document type as 'judgement', and the full texts of the judgement documents were retrieved twice. With 'public interest litigation' and 'punitive damages' as keywords, 954 judicial documents were obtained, while 2749 judicial documents were obtained with 'public interest litigation' and 'Article 55 of the Civil Procedure Law of the People's Republic of China' as keywords. After manually screening the entire sample, duplicate and irrelevant judgement documents were excluded. Finally, 670 valid judgement documents on consumer public interest litigation were obtained, including 501 judgement documents involving punitive damages.

Basic situation of the plaintiff's claim for punitive damages. As shown in Fig. 1, from 2013 to 2016, consumer public interest litigation cases and punitive damages from consumer public interest litigation were rare. Since 2017, plaintiffs in consumer public interest litigation have been increasingly claiming punitive damages. Since 2018, with the promulgation of the Notice of the Supreme People's Procuratorate on Strengthening the Handling of Public Interest Litigation Cases in the Food and Drug Fields and the Opinions of the Central Committee of the Communist Party of China and the State Council on Deepening Reform and Strengthening Food Safety, the number of consumer public interest litigation cases has increased, showing rapid growth for three consecutive years. The number of cases in which plaintiffs in consumer public interest litigation request punitive damages also shows an upward trend. In particular, the special action of implementing the 'four strictest' requirements for food and drug safety jointly carried out by the Supreme People's Procuratorate, State Administration of Market Supervision, and State Food and Drug Administration from September 2019 to December 2020 had a significant impact on consumer public interest litigation. In 2020, the number of consumer public interest litigation cases and cases involving punitive damages was the highest. Specifically, in 2018, 69 consumer public interest litigation cases involved punitive damages, accounting for approximately 65% of consumer public interest litigation cases. In 2019, 133 consumer public interest litigation cases involved punitive damages, accounting for approximately 62% of these cases. In 2020, 192 consumer public interest litigation cases involved punitive damages, accounting for approximately 84% of these cases. In 2021, although the number of consumer public interest litigation cases declined after the special action ended, with 106 cases involving punitive damages, the proportion of cases involving punitive damages continued to rise, accounting for approximately

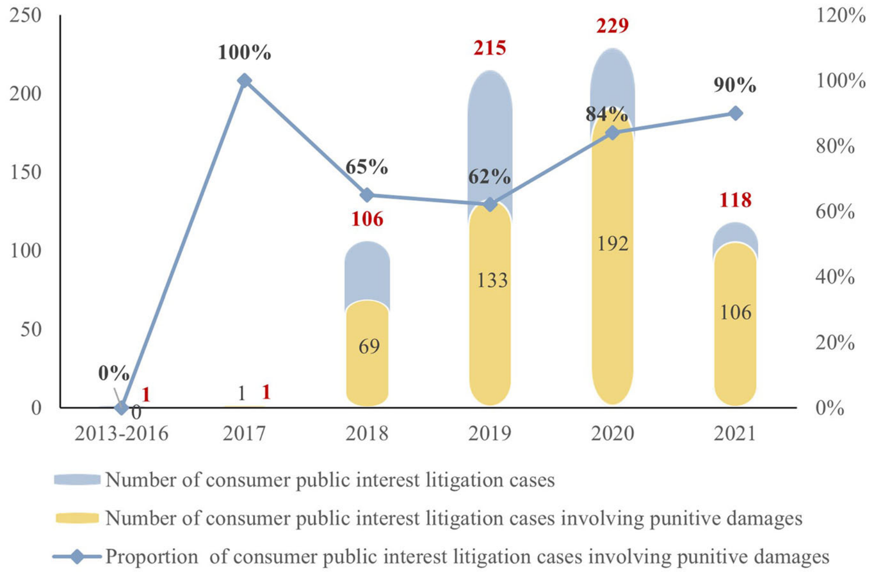

Fig. 1 Annual distribution of punitive damages in consumer public interest litigation in China. The number of consumer public interest litigation cases, the number of consumer public interest litigation cases involving punitive damages, and the proportion of consumer public interest litigation cases involving punitive damages from 2013 to 2021 in China.

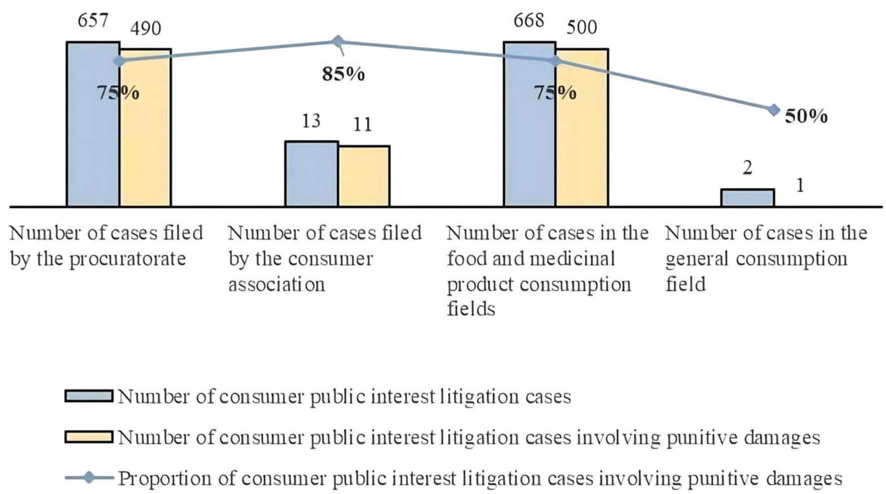

Fig. 2 Distribution of subjects and objects of punitive damages in consumer public interest litigation in China. The number of consumer public interest litigation cases and the number of consumer public interest litigation cases involving punitive damages filed by the procuratorate and the consumer association respectively, and also shows the distribution of consumer public interest litigation cases and consumer public interest litigation cases involving punitive damages between the two types of consumption fields (food and medicinal product consumption fields and general consumption field).

90% of consumer public interest litigation cases. Generally speaking, the proportion of consumer public interest litigation cases in which plaintiffs claim punitive damages has increased annually.

As shown in Fig. 2, in China, the number of consumer public interest litigation cases filed by the procuratorate is currently the largest, with 657 cases, of which 490 cases involve punitive damages, accounting for approximately 75%. The number of consumer public interest litigation cases filed by consumer associations is relatively small, with a total of 13. However, these cases mostly involve punitive damages, and there are 11 cases of consumer associations advocating punitive damages, accounting for 85% of consumer public interest litigation cases filed by consumer associations.

Currently, consumer public interest litigation in China is mainly filed in fields of food and medicinal product safety. Among the 670 consumer public interest litigation cases, 668 were related to food and medicinal products, of which 500 involved punitive damages, accounting for 75% of the total number of consumer public interest litigation cases in the food and medicinal product consumption fields. In addition to that fields, China has a small number of consumer public interest litigation cases in the general consumption field, such as counterfeiting well-known clothing brands and selling smart TVs with a power-on advertising function. There were two such cases, of which one case involved punitive damages, accounting for 50% of consumer public interest litigation cases in the general consumption field.

Situations where judges support or reject punitive damages. As shown in Fig. 3, among the 501 cases in which the plaintiff requested

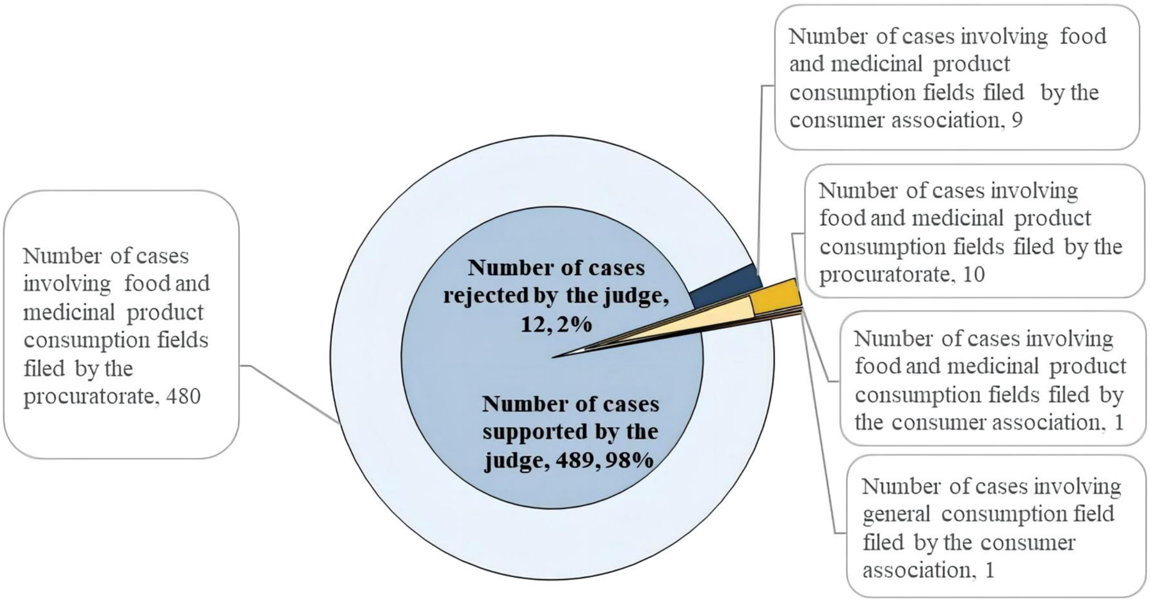

Fig. 3 Distribution of judges supporting or rejecting punitive damages in consumer public interest litigation in China. The number of cases in which China's judges supported or rejected punitive damages in consumer public interest litigation involving different consumption fields (food and medicinal product consumption fields and general consumption field) filed by different subjects (procuratorates and consumer associations).

punitive damages in consumer public interest litigation, 489 were supported by the judge, accounting for approximately 98%. Among the 489 cases supported by the judge, the highest claim scale of the plaintiffs was ¥27,220,150 and the lowest claim scale was ¥300. Twelve cases were not supported by the judge, accounting for approximately 2%. Among them, the highest claim scale of the plaintiff was ¥55,500,000 and the lowest claim scale was ¥30,600.

A total of 489 cases supported by the judges were consumer public interest litigation cases in fields of food and medicinal products. Among them, 480 cases were filed by the procuratorate, with a judge support rate of 98% for the procuratorate's punitive damages claims; 9 cases were filed by consumer associations, and 82% were supported by the judge for punitive damages claims of consumer associations.

Most of the 12 cases rejected by the judge were also in fields of food and medicinal products. Eleven cases in fields of food and medicinal products (10 cases filed by the procuratorate and 1 case filed by the consumer association) were rejected by the judge, and the rejection rate of the plaintiff's punitive damages claims in these fields by the judge was 2%. Additionally, the judge did not support the only case of punitive damages in consumer public interest litigation in the field of general consumption filed by consumer associations.

In general, the judge supports the plaintiff in consumer public interest litigation, claiming punitive damages against the defendant to safeguard public interests, deter the defendant, and avoid failure of the defendant's responsibility. The judges' affirmative attitudes did not show an obvious trend in the plaintiff type, consumption type, and claim scale.

Although there is a clear trend of judges supporting the plaintiff's punitive damages claim, there are still a few judges who have rejected punitive damages claims filed by plaintiffs in consumer public interest litigation. As shown in Table 1, the main reason for rejection was the lack of a legal basis for the plaintiff's claim, which was mentioned in almost all rejection judgements. Additionally, the reasons for rejection include insufficient evidence from the plaintiff and the conclusion that application of punitive damages would violate the principle of fairness.

Current situation of standards applied by judges to calculate punitive damages. Among the 489 cases in which the judge decided to support punitive damages in consumer public interest litigation, most judges used the defendant's total sales amount as the calculation base and applied the ten-times or three-times standard of punitive damages for private interests to determine the amount of punitive damages in consumer public interest litigation. There were 466 such cases, accounting for approximately 95% of all the cases. In the specific case of consumer public interest litigation related to food and medicinal products, the punitive damages determined by the judge are ten times the defendant's actual sales amount. In the case of consumer public interest litigation in the field of general consumption, the judge will calculate the punitive damages as three times the actual sales amount of the defendant. Additionally, some judges did not use the calculation standard of punitive damages for private interests to calculate the amount of punitive damages in consumer public interest litigation; however, determined the specific amount of punitive damages in consumer public interest litigation using methods such as one, two, or eight times the defendant's sales amount. There were 23 such cases, accounting for approximately 5% of all cases.

As shown in Fig. 4, further observation of the judgement documents reveals that there are generally three judgement modes in the calculation of punitive damages in consumer public interest litigation by judges.

In the first mode, the judge believes that consumer public interest litigation is a substitute, supplement, and aggregation of consumer private interest litigation. The calculation standard of punitive damages for private interests stipulated by Chinese law is the standard for calculating punitive damages for consumer public interest litigation, and can be directly applied when determining punitive damages in consumer public interest litigation. Accordingly, according to the different consumption fields involved in consumer public interest litigation, the calculation of punitive damages in such litigation can be subject to the standard of three times or ten times specified in the Law of the People's Republic of China on the Protection of Consumer

Table 1 Reasons for judge's rejection of punitive damages in consumer public interest litigation.

Number	Case	Consumer fields involved	Amount claimed by the plaintiff	Reasons for court rejection
1	Shanxisheng Xiaofeizhexiehui Yu Yanhao Yishen Minshi Panjueshu (山西省消费者协会与闫浩一审民事判决书) [Shanxi Consumer Association v. Yan Hao], Shuozhou Interm. People's Ct. No. 36 (29 Sept., 2019).	Food and medicinal product consumption fields	¥30,600	(1) The plaintiff's punitive damage claim lacks legal basis. (2) The defendant has already been subjected to administrative and criminal penalties, and also bears compensation responsibility to consumers. Based on the above circumstances, it is against the principle of fairness to judge the defendant to bear punitive damages for consumer public interest litigation.
2	Xuwenqiao Deng Xiaoshou Youdu Youhai Shipinzui Yishen Xingshi Panjueshu (徐文巧等销售有毒、有害食品罪一审刑事判决书) [Longshan District People's Procuratorate v. Xu Wenqiao et al.], Longshan Primary People's Ct. No. 220 (22 Nov., 2018).	Food and medicinal product consumption fields	¥55,500,000	The plaintiff's request for punitive damages has insufficient legal basis.
3	Lengguilin Wangguoqi Chanpinzerenjiufen Yishen Minshi Panjueshu (冷桂林、王国旗产品责任纠纷一审民事判决书) [The Second Branch of Shanghai People's Procuratorate v. Leng Guilin and Wang Guoqi], Shanghai Third Interm. People's Ct. No. 24 (12 Jun., 2020).	Food and medicinal product consumption fields	¥8,675,208.64	The evidence provided by the plaintiff is not sufficient to prove their punitive damages claim.
4	Luoxiuying Zhangliangqiu Yishen Minshi Panjueshu (罗秀英、张良秋一审民事判决书) [Xiejiaji District People's Procuratorate v. Luo Xiuying et al.], Xiejiaji Primary People's Ct. No. 861 (23 Sept., 2019).	Food and medicinal product consumption fields	¥3,150,000	The plaintiff does not have the subject qualification to claim punitive damages, and the plaintiff's claim for punitive damages has no legal basis.
5	Xingshifudaiminshisusong Beigao Dengzaigang Lihanlin Shengchan Xiaoshou Youdu Youhai Shipinzui Yishen Xingshi Panjueshu (刑事附带民事诉讼被告邓在刚、李汉林生产、销售有毒、有害食品罪一审刑事判决书) [Pidu District People's Procuratorate v. Deng Zaigang and Li Hanlin], Pidu Primary People's Ct. No. 591 (30 Dec., 2019).	Food and medicinal product consumption fields	¥3,950,320	(1) There is currently no evidence to prove that unspecified consumers have suffered actual damage. (2) If the defendant is judged to bear punitive damages, it will lead to their bankruptcy, which is not conducive to achieving true social fairness.
6	Mayehui Weikongxin Guangxizhuangzuzizhiqu Guigangshi Renminjianchayuan Deng Qinhai Jitijingjizuzhichengyuanquanyijiufen Ershen Minshi Panjueshu (马业辉、韦孔鑫、广西壮族自治区贵港市人民检察院等侵害集体经济组织成员权益纠纷二审民事判决书) [Guigang People's Procuratorate v. Ma Yehui et al.], Guangxi High People's Ct. No. 227 (22 Aug., 2019).	Food and medicinal product consumption fields	¥57,758.71	According to current law, punitive damages for consumer public interest litigation are not within the scope of trial.

Table 1 (continued)

Number	Case	Consumer fields involved	Amount claimed by the plaintiff	Reasons for court rejection
7	Yangchunchao Shengchan Xiaoshou Weiliechanpinzui Ershen Xingshi Panjueshu (杨春超生产、销售伪劣产品罪二审刑事判决书) [Wuchang District People's Procuratorate v. Yang Chunchao], Wuhan Interm. People's Ct. No. 200 (24 Dec., 2019).	Food and medicinal product consumption fields	¥4,139,355	The plaintiff's claim for punitive damages in consumer public interest litigation violates the law.
8	Mamou Mamoumou Shengchan Xiaoshou Weiliechanpinzui Yishen Xingshi Panjueshu (马某、马某某生产、销售伪劣产品罪一审刑事判决书) [Shuangqiao District People's Procuratorate v. Ma et al.], Shuangqiao Primary People's Ct. No. 272 (3 Nov., 2020).	Food and medicinal product consumption fields	¥1,862,430	The plaintiff did not submit evidence of damage.
9	Guodongfang Guoyifang Gaojiafu Shengchan Xiaoshou Youdu Youhai Shipinzui Yishen Xingshi Panjueshu (郭东方、郭益方、高加富生产、销售有毒、有害食品罪一审刑事判决书) [Qingyang District People's Procuratorate v. Guo Dongfang et al.], Qingyang Primary People's Ct. No. 630 (9 Dec., 2020).	Food and medicinal product consumption fields	¥1,617,440.90	(1) According to current law, only consumers can claim punitive damages. (2) If the defendant is sentenced to punitive damages for consumer public interest litigation, it will lead to the defendant's bearing a huge amount of debt, which is not conducive to achieving true fairness.
10	Tangdecai Xiaoshoubufuheanquanbiaozhundeshipinzui Xingshi Yishen Panjueshu (唐德才销售不符合安全标准的食品罪刑事一审刑事判决书) [Anzhou District People's Procuratorate v. Tang Decai], Anzhou Primary People's Ct. No. 7 (4 Dec., 2020).	Food and medicinal product consumption fields	¥3,406,250	There is no evidence to prove that the defendant's illegal behaviour caused actual damage to consumers, and the plaintiff's punitive damages claim lacks legal basis.
11	Wangshangfei Liujijuan Yishen Minshi Panjueshu (汪尚飞、刘纪娟一审民事判决书) [Yuhui District People's Procuratorate v. Wang Shangfei and Liu Jijuan], Yuhui Primary People's Ct. No. 2194 (25 Dec., 2020).	Food and medicinal product consumption fields	¥1,712,616	The plaintiff's claim for punitive damages lacks legal basis.
12	Sichuansheng Baohuxiaofeizhequanyiweiyuanhui Yanpan Tangbin Deng Qinquanzerenjiufen Yishen Minshi Panjueshu (四川省保护消费者权益委员会、闫攀、唐斌等侵权责任纠纷一审民事判决书) [Sichuan Consumer Association v. Yan Pan et al.], Chengdu Interm. People's Ct. No. 5508 (8 May, 2021).	General consumption field	¥2,935,545	The plaintiff's claim for punitive damages has insufficient legal basis.

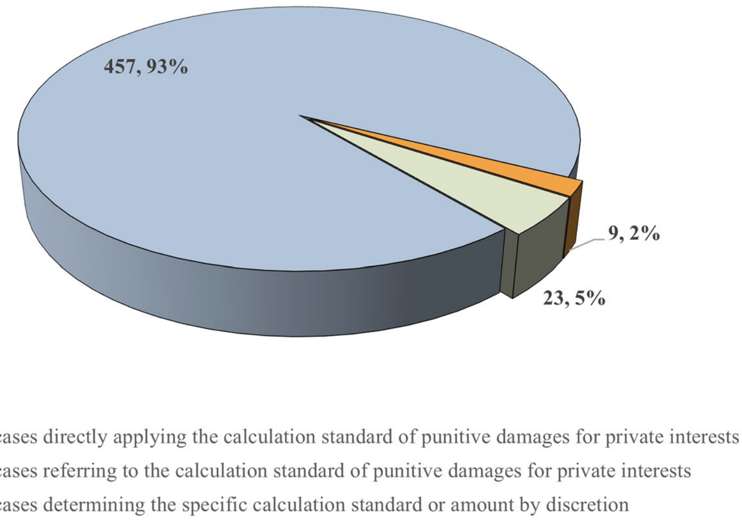

Fig. 4 Calculation model distribution of punitive damages in consumer public interest litigation in China. The three models of calculating punitive damages in consumer public interest litigation in China (directly applying the calculation standard of punitive damages for private interests, referring to the calculation standard of punitive damages for private interests and determining the specific calculation standard or amount by discretion) and their respective number of cases.

Rights and Interests, the Food Safety Law of the People's Republic of China and the Medicinal Product Administration Law of the People's Republic of China, respectively, based on the total sales price. This judgement mode was applied in 457 (93%) cases. For example, in the case of the People's Procuratorate of Lishui City v. Xie Miaoli Bean Products Store in Liandu District of Lishui City, the judge held that 'the defendant knew that the rice tofu produced and sold did not meet the food safety standards and still sold it to the public, so the plaintiff in the public interest litigation claimed damages at ten times the sales price, which was in accordance with the law'.[1]

In the second mode, the judge believes that consumer public interest litigation is not related to consumer private interest litigation. Therefore, there should be an independent calculation standard for punitive damages in consumer public interest litigation. However, in the absence of legal provisions on this calculation standard, to protect the public interest, the amount of punitive damages for consumer public interest litigation can be determined by referring to the calculation standards of punitive damages for private interests stipulated in the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, the Food Safety Law of the People's Republic of China and the Medicinal Product Administration Law of the People's Republic of China by purpose interpretation. The number of cases applying this mode is 9, accounting for 2%. For example, the judge who heard the case of the People's Procuratorate of Gongshu District in Hangzhou v. Li Zhengsheng and Liu Fengli held that 'although the law does not explicitly list punitive damages among the types of litigation claims that plaintiffs can make in consumer public interest litigation, it does not mean that plaintiffs in public interest litigation are prohibited from making punitive damages claims … In the absence of clear provisions on the calculation of public interest losses in the consumption field in the current law, we can refer to the applicable punitive damages provisions for private interests to achieve the purpose of punishing and deterring illegal operators. After investigation, the total sales price of the products involved was ¥61,040, so the two defendants should pay punitive damages of ¥610,400 in this case'.[2]

In the third mode, the judge believes that the calculation standard of punitive damages in consumer public interest litigation should be independent of the calculation standard of punitive damages for private interests. However, in the absence of laws, referring to the standard of punitive damages for private interests would lead to excessive punishment of the defendant. Therefore, in combination with the specific circumstances of the case, the judge determines the specific calculation standard or amount of punitive damages in consumer public interest litigation using their discretion. There were 23 cases in which this mode was applied, accounting for 5% of the cases. This mode has two forms. First, judges apply the calculation coefficient at their discretion, and there are standards such as one time, two times, five times, seven times, or eight times. For example, in the case of the Consumer Association of Inner Mongolia Autonomous Region v. Wang Baijiang, the judge held that 'considering the current economic situation of the defendant, in order to highlight judicial humanisation and avoid excessive punishment, it is appropriate to decide that the defendant should bear punitive damages of seven times the sales amount'.[3] Second, judges directly determine the amount of punitive damages in consumer public interest litigation at their discretion. For example, in the case of the People's Procuratorate of Tongren City v. Wu Chengjing and Yang Tongneng, the plaintiff claimed punitive damages of ¥1,321,770 from the defendant, ten times the sales price. The judge held that, 'Considering the degree of damage caused by the defendant's behaviour, the defendant's compensation ability and the fact that the defendant has already received administrative and criminal penalties, the ¥1,321,770 punitive damages requested by the plaintiff are too high, and the defendant is deemed to bear ¥130,000 punitive damages as appropriate'.[4] In this mode, the factors considered by the judge stated in the judgement mainly include the defendants' behaviour, defendants' subjective fault degree, the degree of social harm of the infringement, fraud circumstance, sales amount, whether the illegal operator had received criminal punishment or administrative punishment, the attitude towards the plaintiff's litigation request, defendants' social responsibility, defendants' living conditions, and the consent of the plaintiff. Table 2 lists the representative cases.

Table 2 Factors judges considered in determining the amount of punitive damages in consumer public interest litigation.

Number	Case	Amount claimed by the plaintiff	Amount decided by the judge	Factors considered by the judge
1	Xuedonglin Xuezhichuan Xiaochuweixianjiufen Yishen Minshi Panjueshu (薛栋林、薛志川消除危险纠纷一审民事判决书) [Shijiazhuang City People's Procuratorate v. Xue Donglin and Xue Zhichuan], Shijiazhuang Interm. People's Ct. No. 1212 (10 Jun., 2019).	¥457,213.50	¥300,000	The defendant has received criminal fines, the defendant's attitude towards the plaintiff's claim, the defendant's social responsibilities, the defendant's living conditions and the plaintiff's consent
2	Fujiansheng Putianshi Renminjianchayuan Liuyuxing Chanpinshengchanzhezerenjiufen Yishen Minshi Panjueshu (福建省莆田市人民检察院、刘玉星产品生产者责任纠纷一审民事判决书) [Putian City People's Procuratorate v. Liu Yuxing], Putian Interm. People's Ct. No. 983 (13 Mar., 2020).	¥392,400	¥100,000	The defendant has received a criminal fine, the defendant has made a public apology, and the defendant's living conditions
3	Longyouxian Renminjianchayuan Lirongchun Qinquanzerenjiufen Yishen Minshi Panjueshu (龙游县人民检察院、李荣春侵权责任纠纷一审民事判决书) [Longyou County People's Procuratorate v. Li Rongchun], Quzhou Interm. People's Ct. No. 106 (27 Oct., 2020).	¥160,000	¥128,000	The circumstances of the defendant's illegal act and administrative fines
4	Zhangxiujuan Gaoguangkui Chanpinzerenjiufen Yishen Minshi Panjueshu (张秀娟、高光奎产品责任纠纷一审民事判决书) [Zibo City People's Procuratorate v. Zhang Xiujuan and Gao Guangkui], Zibo Interm. People's Ct. No. 178 (10 Nov., 2020).	¥39,750	¥5,000	Losses and effects of the defendant's illegal act on unspecified consumers
5	Wuchengjing Yangtongneng Yishen Minshi Panjueshu (吴承静、杨通能一审民事判决书) [Tongren City People's Procuratorate v. Wu Chengjing and Yang Tongneng], Tongren Interm. Ct. No. 49 (11 Dec., 2020).	¥1,321,770	¥130,000	The extent of damage caused by the defendant's illegal act to the public, the defendant's ability to bear damages, and the defendant has received criminal fines

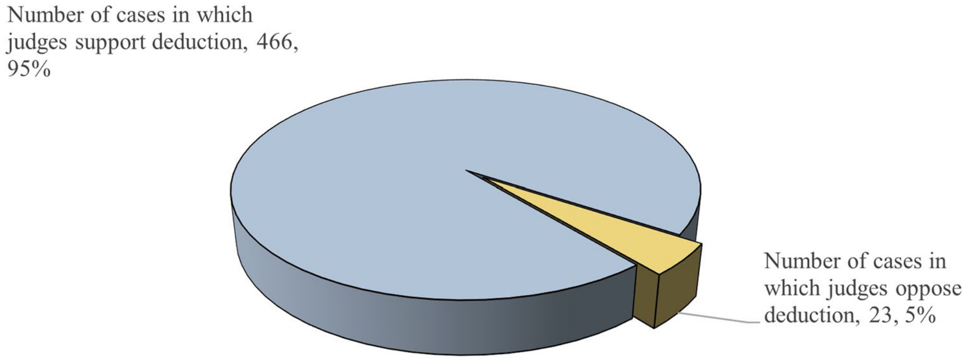

Fig. 5 Distribution of judges who supported or opposed punitive damages in consumer public interest litigation, deducting criminal fines and administrative fines, in China. The number of cases in which China's judges supported or opposed punitive damages and administrative or criminal fines to offset each other.

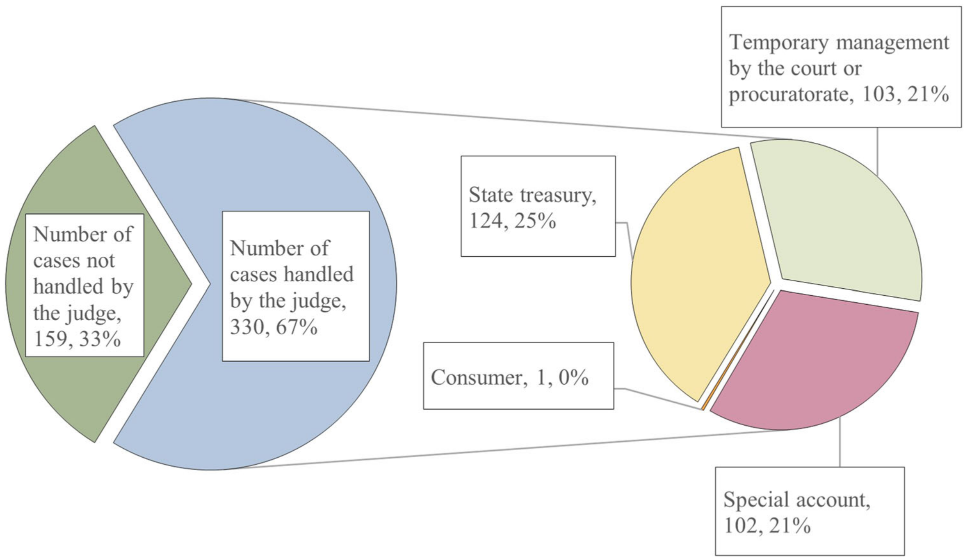

Fig. 6 Ownership and management distribution of punitive damages in consumer public interest litigation in China. The number of cases that China's judges have handled or not handled the ownership and management of punitive damages in consumer public interest litigation, and also shows the possible whereabouts of punitive damages in consumer public interest litigation (including state treasury, temporary management by the court or procuratorate, special account and consumer).

Deduction of punitive damages, criminal fines, and administrative fines. In 501 cases involving punitive damages in consumer public interest litigation, defendants received administrative punishment or were sentenced to criminal fines. As shown in Fig. 5, judges in 466 cases considered punitive damages as different from administrative and criminal fines in their legal nature, and punitive damages are not allowed to be offset against criminal or administrative fines. These cases accounted for 95% of all cases. However, the judges in 23 cases considered that there was a correlation in their application based on the fact that punitive damages in consumer public interest litigation, criminal fines, and administrative fines pertained to the creditor's punishment. To avoid excessive punishment and ensure execution, punitive damages, criminal fines, and administrative fines were deducted, accounting for 5% of such cases. For example, in the case of the People's Procuratorate of Chifeng City v. Wang Wenli, the judge calculated the punitive damages in consumer public interest litigation to be ten times the defendant's sales amount, which totalled ¥450,000. The judge then ruled that the defendant's criminal penalty of ¥5,000 for the same illegal act was deducted from ¥450,000 in punitive damages. The actual punitive damages borne by the defendant in this case were ¥445,000.[5]

Ownership and management status of punitive damages in consumer public interest litigation. Observing the judgement documents, it can be seen that almost none of the plaintiffs made any claims regarding the ownership and management of punitive damages in consumer public interest litigation, and the judges have not taken this issue as the focus of controversy in the case. Accordingly, as shown in Fig. 6, among the 489 cases in which judges supported punitive damages, 159 did not explain the ownership and management of punitive damages in their judgements, accounting for 33%. However, in 330 cases, the judges directly decided the ownership and management of punitive damages based on their authority, accounting for 67%.

Among the cases involving the whereabouts of punitive damages, judges in 124 cases decided to hand punitive damages over to the state treasury, accounting for 38%. Notably, some regions involved in these judgements have special accounts. For example, based on the judgement of the People's Procuratorate of Songyang County in Zhejiang Province v. Huang Wei'ai, Songyang County already had a special public interest litigation account managed by the procuratorate in 2018.[6] During the same period, the judge who tried the case of the People's Procuratorate of Songyang County in Zhejiang Province v. Wu Peiqing ruled that the punitive damages paid by the defendant should be turned over to the state treasury.[7] Additionally, in 102 cases, the judges ruled that punitive damages should be paid to special accounts managed by procuratorates, consumer associations, courts, market supervision bureaus, or finance bureaus, accounting for 31%. In 103 cases, the judge only asked the defendant to hand over punitive damages to the court or the procuratorate for temporary management, but did not determine whether the final destination of these punitive damages would be the state treasury to use as a general revenue fund or a special fund. These cases accounted for 31% of all cases. However, it is worth noting that some judges mentioned priorities in their judgement. For example, in the case of the People's Procuratorate of Wuxi City v. Chen, the judge mentioned that 'The punitive damages paid by the defendant shall be handed over to the court for temporary management, and then transferred to the consumer public welfare fund by the court. If there is no corresponding consumer public welfare fund, the court shall turn it over to the state treasury.'[8] Among all the cases involving the whereabouts of punitive damages, only one judge ruled that the defendant pay punitive damages directly to the consumer, and the judge did not provide a clear reason for this decision.[9]

Results and discussion

Through the data analysis, it can be seen that in China, consumer public interest litigation cases involving punitive damages filed by procuratorates or consumer associations are on the rise. These cases are mainly in fields of food and medicinal product consumption, but also include a small number concerning general consumption fields. Chinese judges generally hold a positive attitude towards the application of new punitive damages in relation to consumption. Despite the lack of relevant laws, some judges have rejected punitive damages claims filed by procuratorates or consumer associations, while more judges have affirmed the plaintiff's punitive damages claims in consumer public interest litigation to punish, deter, and protect public interests, and even made extensive interpretations of the current laws. The judge's positive attitude towards the application of punitive damages in consumer public interest litigation has no obvious correlation with the plaintiff's type, consumption type, or claim scale. Influenced by legal provisions on punitive damages for private interests, the current calculation standard of punitive damages for consumer public interest litigation in China is closely related to the consumption field involved in the case. Most judges determine the punitive damages for consumer public interest litigation in the food and medicinal product consumption fields to be ten times the total sales amount of the defendant, and determine the punitive damages for the general consumption field to be three times the total sales amount of the defendant. However, some judges believe that the determination of punitive damages in consumer public interest litigation by referring to the application of the standard of punitive damages for private interests is excessive punishment, and they, instead, choose the appropriate amount of punitive damages at their discretion. Regarding the issue of the relationship between punitive damages and administrative or criminal fines, most judges believe that there is no necessary correlation among the three, or only regard the defendant's criminal or administrative punishment as discretionary circumstances, while only a few judges believe that there is a correlation among the three, and punitive damages and administrative or criminal fines should be deducted. Presently, Chinese judges display diversity in judging the ownership and management of punitive damages in consumer public interest litigation. Some judges tend to hand over punitive damages to the state treasury for unified management and control, while others tend to allocate punitive damages to special accounts for safekeeping and use. Only a very small number of judges support the direct payment of punitive damages in consumer public interest litigation to individual consumers.

Combined with the practical characteristics of punitive damages in consumer public interest litigation in China, to standardise the judicial application of punitive damages in consumer public interest litigation, it is necessary to further discuss the attributes, calculations, and owners of punitive damages in consumer public interest litigation.

Attribute of punitive damages in consumer public interest litigation. The definition of punitive damages in consumer public interest litigation is the core of all related issues. This problem involves two groups of relationships. The first is the relationship between punitive damages in consumer public interest litigation and private compensation. The second is the relationship between punitive damages in consumer public interest litigation and criminal and administrative responsibilities.

First, punitive damages in consumer public interest litigation have the attribute of social interest, which is different from the attribute of private interest. Private interest focuses on the damage suffered by a specific plaintiff, while punitive damages in consumer public interest litigation focus on the social harm caused by the defendant's behaviour. The fraudulent behaviour of operators not only infringes the private interests of specific consumers or groups, but also harms unspecified and public social interests and social order. The loss of social interest cannot be compensated through private interest litigation filed by specific consumers, which needs to be solved through the social compensation system. Punitive damages in consumer public interest litigation are the punishment that the plaintiff on behalf of society rather than the individual for the defendant's 'transgression of the social compact' behaviour (Cabraser, 2001). Although punitive damages in consumer public interest litigation objectively safeguard consumers' private interests, they are essentially social; in other words, this new type of damage and traditional compensation are punishments that constitute different levels of punitive measure. Traditional compensation is based on protecting the private interests of equal subjects, whereas punitive damages in consumer public interest litigation are intended to protect the social interests of unspecified subjects in the consumption field. This is the interest of a broader consumption order rather than a simple sum of private consumption interests.

Second, punitive damages in consumer public interest litigation are a civil responsibility. When the plaintiff claims punitive damages for social interest, especially when the procuratorate is the plaintiff, the boundary with public law responsibility is not clear. Some people believe that punitive damages in consumer public interest litigation, such as criminal and administrative fines, punish greedy illegal acts and are, thus, objectively homogeneous (Yang, 2021). Punitive damages have the nature of public law responsibility, which are a supplement to criminal responsibility (Liu, 2019). This new type of punitive damages is 'quasi-criminal' (Klugheit, 2002). The view that punitive damages are a private law creditor's right holds that, although punitive damages in consumer public interest litigation have the function of punishment with criminal and administrative fines, their purposes and values are not the same. In addition to deterring and punishing illegal operators, punitive damages also have the purpose of safeguarding consumer public interests. It is unnecessary to reflect on the modesty of punishment at the cost of confusing the nature of punitive damages with private law creditors' rights (Chen and Zhu, 2022). There are also views that punitive damages in consumer public interest litigation have the dual attributes of public law responsibility and private law responsibility (Wang, 2021). Regarding the relationship between punitive damages in consumer civil public interest litigation and administrative and criminal fines, we believe that although the functions of the three overlap, they are different in nature. Punitive damages in consumer public interest litigation remain a civil punishment for infringement of the interests of unspecified consumers and are the civil liability of the defendant. An administrative fine or criminal fine is a negative evaluation of an illegal administrative act or criminal act imposed by the public authority based on its power, which is a public law responsibility. Additionally, the interests protected by these three strategies are different. Public interests protected by administrative or criminal fines are mainly macro-national public interests (Zhang and Yan, 2022), while punitive damages in consumer public interest litigation safeguard the social interests of unspecified consumer groups. Generally, a defendant's illegal acts may infringe upon many interests, which may be at different levels and have different attributes. If these interests are independent, even if they are infringed upon by the same illegal act, they constitute different causes of responsibility (Colby, 2003). The new punitive damages system fills the gap between tort liability and criminal sanctions (Schwartz, 1994). The judge can determine the appropriate amount of punitive damages by weighing the public law responsibilities that the defendant has undertaken, rather than directly offsetting responsibilities of different natures.

Calculation of punitive damages in consumer public interest litigation. Currently, many judges in China directly apply the calculation method of punitive damages for private interests to determine the amount of punitive damages for consumers' public interest. In addition to reflecting the lack of laws, this judgement method largely reflects the dislocation of the judge's judgement logic; that is, the social interests protected by punitive damages in consumer public interest litigation are regarded as the superposition of consumers' private interests. Therefore, the plaintiff in consumer public interest litigation can apply the provisions of private punitive damages instead of consumers. The practice in United States courts of linking the amount of punitive damages with the plaintiff's compensatory damages follows the same logic (Scheuerman, 2008). However, if punitive damages in consumer public interest litigation are regarded as a punishment for the full scope of the wrong to society, rather than simply the wrong to the plaintiff, it is meaningless to require a reasonable relationship between the amount of punitive damages in consumer public interest litigation and the amount of private interest compensation (Colby, 2003). Moreover, the standard of private interest compensation is based on the context of private interest disputes. Consumers buy goods based on their daily needs. The amount of subject matter involved is generally small, and the amount of private interest compensation is rarely excessive. However, applying the calculation method of compensation for private interests to punitive damages in consumer public interest litigation may lead to excessive punishment and subsequent difficulties in execution due to the excessive amount of punitive damages. When the punishment exceeds the defendant's ability to bear responsibility, its deterrent ability is counterproductive.

The purpose of punitive damages in consumer public interest litigation is not to deprive the defendant of their basic rights of survival and life. Only reasonable and enforceable punitive damages can allow the punitive damages system to play its proper role. Therefore, the calculation standard for punitive damages in consumer public interest litigation should be distinguished from that of private interest compensation. Some people hold that the damages coefficient should be redefined based on the total illegal interests of the defendant (Liu, 2019). There is a view that the maximum coefficient of punitive damages calculation should be set to avoid the large gap in the amount of punitive damages determined by different judges and prevent the destruction of the enthusiasm of operators in production (Zhang and Zheng, 2019). There are also views that the coefficient range for calculating punitive damages in consumer public interest litigation should be set. Considering the provisions of China's current law, the elastic range can be three to ten times (Huang and Liu, 2021). The basic consensus is that the calculation of punitive damages in consumer public interest litigation should not be rigid. In fact, there is no precise mathematical formula to determine punitive damages in consumer public interest litigation (Miller, 1997). However, it is still necessary to restrict the discretion of the judge. In current judicial practice in China, the ten-times standard is the upper limit because food and medicinal products are the most important things for people, and food and medicinal product safety, in particular, concerns people's health and safety. The legislator's adoption of the ten-times standard on food and drug safety reflects the correlation between the ten-times standard and the severity of punishment. In fact, a calculation coefficient of no more than ten is consistent with the criterion that a 'single-digit ratio between punitive and compensatory damages will satisfy due process', as stated by the U.S. Supreme Court (Shavell, 2007). Within this limit, the judge can weigh the appropriate amount of punitive damages for the consumer's public interest in combination with the infringer's subjective fault degree, number of violations, duration of the illegal act, number of victims, type of damage, business status, profitability, property status, administrative punishment, criminal punishment, and other factors.

Ownership and management of punitive damages in consumer public interest litigation. In practice, considering their public characteristics, some judges in China tend to turn over punitive damages assigned in consumer public interest litigation to the state treasury; however, some scholars have raised objections to this decision. They believe that turning over punitive damages to the state treasury violates the principle of prioritising the protection of private interests, violates the social nature of damages, and contradicts the legislative spirit of the consumer public interest litigation system. The practice of handing over punitive damages to the state treasury directly changes the role and function of punitive damages, turning punitive damages in consumer public interest litigation into a simple fine for the defendant (Zou and Research Group of Chongchuan District People's Procuratorate, 2019). Some have argued that punitive damages in consumer public interest litigation should belong to consumers because consumer public interest litigation is not without specific consumer victims, but as everyone may be injured by illegal sales (Yan, 2020). Opponents believe that the punitive damages assigned in consumer public interest litigation belong to consumers, which is tantamount to using the public interest litigation procedure for the benefit of consumers' personal interests, and will cause confusion of public and private interest relief paths. Simultaneously, a plaintiff in consumer public interest litigation who files punitive damages without the consent of consumers will also infringe on the consumer's right of disposition (Hao, 2021).

When discussing the ownership and management of punitive damages in consumer public interest litigation, we often ignore a fundamental position. Punitive damages in consumer public interest litigation reflect neither the power of the state nor the rights of the victims, but the rights of society. This means that the practice of turning over punitive damages to the state treasury may lack a proper foundation, as the destination of punitive damages is determined by the national unified financial scheme, which leads to confusion of punitive damages in consumer public interest litigation with criminal and administrative fines. Punitive damages in consumer public interest litigation should belong to consumers; however, the consumers here are not individual consumers, nor specifically numerous consumers, but the overall public in the field of consumption. The ultimate destination of punitive damages to the public in the field of consumption should be consumer welfare.

From the perspective of practice in China, some judges have expressed more precise thoughts about the ownership and management of punitive damages in consumer public interest litigation from the essence of punitive damages in consumer public interest litigation. They have, in general, been willing to prioritise special funds; for example, in the case of the People's Procuratorate of Yuhang District in Hangzhou v. Cai Chenjie and Yao Meng, the judge stated that 'consumer public interest litigation was initiated to protect the social public interest, the litigation interest should belong to the public, and the punitive damages paid by the defendant for the sale of inferior masks should be directly used for public health public welfare matters, therefore, the punitive damages should be managed and a used by the special social welfare fund for public health'.[10]

In March 2021, China's Supreme People's Procuratorate, Supreme People's Court, Ministry of Agriculture and Rural Affairs, General Administration of Customs, State Administration for Market Regulation, National Food and Strategic Reserves Administration, and the China Consumers Association jointly issued the Minutes of the Symposium on Exploring the Establishment of a Punitive Damages System for Civil Public Interest Litigation for Food Safety. The minutes suggest that all local authorities explore ways to include punitive damages in special public welfare fund accounts for unified management and make overall arrangements for their use in the protection of consumers' lawful rights and interests in accordance with the law. To some extent, this document can be seen as a windvane regarding the ownership and management of punitive damages in consumer public interest litigation from a national perspective, which means that an increasing number of regions will set up special accounts for punitive damages in consumer public interest litigation, and more punitive damages in consumer public interest litigation will be managed and used under special accounts. For example, after March 2021, regions such as Suqian City, Yibin City, and Yinchuan City established consumer public interest litigation special accounts managed by consumer associations, which are mainly used to pay for handling consumer public interest litigation and other expenses incurred in protecting consumer public interest (Lu, 2023; Jiang et al., 2023; Gao, 2023). Compared with the unified management and payment of punitive damages in consumer public interest into the state treasury, this predictable special management and use trend is more conducive to highlighting the value of punitive damages in consumer public welfare litigation and helps to realise the purpose of this system.

Conclusion

In the consumption field, which is closely related to people's lives, it is an institutional innovation that a plaintiff claims punitive damages against a defendant on behalf of the general interests of society, which reflects and guides the urgent needs of modern life. Regardless of whether the plaintiff in these new punitive damages is an injured consumer, a procuratorate, or a consumer association, it will not affect the role of this system in punishing the defendant or deterring future illegal acts.

However, compared to the operation method of the 'private attorneys general', the 'public–private dichotomy' operation method adopted by China provides a purer environment for the new punitive compensation system. Through data statistics and analysis, this study finds that since the implementation of the new system in 2013, punitive damages cases of consumer public interest litigation in China have increased steadily, and judges generally hold a positive attitude towards punitive damages in consumer public interest litigation. However, owing to the current lack of laws regulating punitive damages in consumer public interest litigation in China and the vague understanding of punitive damages in such litigation, Chinese judges have different judging modes and handling methods to calculate the amount and determine the ownership and management of punitive damages in consumer public interest litigation, which has affected judicial justice and the function of the system.

In essence, punitive damages in consumer public interest litigation are civil punishments for social interests. Their attributes determine that the calculation of punitive damages in consumer public interest litigation is not necessarily linked to compensation for private interests, criminal fines, or administrative fines. Within the necessary limits, the judge can decide the appropriate punitive damages in consumer public interest litigation by comprehensively considering the infringer's degree of subjective fault, number of violations, duration of illegal act, number of victims, type of damage, business status, profitability, property status, administrative punishment, criminal punishment, and so on, to realise the equivalence of fault and punishment in specific cases. The sociality of punitive damages in public interest litigation also determines that the damages should belong to unspecified consumers, be included in the management of special funds, and be used for public welfare matters in the consumption field, to boost consumer confidence, maintain social order, and promote the healthy development of the market economy through this new punitive damages system.

Data availability

All data generated or analysed during this study are included in this published article.

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Notes

1 See Lishuishi Renminjianchayuan Lishuishi Lianduqu Xiemiaolidouzhipindian Xiaofeizhe Quanyibaohu Minshi Gongyisusong Yishen Panjueshu (丽水市人民检察院、丽水市莲都区谢妙丽豆制品店消费者权益保护民事公益诉讼一审判决书) [The People's Procuratorate of Lishui City v. Xie Miaoli Bean Products Store in Liandu District of Lishui City], Lishui Interm. People's Ct. No. 260 (29 Dec., 2021).

2 See Lizhengsheng Liufengli Chanpinzerenjiufen Yishen Minshi Panjueshu (李正声、刘凤丽产品责任纠纷一审民事判决书) [The People's Procuratorate of Gongshu District in Hangzhou v. Li Zhengsheng and Liu Fengli], Hangzhou Internet Ct. No. 5464 (5 Sept., 2019).

3 See Wangbaijiang Neimengguzizhiqu Xiaofeizhexiehui Deng Minshi Ershen Minshi Panjueshu (王柏江、内蒙古自治区消费者协会等民事二审民事判决书) [Consumer Association of Inner Mongolia Autonomous Region v. Wang Baijiang], Inner Mongolia High People's Ct. No. 500 (17 Nov., 2021).

4 See Wuchengjing Yangtongneng Yishen Minshi Panjueshu (吴承静、杨通能一审民事判决书) [The People's Procuratorate of Tongren City v. Wu Chengjing and Yang Tongneng], Tongren Interm. People's Ct. No. 49 (11 Dec., 2020).

5 See Wangwenli Qinquanzerenjiufen Yishen Minshi Panjueshu (王文立侵权责任纠纷一审民事判决书) [The People's Procuratorate of Chifeng City v. Wang Wenli], Chifeng Interm. People's Ct. No. 100 (8 Mar., 2019).

6 See Huangweiai Shengchan Xiaoshou Bufuheanquanbiaozhundeshipinzui Yishen Xingshi Panjueshu (黄伟爱生产、销售不符合安全标准的食品罪一审刑事判决书) [The People's Procuratorate of Songyang County in Zhejiang Province v. Huang Wei'ai], Songyang Primary People's Ct. No. 192 (28 Nov., 2018).
7 See Wupeiqing Shengchan Xiaoshou Youdu Youhai Shipinzui Yishen Xingshi Panjueshu (吴培清生产、销售有毒、有害食品罪一审刑事判决书) [The People's Procuratorate of Songyang County in Zhejiang Province v. Wu Peiqing], Songyang Primary People's Ct. No. 147 (23 Nov., 2018).
8 See Chenyuan Yishen Minshi Panjueshu (陈元一审民事判决书) [The People's Procuratorate of Wuxi City v. Chen], Wuxi Interm. People's Ct. No. 451 (4 Dec., 2019).
9 See Dingmanzhen Hunansheng Huaihuashi Hechengqu Renminjianchayuan Shengchan Xiaoshou Youdu Youhai Shipinzui Yishen Xingshi Panjueshu (丁慢珍、湖南省怀化市鹤城区人民检察院生产、销售有毒、有害食品罪一审刑事判决书) [The People's Procuratorate of Hecheng District in Huaihua City v. Ding Manzhen], Hecheng Primary People's Ct. No. 316 (23 Jul., 2021).
10 See Caichenjie Yaomeng Wangluoqinquanzerenjiufen Yishen Minshi Panjueshu (蔡晨杰、姚猛网络侵权责任纠纷一审民事判决书) [The People's Procuratorate of Yuhang District in Hangzhou City v. Cai Chenjie and Yao Meng], Hangzhou Internet Ct. No. 1147 (31 Mar., 2020).

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The first author conceived, designed, and wrote the study. The second author collected the sample data, and conducted the statistical analysis. All authors contributed to drafting the study and interpretation of results.

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The authors declare no competing interests.

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