
THE ENVIRONMENTAL CRIMINAL JUSTICE IN CHINA

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SUMMARY

This paper is intended to introduce the legal basis for punishing environmental crimes in China. It reviews the penalties against the environmental crimes, the institutional structure of the judicial bodies in China and their responsibilities. The procedure for prosecuting and bringing suits for environmental crimes are also described. Finally it reviews the barriers to punish environmental crimes, the related causes and provides possible solutions to overcome these barriers.

1 THE LEGAL BASIS FOR PUNISHING ENVIRONMENTAL CRIMES IN CHINA

The Criminal Law of the People's Republic of China which was issued in 1979 and did not contain provisions concerning environmental crimes.

To strengthen the protection of the environment and punish the behavior of seriously polluting and damaging the environment, all the environmental laws in China now stipulate that the person responsible for environmental accidents shall be given certain penalties referencing provisions in the Criminal Law. For example, Article 43 of the Law of Water Pollution Prevention and Control of the People's Republic of China enacted in 1984 provided that the criminal penalty of the violators of this Law and those responsible for serious pollution accidents which cause losses of public and private properties or human deaths or injuries can be judged by referring to the related provisions in the Articles 155 or 187 of the Criminal Law. Similar provisions are also found in Article 38 of the Law of Air Pollution Prevention and Control of the People's Republic of China enacted in 1987 and Article 72 of the Law of Solid Waste Pollution Prevention and Control of the People's Republic of China issued in 1995. In the Law of Environmental Protection of the People's Republic of China issued in 1989, even though it does not clarify that the Articles 115 or 187 of the Criminal Law can be referred to in giving the penalties against environmental crimes, there is principle provision that the penalties can be measured in accordance with the related laws which refer to Article 3 of Water Pollution Prevention and Control Law and Article 38 of Air Pollution Prevention and Control Law. This also means Articles 115 or 187 and Article 79 of the Criminal Law can be referred to in the process of measuring the penalties because according to the related provisions in these environmental laws, the judiciary bodies can give the criminal penalty to the people causing pollution and damaging the environment by referring to Articles 115, 187 and 79 of the Criminal Law.

The Article 115 provides that those responsible for serious consequences and accidents in the manufacturing, storage, transportation and use of explosive, flammable, radioactive, hazardous and corrosive substance due to violation of regulations of management of these substances will be sentenced to imprisonment of less than three years and those responsible for more serious cases to an imprisonment of between 3 and 7 years.

The Article 187 stipulates that those government officials and workers responsible for major losses of property and damages to the interests of the State and the People due to neglect of their duties will be sentenced to an imprisonment of less than five years or criminal detention.

The Article 79 stipulates that the penalties against the crimes unclarified in the articles of this Law can be measured by referring to similar provisions in the articles of this Law and submitted to the People's Supreme Court for examination and approval. Similar to the crime of polluting and damaging the environment is Article 106 of the Criminal Law in which there is a provision that those responsible for major losses of public and private properties, serious human injuries and deaths by employing such dangerous means as setting fire, destroying water or flood works, explosion, poisoning and so on will be sentenced to an imprisonment of less than ten years, life imprisonment or death depending upon the nature of damages caused. And those responsible for the above crimes but not out of their detention will be sentenced to an imprisonment of less than seven years or criminal detention.

Above is the legal basis for the judiciary bodies in China to punish the environmental crimes. Some provisions are from the environmental laws and some from the Criminal Law which are put together to form a framework of environmental criminal justice of the present stage of China. This means that the judiciary bodies can judge as crimes the behavior of violating the environmental laws and causing serious environmental pollution and damages and measure the penalty accordingly by referring to the related provisions of the Criminal Law.

2 THE PENALTIES AGAINST ENVIRONMENTAL CRIMES IN CHINA

Based on the above provisions in the laws related to the environmental crimes there are five penalties for environmental crimes in China: criminal detention, a fixed term of imprisonment, life imprisonment, death and paying fines.

Criminal detention means that the criminal is deprived of freedom of activity for a period from 15 days to at most 6 months. The criminal being detained will undertake assigned labor under the supervision of the public security authorities.

The criminal convicted of a set term of imprisonment will be deprived of freedom of activity ranging from more than 6 months to less than fifteen years and forced to work in prisons or on criminal reform farms under the supervision of the criminal reform authorities.

Life imprisonment is defined as a penalty to deprive the criminal of freedom of activity and force them to work in prison for their whole life.

Death penalty means that the criminal will be executed.

In minor cases, the people's court will require the criminal to pay for a certain amount of fine.

But in practice, the judiciary bodies seldom apply to the above penalties because the judicial personnel's have a great deal of difficulty in measuring the penalties against the behavior of polluting and damaging the environment by analogy or reference to similar provisions of the Criminal Law, which is the practice not easy for them to master. In addition, in most cases, the environmental criminal is the legal person and the above penalties except paying the fine can be applied only to the individual. The regulation on paying fines for the environmental crimes will go into effect from April 1, 1996.

In addition to the above penalties, the Criminal Law provides some non-criminal punishments. For example, Article 31 of the Criminal Law provides that the criminal responsible for economic losses of victims of the crime will make compensations for the losses besides criminal penalty. Compensating for the economic losses caused is the civil punishment the court force on the criminal after the criminal trial on the basis of the amount of losses the victim suffers. To those committing misdemeanors which can be exempted from criminal punishment,

Article 32 of the Criminal Law stipulates that the person responsible will be given the punishment ranging from apologies, compensation for losses to administrative punishment. The three main non-criminal punishments: a) compensation for losses; b) administrative punishment; and c) apologies and receiving instructions can be applied to the environmental crimes.

3 THE ENVIRONMENTAL JUDICIARY BODIES IN CHINA AND THEIR RESPONSIBILITIES

The environmental judiciary bodies in China include the public security authorities, the people's procuratorate, the people's court and the criminal institution.

3.1 Public security authorities

The public security authorities are the government administrative bodies responsible for protection of the security of the public and the society. Their specific responsibilities in the judicial activities concerning the environmental crimes are to investigate the cases of environmental crimes and exercise the power of criminal detention, arresting and pretrying the criminal.

3.2 The people's procuratorate

The people's procuratorate is the legal supervisory body to exercise the power of procuration on the behalf of the State. It is responsible for approving the arrest, initiating public prosecution and supervising the trial by the people's court and the execution of the court decision by the criminal reform institution.

3.3 The people's court

The people's court is to exercise the power to try the cases. So is their responsibility in the trial of environmental crimes.

3.4 The criminal reform institution

The criminal reform institution is the body to execute the court decision. They will categorize the criminals according to the court verdicts and reform and educate the criminals and supervise their labor.

4 THE PROCEDURE OF PROSECUTING THE ENVIRONMENTAL CRIMES

According to the Criminal Procedure Law of China, to prosecute and punish the environmental crimes shall go through the following five phases: putting the case on file, investigating, initiating public prosecution, trial and execution of the court decision.

4.1 Putting the case on file

All the government bodies, groups, institutions, enterprises and individuals have the right as well as the obligation to inform the public security authorities about the behavior or the suspect of causing environmental pollution or damages. And the public security authorities should respond immediately after receiving the report and information and put the case on file after the preliminary examination of the case if they think there is the need to prosecute the criminal based on the criminal fact.

4.2 Investigation

The public security authorities shall collect the evidence and identify the criminal facts and the criminals after the case is put on file.

4.3 Initiating public prosecution

Whether the case can be prosecuted or exempted from prosecution or not shall be examined and decided by the people's procuratorate. After the examination, the people's procuratorate think the criminal facts of the accused have been identified and the comprehensive evidence collected and shall initiate public prosecution at the people's court if they decide the case should be prosecuted.

4.4 Trial

After receiving the prosecution of the environmental crimes by the people's procuratorate, the people's court shall first of all examine the case and try it with the presence of the public if they think the criminal facts have been identified and full evidence collected. In the process of the trial, the court shall go through the procedures of court investigation, court debate, statement of the accused and discussion of the court decision and shall declare whether the accused is guilty or innocent and give appropriate penalties if they decide the accused is guilty.

4.5 Execution of court decision

The court decision will be executed after it has legal effect. The death penalty shall be executed by the people's court. To the criminals convicted of the suspended execution of death penalty for two years, life imprisonment, fixed term of imprisonment, or criminal detention, the people's court shall send the verdicts or notice to prisons or criminal reform institutions for execution. The people's court shall force the criminal to pay for fines if he or she is given fine penalty and fails to pay fines within a fixed time.

5 BARRIERS TO PUNISH ENVIRONMENTAL CRIMES IN CHINA AND PROPOSED SOLUTIONS

There are few cases of environmental crimes which have been punished in China. Seen from the statistics in China Legal Yearbook, there is no yet statistics about cases of environmental crimes. According to the statistics done by National Environmental Protection Agency of China, there happened to be 3001 accidents of environmental pollution and damage caused by the enterprises above the county level in 1994, including 141 serious major accidents. In accordance with the environmental laws, those responsible for serious environmental pollution accidents should be given criminal penalties by referring to the related provisions in the Criminal Law. In actuality, the majority of cases were given administrative punishments or ended in making compensations rather than criminal penalties.

5.1 The barriers to punish environmental crimes

There are two reasons for failing to punish those seriously polluting and damaging the environment.

5.1.1 The barriers from imperfect environmental legislation

First, in the Criminal Law of China, there are no yet specific provisions which define the environmental crimes and measure the penalties against the environmental crimes. At present, the penalties against the behavior of seriously polluting and damaging the environment can be measured only by referring to the related provisions in the Criminal Law. This practice poses a great deal of difficulty to the judiciary bodies in applying to the similar provisions because there exist great differences between environmental crimes and other categories of crimes in the subject and object of crimes and subjective and objective components of crimes if seen from the content of crimes. The crimes of poisoning, causing major accidents due to violation of the regulations on management of hazardous substances and neglect of duties stipulated in Articles 106, 115, and 187 of the Criminal Law are difficult to be applied to all the behavior of polluting and damaging the environment. Therefore, in most cases, the judicial personnel will not judge environmental pollution and damage as crimes and put them on file when they examine the cases after they are reported.

Secondly, the existing penalties except paying fines provided by the Criminal Law and environmental laws can be applied only to the individual rather than the legal person which is the main part of environmental crimes. Therefore, few of the existing criminal punishments can be applied to environmental crimes.

Thirdly, the Chinese laws of environmental crimes punish only the criminals whose behavior has produced certain consequences dangerous to the society and the public rather than those whose behavior has not produced certain consequences but has the potential to bring about certain dangerous consequences and those who have violated the law but not brought about certain dangerous consequences. According to the provisions in the Law of Environmental Protection, only those who have caused serious environmental pollution accidents and major losses of property and human death and injury can be given criminal penalties by analogy to the related provisions of the Criminal Law. To those whose behavior has not but has the long-term potential to damage the environment and harm human health, such as illegal disposal of hazardous substance, no criminal penalties will be given to them. Such legal practice does not fit in with the principle of prevention as priority measure for environmental protection and narrows the range of environmental justice.

5.1.2 The barriers from the low level of economic development

Both making and enforcing laws often subject to the economic level of one society. Under the existing circumstances, the main task for China is to develop its economy. So many people, including law makers and enforcement personnel's, lack awareness of environmental protection. Even though they are not in favor of polluting and damaging the environment, they do not consider crimes the behavior of seriously polluting and damaging the environment.

5.2 Proposed solutions to overcome barriers

5.2.1 To perfect the legislation to punish environmental crimes

The legislature body should consider revising the existing Criminal Law or formulating a separate regulation for punishing environmental crimes in which the environmental crimes and the penalties against them should be specified and clarified so that the judicial personnel's can easily deal with the related cases.

In the content of legislation, the following issues should be solved:

To specify the range of environmental crimes. I think all the behavior of violating the environmental laws and polluting or damaging the environment should be given certain penalties depending on the consequences of the behavior. The criminal should include individuals, legal persons, and groups. The environmental crimes should be divided into intentional environmental crimes and negligent crimes if we look at the subjective side of crimes. And if we look at the objective side of crimes, the punishment should be given to not only the criminals whose behavior has produced certain dangerous consequences but also those who have violated the laws but not brought about serious consequences and those whose behavior has the potential to bring about damages to the environment and the hazards to human health. The environmental crimes should be specified as the crimes of air pollution, ocean and sea pollution, pollution of internal water body, soil pollution, land damage, forest destruction, grassland damage, killing endangered species and animals and collecting endangered rare plants and others.

To formulate effective methods of punishment. First, a system of double punishment should be established. The environmental criminals, in most cases, are the groups or legal persons. To punish the environmental crimes effectively, both the persons responsible and the legal entity responsible should be punished. The person directly responsible for the case may be the representative of the legal entity as well as the executor of the illegal behavior. Secondly, a penalty of property confiscation and compensation for losses should be established to punish environmental crimes. The penalties of paying fines and property confiscation should be fully given to check the motive of polluters to a maximum extent to pursue the economic interest by sacrificing environmental resources. Since the penalties, except fines, cannot be applied to the legal persons, this proposed penalty of property confiscation or compensation for losses can be applied to the legal persons in the case that the criminal is the legal person. Thirdly, a penalty of stopping operation or production should be established. When the penalty of property confiscation or compensation for losses cannot prevent the environmental crimes, the penalty of stopping production or operation shall be adopted to check the continual of the criminal behavior because some behavior of polluting the environment, such as discharging pollutants into water bodies, is often frequent and constant. If the production or operation is not stopped, the behavior of polluting the environment will not be stopped. Under such circumstance, only through stopping production or operation can the punishment be effective.

5.2.2 To set up a precedent rule for environmental criminal penalty

Legal precedents are typical examples of successfully employing the laws which have been confirmed by the legal authorities as reference for judging the future cases. At present, China's environmental legislation is still developing and only principled regulations can be made on many problems. In addition, many judicial personnel's lack the experience of punishing environmental crimes and perfecting environmental legislation will play an active role in effectively punishing environmental crimes. First, setting up a precedent can help interpret and specify some abstract provisions and remove the ambiguities in the process of law enforcement. Next, precedents can provide the judicial personnel with examples of measuring the penalty against the behavior of polluting and damaging the environment. Thirdly, setting up a precedent rule can meet the changing situation of environmental crimes and avoid the necessity to amend or revise the environmental laws constantly.

5.2.3 To strengthen the training of judicial personnel

Since most of judicial personnel's in China lack the experience in punishing environmental crimes, it is necessary to provide them with training's in this field. The training can cover: a) a systematic knowledge of the laws punishing the environmental crimes; b) knowledge of characteristics of environmental crimes; c) techniques to investigate environmental crimes; and

d) analysis and discussion of precedents of punishing environmental crimes. The training of this kind is expected to upgrade the quality of judicial personnel's and promote the development of environmental legislation and justice.