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On the Coordination between Environmental Law Enforcement and Criminal Justice

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Abstract

Although there is a legal foundation for and practical benefit to the coordination of criminal justice and environmental law enforcement, problems like inadequate coordination and malfunction still exist. In practice, the "four mores and four lesses" phenomena still poses a challenge to the coordination of the two rules. This is caused by both internal (such as a lack of legislative cooperation and evidence-gathering organizations) and external (such as local protectionism and poor inspection and oversight) causes. Reforming the assessment process, developing a scientific and thorough perspective on political performance, enhancing the coordinated oversight between procuratorates and supervisory committees, encouraging an environment-centered mindset, coordinating legislative protection, developing professionals, and utilizing cutting-edge platforms are some examples of measures that can be used for regulation.

Keywords

Environmental Law Enforcement; Criminal Justice; Environmental Crime; Coordination between Environmental Law Enforcement and Criminal Justice

1 Introduction

The "Opinions on Accelerating the Construction of Ecological Civilization," published by the State Council in 2015, specifically called for "improving the administrative law enforcement and criminal justice coordination mechanism," or the "coordination mechanism between the two laws." This pertains specifically to a system of operation whereby administrative law enforcement departments identify cases or leads they believe to be criminal in nature during the course of law enforcement and forward them to criminal justice authorities for legal investigation and handling.

There are several practical and legal benefits to the way the two laws are coordinated. The distinction between criminal activities in criminal justice and unlawful acts in environmental law enforcement is purely quantitative, not qualitative. According to the subject, those who cause environmental harm may be both offenders in criminal proceedings and administrative respondents in administrative actions. Regarding the interests safeguarded by the standards, preserving the natural environment and achieving intergenerational justice are the goals of both criminal justice and environmental law enforcement. From the standpoint of norm composition, the distinction between administrative and criminal infractions is sometimes muddled since the

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legislative model of blank crimes in criminal law makes it necessary to rely on preparatory legislation in order to identify administrative offenses. The two laws' cooperation allows for the transfer of unlawful conduct to law-abiding investigating agencies and gives the essential instructions for penalizing environmental offenses. Criminal law involvement is desperately needed to safeguard ecological interests in the face of the ongoing rise of environmental infractions.

Poor connectivity and coordination between the two have been problems in practice. "In fact, most environmental pollution cases are handled by environmental law enforcement departments due to poor communication between the two parties, untimely transfers, and irregular cooperation." Thus, the purpose of this article is to examine the problems pertaining to the two laws' cooperation and offer appropriate fixes.

2 The Practical Dilemma of the Coordination Between the Two Laws

In terms of environmental protection initiatives, notable advancements have recently been achieved in both administrative and criminal law. Reforms have been put in place to centralize and verticalize administrative law enforcement capabilities from the standpoint of administrative power allocation. This involves moving from territorial supervision to vertical supervision and from multi-agency enforcement to centralized enforcement. In order to ensure efficient and seamless coordination between administrative law enforcement and criminal justice, Amendment VIII to the Criminal Law has significantly changed environmental crimes and issued corresponding judicial interpretations. These changes require administrative law enforcement agencies to promptly transfer cases involving criminal issues discovered during law enforcement and case handling to the appropriate investigative authorities.

"A law alone is not enough to enforce." The "four mores and four lesses" phenomena is prevalent in practice, and environmental crime prosecutions continue to provide challenges. "Four mores and four lesses" refers to more environmental cases that actually occur but fewer investigations and dispositions, more administrative dispositions but fewer transfers to authorities for the pursuit of criminal responsibility, more investigations and dispositions of common criminals but fewer behind-the-scenes pursuits of masterminds, and more probationary sentences but fewer jail sentences. According to some researchers, "the severe imbalance in the proportion of environmental administrative penalties to environmental criminal verdicts indicates that a large number of environmental crime-related cases are being turned away." These empirical analyses highlight the current state of poor interaction between environmental administrative law enforcement and criminal justice.

3 Analysis of the Causes of the Dilemma in the Coordination Between the Two Laws

There are a number of issues with the coordination of the two laws (administrative and criminal laws in the context of environmental protection), including the failure to transfer environmental cases and the replacement of fines for criminal punishments. Therefore, examining the reasons behind these disadvantages is very important. According to the author, there are two types of causes: internal and external. Things out-

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side the law that interfere with the coordination mechanism between the two laws during their execution are referred to as external factors. We refer to these issues as external influences. Conversely, internal factors are barriers to the coordinating mechanism's ability to function brought on by ambiguous, imprecise, or insufficient legislative requirements. These matters are termed as internal factors. The malicious interaction between internal and external factors further obstructs the operation of the coordination mechanism between the two laws and may even lead to corruption of power.

3.1 External Factors

3.1.1 Constraints of Local Protectionism

Although the reform of power allocation in environmental law enforcement agencies has eliminated multi-agency enforcement and created a unified force, there are still local interventions in the transfer of evidence obtained during administrative enforcement. In the past, within law enforcement agencies, there were conflicts of interest and abuse of power among departments. Both relevant departments hoped to handle the cases themselves and were unwilling to transfer jurisdiction. Since the reform of power allocation, conflicts between departments have decreased, and internal friction has been greatly reduced.

Despite the reduction in internal friction, local governments still control the human resources, decision-making powers, and financial resources of law enforcement departments. While the reform has reduced internal conflicts between departments, local governments still occupy a leading position in environmental law enforcement departments. The law enforcement departments are administratively subordinate to local governments, and the income and performance of their personnel are closely related to local fiscal revenue, making it difficult for them to transfer cases due to their being part of a "community of interests." Analyzing environmental protection cases that pursue criminal responsibility, one can find the involvement of governments behind them. Environmental protection issues are not just issues of economic reform but often involve a series of complex topics such as political reform and central-local relations. Structural constraints make it inevitable that the coordination mechanism between the two laws will face difficulties in smooth operation.

The emergence of local protectionism is not only due to structural reasons but also stems from the pursuit of political achievements and GDP economic growth. To ensure economic development, local governments often turn a blind eye to highly polluting enterprises. The promotion of officials largely depends on GDP growth, so they often sacrifice the ecological environment for the sake of local fiscal revenue and personal careers. Furthermore, fines collected by law enforcement departments constitute an important source of income and performance for law enforcement personnel. If cases are transferred to criminal judicial authorities, this portion of income may be lost. Such "unwritten rules" further exacerbate the phenomenon of "substituting fines for criminal penalties."

3.1.2 Absence or failure of procuratorial supervision

Procuratorial organs serve as the legal supervisory organs in China. According to Article 134 of the Constitution of the People's Republic of China, the people's procuratorates of the People's Republic of China

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are the state organs for legal supervision. Some scholars point out that the term "law" used here refers to laws in a narrow sense, and "the supervision of administrative regulations, local regulations, and government and departmental rules does not fall within the scope of procuratorial supervision." However, there are also opposing views in academic circles, which argue that China's procuratorial organs are "constitutional" legal supervisory organs, and their functions are not limited to "litigation supervision." "As a constitutional organ, procuratorial organs, while fulfilling their litigation duties, also exercise legal supervision over administrative enforcement activities, judicial activities, and even legislative activities on the platform of the country's secondary power in accordance with the law." The author supports the second view, arguing that it is unrealistic to limit the functions of procuratorial organs solely to legal supervision in a narrow sense or to confine them to litigation fields. Instead, the initiative of procuratorial organs should be fully leveraged to restore procuratorial supervision to its rightful place.

The supervision of procuratorates is essential to ensure the effective interface between environmental law enforcement and criminal justice. This guarantee manifests in the supervision of case transfers and case filings. According to Article 14 of the “Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs” issued by the State Council in 2001, administrative law enforcement organs shall accept the supervision implemented by procuratorates in accordance with the law when transferring suspected criminal cases. This refers specifically to the supervision of case transfers as stipulated in the regulation.Furthermore, Article 9 of the same regulations stipulates the supervision of case filings, stating that administrative law enforcement organs may suggest that procuratorates conduct supervision of case filings in accordance with the law.

Procuratorates are organs for handling cases and also maintain national and social public interests through their work. When procuratorates discover during the performance of their duties that administrative organs responsible for supervision in the field of ecological environment fail to perform their duties, leading to harm to national and social public interests, they shall issue procuratorial suggestions and urge the fulfillment of duties.

In practice, there are frequent occurrences where procuratorial supervision is absent. "Procuratorial supervision often takes a passive stance, entering into its scope only after being reported or reflected by relevant individuals or units." Some scholars have also pointed out that there are mainly three types of cases in which procuratorates intervene: those with clear or direct victims, those that trigger mass incidents, and those that cause widespread diseases. This undoubtedly limits the scope of cases in which procuratorates can fulfill their legal supervision functions. Unlike the passive and neutral stance of courts, procuratorates take a proactive approach in safeguarding public interests, fully leveraging their advantages in case handling and public power to supervise the transfer of cases by law enforcement agencies or the filing of cases by investigative organs. However, due to practical considerations, procuratorates sometimes shirk their statutory responsibilities, resulting in procuratorial supervision being merely a nominal exercise without substance.

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3.2 Internal factors

3.2.1 Insufficient legislative convergence

The criminal law should take the protection of legal interests related to the ecological environment as its starting point. Some scholars have identified three theories regarding the legal interests protected by environmental crimes in academic circles: Firstly, the anthropocentric theory of legal interests, which advocates understanding the legal interests protected by environmental crimes from a human-centered perspective; secondly, the purely ecological theory of legal interests, which asserts that the legal interests protected by environmental crimes are the environment itself from an ecological perspective and other environmental interests; and thirdly, the eclectic theory, also known as the anthropocentric-ecological theory of legal interests, which maintains that "the purpose of protecting the environment is still to safeguard human interests, but these human interests are future and anticipated ones. In terms of practical protection, they can only be translated into protecting the integral environment that is closely related to human survival." Additionally, some scholars have suggested that China's criminal law should establish a quaternary structure of legal interests, namely, "national interests - personal interests - social interests - ecological interests." Both administrative legislation and criminal legislation in China fully reflect the importance of the ecological environment in some legal provisions.*

Some criminal offenses take the consequences of causing public or private property damage or personal injury and death as necessary elements, focusing on the protection of personal and property interests while neglecting the legal interests related to the ecological environment.** Due to the requirement of legality in crimes, an offense must meet the constituent elements stipulated in the criminal law to be recognized as a crime. In cases where such illegal and criminal acts have severely impacted the ecological environment but the damage consequences to personal and property interests cannot be verified, based on the principle of in dubio pro reo (when in doubt, rule in favor of the defendant), penalties other than criminal sanctions may be imposed. Although this legislative formulation is beneficial to defendants, its incomplete coverage may lead to inadequate environmental protection.

3.2.2 The Formalization of Evidence Collection Entities

In China's criminal proceeding procedures, the entities responsible for collecting evidence are limited to the public security organs, procuratorates, and courts. According to Article 52, Paragraph 1 of China's Criminal Procedure Law, "Judges, procurators, and investigators must, in accordance with legal procedures, collect all kinds of evidence that can prove the guilt or innocence of criminal suspects and defendants, as well as the severity of their criminal circumstances." From the literal interpretation of this law, the entities responsible for collecting evidence are indeed limited to the public security organs, procuratorates, and courts. Some scholars point out that the principle of competence in criminal proceedings requires that the main bodies in criminal proceedings are the public security organs, procuratorates, and courts, and administrative organs do not have the status of main bodies, so evidence collected by them cannot be directly used

* Examples include crimes such as unauthorized importation of solid wastes.

** Relevant provisions in administrative law include Article 1 of the Environmental Protection Law and Article 1 of the Water Pollution Prevention and Control Law. Corresponding provisions can also be found in criminal law, such as Articles 338 and 345.

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in criminal proceedings. However, some scholars hold opposite views, arguing that "interpreting that judges, procurators, and investigators have the power to collect evidence does not mean that others, apart from them, are prohibited or unable to collect evidence." The author agrees with the former view. Criminal proceedings are judicial activities that use penal measures to combat crime and protect human rights, and the entities engaged in these activities should be limited. Only the organs stipulated in the Criminal Procedure Law can exercise the corresponding powers. The author opposes the generalization of the entities responsible for collecting evidence and the granting of power to collect evidence in criminal proceedings to general administrative organs. Such a practice may lead to irregular evidence collection and render corresponding evidence rules ineffective.

Environmental law enforcement agencies have considerable discretion in deciding whether to transfer cases of illegal conduct to investigative authorities, and investigative authorities exhibit a certain degree of passivity. Unlike traditional crimes involving personal and property offenses, environmental crime investigative authorities generally intervene after law enforcement departments. Investigative authorities can only conduct preliminary investigations and decide whether to file a case after receiving relevant materials and clues from law enforcement departments. If the environmental law enforcement agency believes that there is a suspicion of a crime, it may transfer the case to the investigative authority, but the extent of this possibility and the decision to transfer are entirely within the discretion of the environmental law enforcement agency. Additionally, due to the lack of legal expertise among law enforcement personnel, the standards for filing criminal cases may not be clearly understood, leading to confusion between violations and crimes. This confusion may result in some cases being misclassified as administrative violations and not transferred for criminal investigation. In some cases, influenced by external factors, there may even be deliberate decisions not to transfer cases. These issues have led to the administrative power overriding judicial power and the severe penalties stipulated in the law being rendered ineffective.

4 Regulatory measures for the convergence of the two laws

4.1 Reform of the appraisal mechanism and establishment of a scientific and comprehensive view of political performance

Government departments' excessive focus on economic growth, and even the GDP-oriented approach, can lead to disregard for regional ecology. So far, the appointment of cadres in our country has mainly been based on local achievements. Cadre leaders tend to use economic achievements as a capital for promotion and work performance. Under negative incentives, officials often rely solely on indicators, paying little attention to non-indicator matters. When I was promoted, I often left a mess of problems to the next person. This results in evading important issues in environmental law enforcement and avoiding transfer. At the same time, out of fear of negative news affecting personal prospects, officials are afraid to transfer administrative cases, and even intervene in the normal operation of criminal justice. Environmental indicators such as water pollution, toxic gas emissions, etc., should be included in the assessment mechanism, and even become a veto mechanism. If relevant officials attach importance to economic development disregarding the ecological environment, introduce a large number of highly polluting

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and high-emitting enterprises to seek rapid and low-quality economic growth that seriously affects the environment, the environment index can be used as a one-vote veto mechanism to force departmental leaders to attach importance to environmental protection and protect the ecological environment in accordance with criminal procedures. At the same time, reform the current fine system so that the fines for environmental illegal gains are separated from departmental interests, eliminating local protectionism.

4.2 Strengthen Collaborative Supervision between the Supervisory Committee and the Procuratorate

The poor connection between the administrative law and criminal law indicates a lack of necessary constraints on administrative law enforcement actions. Therefore, it is necessary to strengthen supervision and regulation to prevent corruption from breeding in power. This should involve collaborative supervision by the procuratorate and supervisory committee.

The supervisory committee is responsible for overseeing duty-related crimes. The phenomenon of replacing criminal penalties with administrative fines is often linked to dereliction of duty and corruption among administrative personnel, representing two sides of the same coin. In criminal proceedings, the supervisory committee exercises investigative power over duty-related crimes according to the supervisory law. To eliminate the poor connection between the two laws in the environmental field, it is crucial to strengthen the supervisory committee's oversight and investigation.

The procuratorate conducts legal supervision and proposes procuratorial suggestions in accordance with the law. The criminal procedure law should clearly stipulate that procuratorial organs have the right to require administrative organs to transfer suspected criminal administrative cases or require public security organs to file cases. Specifically, if the procuratorate believes that the public security organ should file a case but fails to do so regarding the transferred case, it should first request an explanation and then notify the filing. If the public security organ refuses to file the case, the procuratorate can notify its superior authority. For environmental law enforcement departments that refuse to transfer cases, procuratorial suggestions should be made.

4.3 Establish the concept of environmental primacy and coordinate legislative protection

To remedy the shortcomings in current laws and preserve the consistency of legal standards, criminal law changes and judicial interpretations can be used to add to or update the components of crimes. Incorporating criminal sanctions into administrative law is unnecessary because, although it could attract the attention of pertinent administrative staff, doing so would surely fracture the criminal law. Therefore, in order to enhance criminal law, the current strategy should be kept in place.

The provability of constituent pieces should be prioritized while creating particular charges. Ecological interests should be regarded as separate legal interests in cases involving environmental crimes, and the idea of environmental primacy should be developed. Damages to one's person or property may be taken into account while determining a sentence. This method can lessen the burden of proof while balancing the provability of the component parts.

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4.4 Cultivate specialized talents and leverage innovative platforms.

Within the public security organs, a dedicated department for investigating environmental crimes should be created. This department would be in charge of all criminal activity pertaining to environmental crimes, including material transfers, preliminary investigations, case filing, and investigations. Enhancing the legal literacy of employees in environmental law enforcement agencies should be a priority, and when applying for jobs, candidates may be required to hold pertinent legal professional certifications, such as the Legal Profession Qualification Certificate (Class A). This will make communication easier, improve comprehension of each other's work, and further solidify the two parties' collaboration.

It is necessary to set up an information sharing platform for instantaneous administrative and criminal court communication. There are two primary advantages to this platform: First of all, it makes it easier for both parties to access the documents. Real-time case file uploading and downloads can conserve resources by connecting on the platform. Second, it guarantees that case management is evidence-based and leaves a trace. In addition to facilitating public oversight and supervisory committee investigations of connected cases, leaving a trail when managing cases also acts as a self-defense tactic for case handlers.

5 Conclusion

The functioning of criminal justice and administrative law enforcement is greatly impacted by the question of how administrative law and criminal law should be coordinated. When the two laws are not properly coordinated, administrative law enforcement may resort to using administrative procedures as the last resort to address environmental violations. In terms of criminal law, a lack of coordination may lead to many administrative infractions that escalate to crime being unpunished, which lessens the deterrent power of punishment. As a result, the required steps should be done to guarantee the safety mechanism operates reasonably and to remove any barriers to the coordination of the two laws.

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