

Study on the legislative Mode of Environmental Criminal Law

Fang Zhenghang

Zhejiang A&F University, Hangzhou, China

Abstract: *At present, environmental crimes are becoming more and more serious in various countries. How to effectively combat environmental crimes has become a difficult problem facing all countries. Germany legislates through the criminal code model, Britain and the United States legislates through the administrative criminal law model, and Japan adopts the comprehensive legislation model to regulate environmental crimes. Each country is based on its own national conditions and laws and regulations to establish a suitable mode of environmental criminal law legislation. However, in the present severe state of environmental crimes, it is suitable to adopt the model of unified criminal code to make special legislation and centralized legislation on environmental crimes. Establishing this kind of legislation pattern is the basic requirement to promote the status of environmental crime in the criminal law, which is beneficial to combating environmental crime and conforms to the environmental protection policy idea of our country.*

Keywords: *Environmental crimes; Mode of legislation; Special criminal law; Penal code*

1. Introduction

Protection of environment in our country is always in an important position, is also the basic state policy. The government has repeatedly stressed that we should protect the ecological environment as we protect our eyes and treat the ecological environment as we treat our life. A series of important discussions have been formed to point out the direction for solving environmental pollution problems in the future. Environmental criminal law, as a law stipulating environmental crime, criminal responsibility and penalty for environmental crime, plays a guarantee role in the construction of socialist ecological civilization with Chinese characteristics. However, with the improvement of environmental criminal laws and regulations in recent years, the number of environmental criminal cases has increased year by year. In tracing to its source, we MUST start from the deficiencies of our country's current environmental criminal law legislation model to solve the problems.

The choice of environmental criminal law legislation mode should not be blindly followed, we should proceed from the national conditions, choose the legislation mode suitable for the current domestic environmental problems. This article hopes that by comparing various countries' environmental criminal law legislation model, analyzing the deficiency of our current environmental criminal law legislation model, and choosing a suitable model for the future development of our country.

2. Legislative models of environmental criminal law in various countries

Due to the different national conditions, the legislative models of environmental criminal law vary greatly in different countries. In summary, there are mainly the following modes:

2.1. Penal code

The criminal code mode refers to the special chapter or section in the criminal code to stipulate environmental crimes and criminal liability. Germany is a typical country that stipulates environmental crimes in the criminal code. The German Criminal Code adopts the form of separation of charges. Chapter 29 of the sub-provisions contains 13 articles that focus on environmental crimes (crimes against the environment). Of these, 10 articles are the code of conduct, and the other three provide for the suspension of crimes, confiscation, the definition of relevant terms and the scope of application in EU countries.^[1]

As the most advanced country in the criminal legislation of the civil law system, Germany's criminal law of environmental crimes can be said to be relatively complete and systematic. Germany's regulations on environmental crimes are very detailed, not only in the setting of charges is very perfect, but also in the subjective and objective standards of crime, the setting of penalties are detailed, through the direct revision of the criminal code to deal with the constantly emerging environmental problems. According to the model of criminal code, environmental crime has much to learn from Germany. The specific provisions of environmental crimes in Germany, for example, there are both optional crime legislation and double crime legislation in the form of crime legislation. The alternative offense legislation stipulates that environmental crime can be constituted either intentionally or negligently; The double crime legislation is to legislate the form of the resulting crime and set up different criminal laws according to the standards of intention and negligence in the setting of penalty. The legislation of these two forms of crime reflects the clarity of German environmental criminal law, which is conducive to the fight against environmental crimes and conforms to the principle of matching crime, responsibility and punishment. Therefore, although the provisions of environmental criminal law in Germany are relatively complicated, the specific provisions of criminal responsibility and punishment are very clear, in line with the basic requirements of our criminal law, and have a strong reference significance.

2.2. Administrative criminal law

The mode of administrative criminal law refers to stipulating the criminalization standard and criminal liability of environmental crimes in the administrative laws and regulations on environmental protection, and investigating the responsibility of environmental crimes according to the provisions of administrative laws. The environmental criminal law is the follow-up supplement. Many developed countries in the West, including the United States and Britain, have adopted this model.

As a country of case law, Britain therefore has no uniform criminal code. The governance of environmental crime is mainly the subsidiary criminal law, which mainly uses the criminal responsibility clause stipulated in the environmental administration law to punish those behaviors that harm the environment, while the environmental criminal law is in the auxiliary position to punish the environmental crime. Since environmental problems were very serious in the UK around 1970, the UK began to strengthen the amount of legislation and the connection between various administrative regulations. For example, the Pollution Control Act formulated in 1974 unified the pollution control of water, air, noise and solid waste. In the 1990s, Britain promulgated a large number of new administrative regulations on environmental crimes. The Environmental Protection Law, promulgated in 1990, is a typical representative of the legislative model of administrative criminal law. It not only stipulates administrative organs' restrictions on waste discharge, air pollution control and prohibition orders, but also stipulates criminal punishment measures for acts that seriously damage the environment. The Water Resources Act of 1991 made it an offence to intentionally discharge toxic substances into controlled waters, as well as to extract minerals from riverbeds without permission or to steal plants. The Clean Air Act of 1993 provides criminal penalties for serious air pollution.^[2]

Britain mainly cracks down on environmental crimes through the subsidiary criminal law provisions of administrative laws. Although the provisions are very detailed, there may also be insufficient or insufficient comprehensive crackdown. When the subsidiary provisions of administrative laws and regulations are not effective, the environmental criminal law can play a complementary role. The environmental criminal law in the UK is also very powerful, which not only effectively combats environmental crimes but also plays a good preventive role. After the introduction of a series of laws and regulations on environmental protection, Britain's serious environmental problems have been greatly improved.

Similar to the United States and the United Kingdom, the United States also uses the administrative criminal law model to regulate environmental crimes. In the central federal administrative regulations to add criminal penalties, states according to the actual situation to enact a separate criminal law to protect the environment. The central Federal Government of the United States has enacted well-known environmental protection laws, including the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, etc. These administrative laws not only stipulate the criminal standards and corresponding punishment measures from the perspective of administrative law, but also have criminal punishment provisions. For example, the Clean Water Act makes it a crime to discharge pollutants or dangerous substances in violation of regulations and make false statements in related documents, and provides punishment measures. Since each state has certain legislative power, it can enact corresponding laws according to its own conditions. Many of them even went ahead of the

central Federation and were later absorbed by the Central Federation because of their remarkable effects. For example, Connecticut first adopted criminal means to regulate environmental violations, while the federal government later adopted criminal liability for environmental crimes in administrative law.

To sum up, the United Kingdom, the United States and other countries mainly use the subsidiary criminal provisions of administrative law to regulate environmental crimes. There may be provisions on environmental crimes in criminal law, but they are more as a supplement. Although Anglo-American law system mainly consists of case law, it is different from the codification of our country, but there are many aspects that can be absorbed for reference. For example, some regulations on minor environmental crimes in administrative regulations, some restorative punishment measures can be added to administrative regulations, and the introduction of strict liability are all worth learning and reference.

2.3. Special Legislation

In particular, there are two legislative styles of environmental criminal law: single criminal law and subsidiary criminal law. There are some differences between the two. The single criminal law has been praised more and more. In the legislation of environmental criminal law, Brazil adopts the legislative style of single criminal law. As a country rich in natural resources, environmental crimes are also very serious in Brazil. In contrast, Brazil's environmental criminal law is very much in the forefront, there are many worthy of reference. In 1998, the Environmental Crime Law of Brazil was promulgated and implemented. The main body of the law consists of three parts: general provisions, sub-provisions and supplementary provisions, including the basic theory of environmental crimes, the procedure of environmental crimes, charge setting, administrative violations and international cooperation provisions on environmental protection. Brazil's Environmental Crime Act also has many unique features in the subject of crime, charge setting, penalty setting and so on, which can be said to be very detailed. In the protection of legal interests, the law abandons the traditional guiding ideology of anthropocentrism and chooses to protect the natural ecology as the main guiding ideology, which conforms to the development concept of modern environmental criminal law, which is very advanced in developing countries in the 1990s. In the later period, many countries have absorbed and learned from Brazil's environmental criminal law in the formulation and modification of environmental criminal law.

2.4. Comprehensive legislation

The comprehensive legislative mode means that environmental crimes are not only stipulated in the criminal code and administrative regulations, but also formulated special criminal legislation of environmental crimes. After World War II, during the period of Japan's rapid economic development, environmental problems became increasingly serious. Japan absorbed the advantages of the environmental crime laws of Britain and the United States and adopted the combination of the criminal code, the separate environmental criminal law and the subordinate criminal law of the environmental administrative law. Such comprehensive legislation has achieved good results.

The Penal Code promulgated in early Japan did not set up a special section to regulate environmental crimes, and individual clauses related to environmental elements were scattered in each section. With the continuous development of social economy, Japan's environmental problems are becoming more and more serious. In order to cope with the environmental crisis, the laws promulgated in the 1960s and 1970s began to stipulate environmental crimes, and a large number of subsidiary criminal laws were promulgated, such as the Noise Control Law, the Basic Law of Public Hazard Countermeasures, and the Air Pollution Prevention and Control Law. In 1967, the Basic Law on Countermeasures against Public Hazards was promulgated. This law set the tone for Japan's environmental protection policy, and many later laws were supplemented and amended on the basis of this law. In 1970, the International Conference on Public Hazards held in Japan not only revised the Basic Law on Countermeasures against Public Hazards, but also formulated the Law on Punishing Public Hazards against Human Health by means of a separate criminal law for the first time, which was of landmark significance in the process of punishing environmental crimes in Japan. The comprehensive legislation model in Japan has a strong crackdown on environmental crimes, which has also greatly improved Japan's environmental problems.

3. The deficiency of our current environmental criminal law legislation model

At present, the specific charges of environmental crimes in our country are the centralized provisions of "special section" in section 6 of chapter 6 of the crime of destroying environmental resources protection. Although this kind of legislation is indeed a great progress compared with the previous "decentralized" legislation, it still has many shortcomings in dealing with today's increasingly intractable environmental problems. First of all, anthropocentrism has been gradually abandoned by the academic world, and countries have been moving closer to ecocentrism in practice. From the perspective of ecological nature, the theory of ecocentrism emphasizes that the protection of the environment should be centered on nature, and the protection of the natural environment is also the protection of human beings. Such environmental protection values are gradually becoming the mainstream view and are now widely respected in the academic circle. Ecocentrism theory is obviously more conducive to the harmonious coexistence between man and nature. However, environmental crimes in our country currently belong to the chapter of "crimes against social management order", which focuses on the legal interests of social management order, which is obviously different from the eco-centralism concept and is not in line with the development trend of environmental protection. Secondly, there are still some environmental crimes scattered in Chapter 2 crime of endangering public security, Chapter 3 crime of smuggling and Chapter 9 crime of dereliction of duty. However, such a special legislative mode cannot include all environmental crimes, which greatly reduces the systemization of environmental criminal law, cannot centrally and uniformly fight environmental crimes, and is not conducive to the development of environmental criminal law itself. Moreover, environmental crime has its unique attributes and adjustment methods which are different from other types of crime. Environmental crimes are highly professional and atypical in terms of the offending object and causality of the crime, as well as the evidence and prosecution in the litigation stage. To summarize environmental crimes in one chapter is not conducive to the clarity principle of criminal law and the implementation of the doctrine of responsibility. Finally, in today's increasingly serious environmental problems, more and more countries pay more attention to the environmental criminal law, environmental criminal law is established in the mode of special legislation. Obviously our country will environmental crimes by the special section of the stipulation in the sixth chapter is difficult to highlight the importance of the environmental criminal law, is unfavorable to cracking on the environmental crime, is unfavorable to the enhancement of the masses environmental protection consciousness, does not conform to the environmental protection policy idea of our country.

4. Conclusions

There is a growing voice in the academic community that environmental crime legislation should follow the Brazilian model of special legislation. But when we use the experience of other countries for reference, we should base on our national conditions, start from our basic national conditions. We should not blindly absorb other countries' models. Although the special legislative model of Brazil, for example, has many merits, it is obviously not appropriate to adopt the mode of special legislation to regulate environmental crimes in the development stage of our criminal law at present. At present, the adoption of criminal code mode is the most suitable for the situation of our country and is also in line with the development stage of criminal law. First of all, the traditional legislative model of our country is mainly the criminal code, faced with new problems and challenges are constantly emerging through the revision of the criminal code to deal with, and other areas of law are constantly moving towards the codification, so codification is always the general direction of the legal development of our country. Secondly, the present subsidiary criminal law of our country is to play the role of leak leak, and has not played an important role. It is obviously not intended to enhance the subsidiary criminal law role under the criminal law system of our country. Finally, our country's substantive law and procedural law are differentiated. The existence of the establishment of special criminal law and criminal procedure law is also conflict. It is not consistent with the national condition of the establishment of laws and regulations in our country.^[3]

In conclusion, the special mode of legislation is obviously no longer able to reflect the severe reality in the field of ecological environment, nor does it accord with the requirement of severely cracking down on environmental crimes. However, the mode of special legislation is not consistent with the current development situation of our country. Therefore, it is better to adopt the mode of unified criminal code to legislate the special chapter of environmental crime. It is necessary to separate "Crime of damaging environment and resources Protection" from "Crime of damaging Environment and Resources Protection" in Section 6 of Chapter VI of the Criminal Law and have a separate chapter

named "Crime of damaging Environment". In addition to the 15 charges in the sixth section of the sixth chapter of the Criminal Law, other charges related to environmental crimes are scattered in each chapter, which makes the types of environmental criminal law seem very inconsistent. Therefore, it is necessary to integrate these charges into the chapter of "crimes against the environment". For example, the crime of illegally manufacturing, trading, transporting and storing dangerous substances in Chapter II "Crimes against Public Security"; In the second section of "Smuggling Crimes", crimes of smuggling precious animals, precious animal products and wastes; The crimes relating to cultural relics, historic cultural sites and ancient fossils in the "Crimes of Obstructing the Administration of Cultural Relics" section 4 of Chapter VI; And the crime of illegally issuing forest cutting license, the crime of dereliction of duty in environmental supervision, the crime of illegally approving expropriation, requisition and occupation of land, etc. It is not only beneficial to the systematization and standardization of environmental criminal law, but also can better reflect the exploration transformation from the human-centered view of legal interests to the ecocentric view of legal interests. Early formation of a complete and systematic environmental criminal law is of great significance to the fight against environmental crimes.

References

- [1] LI Liang. *The Legislative model of Environmental Criminal Law in Germany and its reference to our country* [J]. *Journal of law*, 2018, 33 (11) 6:64-70.
- [2] ZHOU E C. *Research on Environmental crime legislation*. Ocean University of China, 2015.
- [3] Feng Yang. *Improve environment crime of criminal law legislation in China* [D]. *Central university for nationalities*, 2020.