

Study on the dilemma and path of criminal justice of environmental pollution

Jia Ou

Xiangnan University, Chenzhou, Hunan, 423000, China

Abstract: *This study aims to explore the difficulties and paths in the practice of criminal justice of environmental pollution. Using the empirical research method, combined with literature analysis, case analysis and field investigation, the current situation of criminal justice, environmental pollution influencing factors and effect evaluation were studied. In the past, judicial relief often focused on the personal and property damage of a specific subject caused by environmental damage, and usually ignored the damage to the environment itself. For example, the legal basis is insufficient, the repair target and plan are not clear, the way to fulfill the responsibility is not scientific, the responsibility and the responsibility is not clear, there is still a lot of room for discussion. Through case analysis and combined with the current situation, some suggestions are put forward for the difficulties in the process of judicial practice, to provide scientific basis for relevant policy formulation and environmental pollution control work.*

Keywords: *environmental pollution; criminal justice; dilemma; path*

1. Introduction

With the rapid development of industrialization and urbanization, the problem of environmental pollution is becoming increasingly serious. Environmental pollution crimes not only have a serious impact on people's health and social economy, but also bring a great challenges to environmental law enforcement and justice. In recent years, although China has continuously strengthened the formulation and implementation of environmental laws and regulations, environmental pollution crimes are still repeatedly banned, which has brought great pressure to environmental governance and protection. Therefore, the research on the criminal justice of environmental pollution is very important. This paper aims to explore the dilemma and path of environmental pollution criminal justice, in order to provide reference for environmental governance and judicial practice.

2. Dilemma of environmental criminal justice

2.1 Environmental pollution in criminal justice

As an important means of environmental pollution control, criminal justice plays a vital role in environmental protection. Environmental pollution is a severe challenge facing the world, and criminal justice, as a means of coping, must pay enough attention to and take measures to solve the problem of environmental pollution.

On the one hand, the environmental pollution problem of criminal justice mainly shows the increase of the number and types of environmental crimes. Environmental crimes involve the pollution and destruction of air, water, soil and other environmental elements, which seriously affect human life and health. For example, the illegal discharge of waste gas, humans waste water, to some extent, aggravates the problem of environmental pollution. In addition, the types of environmental crimes are also increasing, such as illegal mining, illegal dumping of hazardous waste and other behaviors, which have brought great challenges to the environmental governance work.

On the other hand, the challenge of criminal justice on environmental pollution issues lies in evidence collection and judicial judgment. Environmental pollution is mostly hidden illegal behavior, which brings great difficulties to the law of evidence collection in criminal justice. The evidence of environmental pollution cases often needs to be obtained through the technical analysis and evidence collection work of professionals, which requires a lot of time and money. At the same time, the judicial

judgment of environmental pollution cases also needs professional knowledge and experience, so as to make a judgment on the issue of environmental pollution accurately. However, the current lack of judges and prosecutors with environmental protection expertise in criminal justice poses difficulties in the trial of environmental pollution cases.

Another dilemma facing criminal justice in environmental pollution is the lack of penalties. At present, the problem of environmental pollution is intensifying, and the punishment of criminal justice needs to be further strengthened. At present, although the types and amounts of environmental pollution penalties are stipulated in China, there is still the problem of insufficient punishment. This has caused a certain deterrent force to environmental pollution behavior, making environmental pollution behavior is still repeatedly banned.

Criminal justice faces the problems of increasing quantity and types, difficulty in evidence collection and judicial judgment, and insufficient punishment. In order to solve these problems effectively, we need to take corresponding measures to improve the environmental pollution control capacity of criminal justice and improve the effect of environmental pollution control. First of all, we should intensify the crackdown on environmental crimes, increase the punishment, and make environmental criminals pay a greater price. Secondly, we should strengthen the professionalism of evidence collection and judicial judgment, train judges and prosecutors with professional knowledge of environmental protection, and improve the trial quality of environmental pollution cases. We should also strengthen the communication and cooperation between criminal justice and administrative law enforcement to form a joint force and jointly promote the development of environmental pollution control work. Through the implementation of these measures, we are expected to achieve a better effect of criminal justice in environmental pollution control.

2.2 Criminal justice regulations on environmental pollution

The criminal judicial provisions on environmental pollution refer to the relevant laws and regulations on criminal punishment for environmental pollution acts. The purpose of criminal justice on environmental pollution is to protect the stability and health of the environment and ecosystem, and safeguard the legitimate rights and interests of citizens. With the increasingly prominent problem of environmental pollution, the relevant laws and regulations have been gradually improved and developed.

At present, China's criminal judicial regulations on environmental pollution mainly include a series of laws and regulations, such as Environmental Protection Law, Criminal Law and Criminal Procedure Law. Among them, the Environmental Protection Law, as the basis and framework of China's environmental protection legal system, defines the basic principles and institutional arrangements of criminal justice for environmental pollution. The Criminal Law stipulates the constitutive elements and the types of punishment for environmental pollution crimes, and establishes the criminal responsibility and investigation mechanism for environmental pollution crimes. The Criminal Procedure Law ensures the fairness and legality of the criminal justice for environmental pollution, and guarantees the smooth progress of the relevant litigation procedures.

In the criminal justice provisions of environmental pollution, different types of environmental crimes and environmental damage are stipulated in detail. For example, different environmental pollution behaviors, such as air pollution, water pollution and soil pollution, are specifically defined and investigated in the Environmental Protection Law and the Criminal Law, respectively, so as to distinguish different environmental crimes and criminal responsibilities.

The criminal justice provisions of environmental pollution also stipulate the subjective and objective elements of criminal acts, including the intentional or negligence of environmental pollution acts, the degree of harm of illegal acts, social harm and other factors. These provisions aim to ensure the objective establishment and legitimacy of the crime of environmental pollution, and maintain the justice and legality of criminal justice.

Although the criminal justice regulations of environmental pollution have achieved some results, they also face some challenges and difficulties. For example, there are still some disputes and confusion about the standard of conviction and sentencing standard of environmental pollution crimes, in the prosecution and trial practice of environmental pollution crimes, and the connection of criminal liability and civil liability of environmental pollution crimes need to be solved urgently.

Therefore, in order to better promote the environmental pollution administrative law enforcement

and criminal justice, we need to further improve and strengthen environmental pollution criminal justice rules, define criminal standards and sentencing standards, strengthen the investigation and trial of applicable law and evidence, at the same time strengthen environmental pollution criminal justice and administrative law enforcement coordination, form an effective governance mechanism and working mechanism. Only in this way, can we better protect the environment and the ecosystem, and promote the smooth progress of environmental pollution control work.

2.3 Challenges and difficulties of environmental pollution in criminal justice

The challenges and difficulties of environmental pollution criminal justice are mainly reflected in the following aspects. First of all, there are some difficulties in the process of obtaining evidence in environmental pollution criminal justice. Since environmental pollution cases often involve a large amount of data and evidence, a large amount of human and material resources need to be invested in obtaining, reviewing and protecting evidence. Moreover, environmental pollution cases usually have a complex technical nature, and for judges and prosecutors, they need to have certain professional knowledge and skills to effectively try and deal with them. Secondly, the criminal justice of environmental pollution has some difficulty in punishing criminal acts. Environmental pollution crimes are often highly concealed and complex, and criminal acts are often carried out at night or unattended. For law enforcement departments, a series of advanced technical means and methods are needed to obtain relevant evidence. Moreover, due to the complex interests involved in environmental pollution cases and the numerous interest subjects involved, if the rights and interests of all parties cannot be effectively mediated and protected, it may lead to the disorder of social order and the damage of judicial justice. Finally, the criminal justice of environmental pollution faces a series of challenges in the enforcement stage. On the one hand, the criminal justice of environmental pollution often needs to rely on the support and cooperation of administrative law enforcement departments, but due to the differences in the responsibilities, authority and punishment measures of administrative law enforcement departments and criminal justice departments, there is some friction and incoordination in the actual operation. On the other hand, environmental pollution cases involve deep hidden evidence, the victims are often in a weak position,[3]Therefore, a series of protective measures are needed to be taken in the execution of criminal justice to safeguard the legitimate rights and interests of the victims. To sum up, the challenges and difficulties of environmental pollution criminal justice are mainly reflected in the three aspects of evidence collection, trial and law enforcement. Only by fully realizing these problems and taking corresponding measures can we promote the effective implementation of criminal justice of environmental pollution.

3. Environmental pollution criminal justice influencing factors

Legal provisions are one of the important influencing factors of environmental pollution administrative law enforcement and criminal justice. From the perspective of law, environmental pollution administrative law enforcement and criminal justice have different legal basis and operation methods in environmental pollution control. First of all, the administrative law enforcement of environmental pollution is mainly carried out in accordance with the Environmental Protection Law of the People's Republic of China and other laws and regulations, and the administrative departments are responsible for the supervision and punishment of illegal environmental pollution acts. The law clearly stipulates the procedures, intensity of punishment, and definition of illegal acts of environmental pollution administrative law enforcement, which provides a clear legal basis and operational norms for the administrative departments.

In the process of environmental pollution control, criminal justice is mainly based on the Criminal Law of the People's Republic of China and other relevant provisions of the criminal law, and criminal justice mainly cracks down on and punishes serious environmental pollution crimes by means of criminal investigation. The criminal law clearly stipulates the investigation standards, penalty types and evidence requirements of the criminal justice of environmental pollution, which also provides the legal basis and operational norms for the judicial organs.

At the same time, there is a certain legal connection between environmental pollution administrative law enforcement and criminal justice. According to the relevant laws and regulations, the environmental pollution administrative law enforcement organs can transfer the clues of the suspected criminal environmental pollution acts to the criminal judicial organs for investigation and prosecution. The criminal judicial organs can also prosecute the results of environmental pollution

administrative law enforcement as evidence of the crime. Through the connection of administrative law enforcement and criminal justice, an organic connection from prevention and crackdown to elimination of environmental pollution crimes can be formed, and the coordination of environmental pollution control work can be promoted.

However, there are still some challenges and difficulties in the connection between environmental pollution administrative law enforcement and criminal justice. On the one hand, there are differences between environmental pollution administrative law enforcement organs and criminal judicial organs in terms of working methods and standards, which leads to some problems such as inconsistent identification standards and difficult transformation and sharing of evidence in the process of connection. On the other hand, the connection problem is also affected by the institutional problems such as the imperfect communication and cooperation mechanism between the administrative and judicial organs and the poor information sharing, which makes it difficult to promote the connection between environmental pollution administrative law enforcement and criminal justice to go smoothly.

Therefore, in order to solve the problem of connection between environmental pollution administrative law enforcement and criminal justice, it is necessary to further improve relevant laws and regulations and strengthen cross-departmental communication and cooperation. At the legal level, the government can further clarify the connection provisions between environmental pollution administrative law enforcement and criminal justice, unify the identification standards and evidence requirements, and improve the convenience and efficiency of the connection. At the mechanism level, the information sharing and case transfer mechanism between environmental pollution administrative law enforcement and criminal justice can be established and improved, the communication and consultation between administrative departments and judicial organs can be strengthened, and the work efficiency and coordination capability can be improved. In this way, the effective connection between environmental pollution administrative law enforcement and criminal justice can be realized, and the environmental pollution control work can achieve better results.

4. Research on the path of criminal justice of environmental pollution

4.1 Public participation

Due to the public and social nature of the ecological environment, the public is indispensable in the process of ecological restoration the participation of. Actively give full play to the public's power of supervision and fully solicit opinions from the public or relevant stakeholders, There may be many projects that pollute the environment will be stopped in advance, and will not be repaired after the event.[1]Therefore, in the system design, we should closely follow the principle of "public participation" in the environmental protection law to enable the public Enough to fully express opinions to provide the appropriate way. The court is interested in the formulation, implementation and effect evaluation of the ecological restoration plan Price and other links, can follow the environmental assessment system, establish information to repair the surrounding residents as the main object.

Open and decision-making participation mechanism. In addition, the court can also collect the public by sending out questionnaires to the restoration area opinions, and the questionnaire survey results as an important reference combined with the case to finally confirm the ecological restoration plan. In addition, the conciliation statement for such cases shall be made with the contents of the mediation agreement in an appropriate way after the mediation is concluded. The public can not only supervise whether the restoration work of the person responsible for the restoration is carried out on time and according to the contract, but also supervise the supervisory subjects responsible for the ecological restoration work, so as to effectively prevent the occurrence of omission.

4.2 Clarify the supervision responsibility of the procuratorate in environmental cases

The supervision body of environmental public interest litigation in India embodies specialization, which appoints specialized supervisors or a special enforcement supervision agency shall be set up to regularly investigate the execution of cases and refer them to the Supreme Court. Submit the investigation report. The power of supervision of enforcement in environmental citizen litigation cases is exercised by the government and supervised by the government. To supervise the progress of the ecological restoration work. Pollution enterprises shall pay the relevant supervision fees and repair costs to the government. The government then subcontracts the ecological restoration project to the related restoration enterprises, and the government acts as the supervisor to supervise the whole

ecological restoration. Complex engineering.[2] According to China's national conditions, environmental criminal cases generally have a long handling period and are in the investigation stage and review. Ecological restoration can be carried out in the prosecution stage, trial stage and penalty execution stage, so the ecological restoration work. The construction of the supervision system can be carried out under the framework of the execution of criminal cases, with the procuratorate as the supervision subject of ecological restoration work. The supervisory responsibility of the procuratorial organs in the ecological restoration work should include the following two aspects: the first capital. Whether the use of gold meets the requirements, and whether the progress of ecological restoration meets the restoration plan. If you're here, any person responsible or a third party, such as abuse or encroachment on repair costs, the procuratorial organ may inform the court to replace the implementing subject of the restoration work. If the circumstances are serious, if the case constitutes a crime, it shall also be investigated for criminal responsibility

4.3 An information sharing platform has been established for administrative law enforcement organs and criminal judicial organs

At present, the environmental pollution administrative law enforcement and criminal justice on the punishment of environmental pollution crimes is relatively light, and it is difficult to form an effective deterrent effect. Therefore, the third place that needs to be improved is to strengthen the crackdown on environmental pollution crimes, increase the severity of relevant penalties, and increase the crackdown on environmental pollution crimes, so that the environmental pollution criminals can pay the due punishment.

Timely report the relevant case information, and share the evidence collection, law enforcement and criminal investigation in the process. At the same time, the two sides can also establish a linkage mechanism. For example, when the administrative law enforcement organs find criminal clues in the process of case investigation, they can timely transfer the relevant information to the criminal judicial organs, so as to realize the connection between administrative law enforcement and criminal justice. We will strengthen law enforcement norms and review. Administrative law enforcement organs and criminal judicial organs should jointly formulate and improve the law enforcement norms, and establish a corresponding review mechanism.[4]In the process of law enforcement, for the environmental pollution cases with illegal acts, the administrative law enforcement organs should timely transfer to the criminal judicial organs for criminal investigation, to ensure the legality and legitimacy of the law enforcement process. Good at technical means and investigation ability. In the implementation of the connection plan, administrative law enforcement agencies and criminal judicial organs need to jointly invest more resources to improve their technical means and investigation capabilities. For example, the collection and preservation of relevant evidence such as material evidence and witness testimony of environmental pollution cases can be strengthened, so as to improve the efficiency of the investigation and evidence collection of cases. In the process of implementing the connection plan, it is also necessary to vigorously promote the legal publicity and education work. By strengthening legal publicity and education, improve the public's understanding and understanding of environmental pollution control, enhance the public's legal awareness and environmental awareness. It is necessary to strengthen the publicity and warning of environmental pollution crimes, form a social consensus, and provide social support and joint force for the connection between administrative law enforcement and criminal justice. In the process of implementing the connection plan, the supervision and evaluation work should be strengthened. Through the establishment of a sound supervision mechanism, the connection between administrative law enforcement and criminal law justice is supervised and evaluated, and the problems found will be solved in time. At the same time, it is also necessary to strengthen the evaluation of the implementation effect of the connection plan, and deeply analyze the problems and deficiencies in the implementation process, so as to provide experience and reference for the future environmental pollution control work.

5. Conclusion

Criminal justice of environmental pollution is one of the important ways to solve environmental pollution crimes. By improving laws and regulations, strengthening enforcement, raising public awareness of environmental protection, promoting scientific and technological innovation, and strengthening international cooperation, we can better solve the problem of environmental pollution crimes and protect the environment on which human beings rely for their survival and development.

Acknowledgement

[Fund Project] 2023; 2021, Project number: 2021 XJ 58.

References

- [1] Ruan Jianhua. *On the application of restorative justice in environmental crime [J]. Journal of Beijing Vocational College of Political Science and Law*, 2017 (3): 7-14.
- [2] Zeng Rui. *Practical innovation and system perfection of ecological environment justice [J]. Theoretical Monthly*, 2019 (2): 100-106.
- [3] Li Zhiping, Tian Wenjuan. *Analysis of the application of restorative measures in environmental criminal justice practice [J]. Journal of Law*, 2018, 39 (12): 109-121.
- [4] Zhang Xia. *Research on judicial applications in ecological crime cases [J]. Politics and Law Series*, 2020 (2): 112-119.