

Practical Challenges and Regulatory Approaches in Handling Misdemeanor Cases in the Field of Environmental Resources

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Abstract: *Against the background of the transformation of the crime structure toward minor offenses and the continued expansion of the active criminal law perspective, environmental and resource-related minor offenses, represented by illegal fishing and illegal logging, have continued to rise in proportion. However, constrained by the traditional idea that “where there is guilt, there must be punishment” and by insufficient institutional supply, their handling is in obvious tension with the criminal policy of “fewer arrests, cautious prosecution, and cautious detention” and the concept of minor offense governance. At present, case handling in this field faces three difficulties: insufficient leniency in compulsory measures, a relatively high rate of arrest, rigid assessment of social danger, and absent consideration of ecological restoration circumstances; deviations in the adaptability of the penal sanction system, including an excessively high proportion of imprisonment, limited deterrent function of fines, and a single type of non-penal sanction; and weak embedding and supervision of ecological restoration measures, poor linkage between restoration responsibility and sentencing discretion, a single restoration measure, and absent supervision and verification mechanisms. The causes lie in insufficient institutional supply, insufficient refinement of sentencing norms, and the institutional absence of embedding ecological restoration into criminal procedure. In view of this, it is necessary to update the case-handling concept, realize the shift from an ecological damage-oriented approach to an ecological restoration-oriented approach, and systematically take measures at three levels: leniency in compulsory measures, optimization of the penal sanction system, and improvement of the whole-process mechanism for ecological restoration, so as to form a systematic case-handling mechanism integrating punishment, prevention, and restoration, and promote the transformation of case handling in this field from “punishing crimes” to “governance.”*

Keywords: *environmental and resource crimes; case-handling philosophy; coercive measures; penal sanction system*

1. Introduction

With the deepening of ecological civilization construction, criminal legislation has shown a trend of preventive and forward-looking expansion. Environmental and resource-related minor offenses, represented by illegal fishing and illegal logging, account for an increasing proportion in this field. However, at the judicial level, the traditional case-handling model of “emphasizing crackdown and neglecting governance” has not changed in a timely manner. A large number of cases with minor circumstances and relatively low social harm are handled rigidly, exposing problems such as insufficient leniency, inadequate implementation and supervision of ecological restoration measures, and deviations in the adaptability of the penal sanction system. It is difficult to achieve a balance of values among punishing crimes, restoring ecology, and protecting human rights. In March 2026, the Supreme People’s Court and the Supreme People’s Procuratorate issued the Decision on Amending the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Environmental Pollution (hereinafter referred to as the Amendment Decision), which separated “actively performing ecological environment restoration responsibility” from the original parallel structure with the guilty plea and acceptance of punishment system, listed it separately as a discretionary circumstance for lenient punishment, and reiterated that where criminal circumstances are minor, non-prosecution or exemption from criminal punishment may be applied, demonstrating the orientation of environmental criminal justice from “punishing crimes” to “governance.” In view of this, this article focuses on the practical difficulties in handling minor offense cases in this field, examines their institutional causes, and then proposes localized normative approaches around four aspects: updating the case-handling concept, promoting leniency in compulsory measures,

optimizing the penal sanction system, and improving the mechanism for embedding ecological restoration.

2. Updating the case-handling concept

The deep-rooted causes of many difficulties in handling environmental and resource-related minor offense cases lie not only in insufficient institutional supply but also in the failure of the case-handling concept to keep pace with the requirements of the era of minor offense governance and ecological civilization construction. Traditional governance has long been dominated by retributivism and “penalty-centrism,” ignoring the reparability of ecological legal interests and the corrigibility of minor offenders. To solve the difficulties, it is first necessary to realize a threefold shift in the case-handling concept. First, shift from an ecological damage-oriented approach to an ecological restoration-oriented approach. Environmental legal interests differ from personal and property legal interests; their core feature is reparability—the damaged ecosystem, under the combined effect of human intervention and natural recovery, has the possibility of rebuilding its structure and functions.[1]The ecological restoration-oriented approach advocates that while criminal liability is pursued according to law, whether the damaged ecology can be effectively restored should be taken as a core consideration throughout the entire case-handling process; the Amendment Decision elevates ecological restoration from a discretionary reference circumstance to a statutory factor affecting the determination of criminal liability and sentencing discretion, which is precisely the normative confirmation of this shift. Second, promote the substantive embedding of restorative justice, that is, transform it into operable, binding, and verifiable institutional arrangements—the concept of restorative justice takes restoring the ecological environment as its goal and safeguarding human interests as its foundation, and conforms to the requirements of China’s grand blueprint of “promoting green development and promoting harmonious coexistence between humanity and nature.” At the procedural entry point, leniency upon guilty plea and acceptance of punishment and conditional non-prosecution should provide incentives for proactive restoration; at the performance stage, the order of application of restoration methods should be established; and at the supervision stage, an effect acceptance mechanism should be established, so that the three links of incentive, performance, and supervision work in concert. Third, realize the integration of ecological justice and minor offense governance. Case-handling organs should transcend the limitation of handling cases for their own sake, take the substantive filling and restoration of ecological legal interests as their guide, seek a dynamic balance among punishing crimes, protecting human rights, and restoring ecology, grant leniency according to law to those who actively restore and pursue responsibility according to law against those who are inactive in restoration, and form a coordinated governance force with administrative departments, third-party institutions, and even the public.

3. The dilemma of leniency in the application of compulsory measures and its correction

3.1 Practical problems in pretrial detention for minor environmental-resource-related crimes

Leniency in compulsory measures requires implementing the principle of proportionality and the criminal justice policy of “fewer arrests, cautious prosecution, and cautious detention,” that is, their severity should be commensurate with the offender’s personal dangerousness and the severity of the crime. Environmental and resource crimes are typical statutory offenses; offenders often have relatively low subjective malice, the statutory penalties for the crimes involved are generally relatively light, and ecological legal interests possess reparability. Whether pretrial detention is applied often directly determines whether the damaged ecology can be timely repaired; therefore, the application of custodial compulsory measures should be restricted. However, the transmission of the leniency trend to this field is insufficient: although the national pre-prosecution detention rate has decreased from 54.9% in 2018 to 26.7% in 2022, minor offenses punishable by fixed-term imprisonment of not more than three years already account for more than 85%, and the six charges of environmental pollution, illegal fishing of aquatic products, illegal mining, illegal occupation of agricultural land, illegal hunting, and illegal logging account for more than 80% of cases examined for prosecution for crimes of disrupting environmental and resource protection. There is still considerable room for contraction in the arrest rate. In practice, a large number of offenders who could have been released on bail pending trial or could have completed restoration before prosecution are approved for arrest. Once detention is applied, the offender cannot personally participate in restoration, and the damaged ecology continues to deteriorate because the optimal time is missed. Arrest objectively squeezes out the restoration function that non-custodial measures should carry. At the same time, arrest review centered on social dangerousness tends to be rigid.

Existing quantitative assessment indicators lack consideration of “willingness and feasibility of ecological restoration.” The mindset of “arrest upon finding the crime constituted” interrupts the process of the offender’s proactive ecological restoration. In practice, case-handling personnel often adopt the principle of “better high than low” in subjective judgment out of fear of judicial accountability or pressure from victims and public opinion, and the social dangerousness of criminal suspects is generally overestimated.[2]

3.2 Institutional causes: alienation of the Function of Arrest

The root of the above difficulties lies in the alienation of the function of arrest in the handling of minor offenses. Arrest should be precisely positioned to ensure the smooth progress of criminal proceedings; however, in practice, its core function has alienated from a neutral procedural safeguard tool into a utilitarian means serving substantive goals: first, the path dependence of “using arrest to facilitate investigation.” Environmental crimes often involve hidden evidence, complex causation determination, and organized criminal subjects. Investigative organs face enormous evidence-collection difficulties, so they use detention as an investigative strategy to cut off suspects’ external contacts and force them to confess; second, the front-loading of punishment through “substituting detention for punishment.” For cases that arouse public attention and for which the final penalty is relatively light or probation may even be applied, some case-handling personnel regard pretrial detention as “advance punishment” to compensate for the possible lack of punishment caused by a final light sentence. Both deviate from the statutory positioning of arrest as a procedural safeguard measure.

3.3 Institutional correction scheme returning to the standard of procedural guarantee

First, return the review of the necessity of arrest to its proper position. A substantive review benchmark for arrest in environmental minor offenses should be established: for cases that may be sentenced to fixed-term imprisonment of not more than three years, especially those that may be subject to probation or a standalone fine, it should in principle be presumed that arrest is unnecessary, unless there is evidence proving the existence of statutory social dangerousness listed in Article 81 of the Criminal Procedure Law and that non-custodial measures are insufficient to prevent it, thereby establishing the benchmark that “where there is no social dangerousness, there is no arrest,” rather than inferring the necessity of detention from whether the criminal facts are established; at the same time, establish an arrest reasoning system, grant the accused the right to object, and strengthen the rigid obligation of investigative organs to transfer evidence of social dangerousness. Second, incorporate ecological restoration into the core consideration of social dangerousness assessment. It is advisable, through judicial interpretation, to add an “ecological restoration” dimension to the quantitative assessment mechanism currently being advanced, refined into three operable sub-indicators: restoration willingness, restoration capacity, and restoration performance. The earlier restoration intervention is and the higher the degree of performance, the lower the social dangerousness score; professional verification by competent departments such as ecology and environment, forestry, and fishery administration and third-party institutions should be introduced; however, it must not be alienated into “redeeming arrest with money,” and behavioral restoration measures should be applied first. Third, improve the non-custodial supervision mechanism. Digital supervision methods such as the “non-custody code” in various places should be promoted, and legislation should be promoted to fill the gap that electronic monitoring under release on bail pending trial lacks a legal basis. Cross-departmental coordinated supervision and inter-jurisdictional data interoperability should be built, and the consequence mechanism for violating non-custodial obligations should be improved, so that “fewer arrests” is truly built on the solid foundation of “able to supervise.”

4. The Mismatch in the Penal Sanction System and Its Optimization

4.1 Practical misalignment among punishment, prevention and restoration functions

Penal sanctions take punishment, prevention, and restoration as three pillars. The current penalty system in this field shows a threefold adaptability mismatch. First, imprisonment emphasizes the punitive function of punishment and uses evil to eliminate evil, making it difficult to educate and correct offenders of minor crimes according to their characteristics; ultimately, it only makes their reintegration more difficult. Once imprisoned, their self-esteem is greatly damaged, and imprisonment inevitably leads to loss of work, which not only causes offenders to worry about their future lives but also brings major

adverse effects on their family life. It easily causes offenders to develop a self-abandoning mentality and makes it difficult for them to return to society after release.[3]Second, the deterrent function of fines is limited. Because China's Criminal Law adopts an abstract fine system for environmental crimes, only providing that "the amount of the fine shall be determined according to the circumstances of the crime" without clear benchmarks, judges often sentence conservatively. The amount of the fine is far lower than the proceeds of crime and even less sufficient to cover the actual cost of ecological restoration. In addition, empty judgments are serious, and the effect of economic sanctions is lost. Third, non-penal sanctions are relatively single. The measures listed in Article 37 of the Criminal Law, such as admonition, ordering a statement of repentance, apology, and compensation for losses, none directly aim at restoring the damaged ecology. Alternative restoration methods spontaneously explored in practice, such as replanting and re-greening, stock enhancement and release, and carbon sink subscription, lack unified normative guidance, resulting in unclear application conditions, inconsistent conversion methods, and difficulty in ensuring the authenticity of performance.

4.2 Institutional Causes: insufficient refinement of sentencing norms

Institutional Causes: Insufficient Refinement of Sentencing Norms. The above deviations centrally reflect the insufficient refinement of sentencing norms. Environmental and resource crimes have never been included in the scope of the Guiding Opinions on Sentencing for Common Crimes. There is a lack of unified operational guidance on how to divide sentencing ranges within the statutory penalty range and how to convert various sentencing circumstances, and different judgments for similar cases are prominent. The root cause lies in the fact that the "quantity" of infringement upon environmental legal interests is cumulative, hidden, and irreversible, and is difficult to quantify by a single indicator such as emission volume or case value. Accompanied by this is the inconsistency in probation application standards: the substantive requirements of Article 72 of the Criminal Law, such as "the circumstances of the crime are relatively minor" and "there is a manifestation of repentance," lack refinement in this field, and there is no explicit provision on whether the degree of performance of ecological restoration can serve as a basis for judgment. Therefore, probation application shows considerable regional differences and case-by-case arbitrariness. At the level of fines, the unlimited fine system does not distinguish between natural persons and units, does not consider the offender's actual economic capacity, and poor execution and lack of discretionary benchmarks restrict each other; at the level of non-penal sanctions, ecological restoration measures lack legal status and lack supporting application conditions, restoration standards, and supervision and acceptance rules.

4.3 Establishing gradient and restoration-oriented rules for the application of penalties

First, construct gradient sentencing rules and expand the space for probation. The supplementary status of imprisonment should be established. For cases where the statutory penalty is criminal detention or fixed-term imprisonment of not more than three years, and the offender pleads guilty and accepts punishment and actively performs restoration responsibility, the application space for a standalone fine, control, and probation should be examined in sequence. Only when the aforementioned lighter punishments are all insufficient to achieve the purposes of punishment and prevention may actual imprisonment be pronounced, so that freedom-depriving punishment returns from a "normal choice" to a "last resort"; the highest judicial organs or provincial courts should formulate specialized sentencing rules for environmental and resource crimes, allocate benchmark punishments in tiers based on the "quality" and "quantity" of infringement upon legal interests, and determine the threshold for conversion between imprisonment and non-imprisonment; offenders of environmental and resource minor offenses are mostly first-time offenders and occasional offenders, and should become the main targets of probation. During the probation period, community correction should be relied upon to urge them to perform restoration obligations and participate in environmental public welfare labor. Second, strengthen the effectiveness of fine application. A dual-track model combining a day-fine system for natural persons and a multiplier/proportional system for unit crimes should be introduced, so that different wealth strata bear equivalent pain of economic deprivation and the fine amount is commensurate with the enterprise's scale and profit-making capacity; and create an "eco-restorative conversion of fine execution" system, under which, for those who truly have no ability to pay, judicial organs have the power to convert the original environmental fine liability into a series of legal norms for restorative non-penal measures such as stock enhancement and release, replanting and re-greening, forest and bird protection, and river patrol, thereby realizing the functional transformation from economic sanctions to ecological restoration.[4] Third, improve non-penal sanctions. Through judicial interpretation, "restoring the ecological environment" and "compensating for losses" should be interpreted in a correlated manner and included

in the scope of non-penal sanctions; enrich the types of behavioral restoration measures; establish the order of direct restoration first, alternative restoration second, and compensatory restoration as supplementary application; and at the same time improve the procedural acceptance mechanism uniformly organized by judicial administrative departments and participated in by qualified third-party institutions.

5. Weak Embedding of Ecological Restoration and Improvement of the Mechanism

5.1 Practical obstacles to the connection between ecological restoration liability and criminal case-handling procedures

Although the application of ecological restoration measures has increasingly expanded, there are still three obstacles in the practice of handling minor offense cases. First, the linkage between restoration responsibility and sentencing discretion is not smooth, and the incentive orientation is unclear. The current legal effect of the linkage is only “may be lenient” rather than “shall be lenient.” Whether and to what extent leniency is granted depends highly on the discretionary power of case-handling personnel. Judicial interpretations also do not clearly define the evaluation standards for “actively restoring the ecological environment,” and the linkage is mainly limited to the sentencing stage at trial, with the incentive point artificially moved backward. Second, restoration measures are relatively single, making it difficult to guarantee substantive restoration effects. Monetary payment still dominates. “Substituting payment for restoration” means the offender has not personally experienced the labor of restoration, weakening the educational and corrective function. In addition, the management and supervision mechanism for restoration funds is not sound, with risks of fund precipitation and misappropriation. Third, the absence of supervision and verification mechanisms causes restoration responsibility to become formalistic. Taking replanting and re-greening as an example, judgments often only generally order the planting of a certain number of saplings, without clear requirements on whether the tree species are suitable, what the survival rate is, and how subsequent management and protection will be implemented. This results in “planting in spring and dying in winter,” and replanting and re-greening becomes a mere formality. Stock enhancement and release may also cause secondary ecological risks such as invasive alien species due to lax quarantine of fry and seedlings.

5.2 Institutional causes: institutional absence of embedding ecological restoration into criminal procedure

The above difficulties stem from the lack of systematic design for integrating ecological restoration with criminal procedure in the current criminal legal system. On the one hand, the legal positioning of ecological restoration as a lenient sentencing circumstance is ambiguous. Although systems such as criminal reconciliation, leniency upon guilty plea and acceptance of punishment, and community correction have laid a foundation for it, this circumstance is not explicitly provided for in criminal legislation. In practice, judgments that grant differentiated sentencing discretion through replanting and re-greening or payment of restoration costs strictly speaking lack sufficient legal basis, which inevitably leads to different judgments for similar cases and triggers doubts about judicial credibility and legitimacy. On the other hand, the evaluation and supervision and verification system for ecological restoration effects is absent. Standards for the survival rate of replanting and re-greening vary across places due to the lack of explicit provisions. There are also no clear provisions on how to ensure the reasonable use of ecological compensation funds paid and how to coordinate the responsibilities of multiple departments. Therefore, the restoration process lacks rigid constraints and is highly prone to formalism.

5.3 Building a whole-chain restoration system of incentive-performance-supervision

First, establish ecological restoration as an independent lenient circumstance and strengthen its linkage with sentencing discretion. As for its positioning in the criminal law system, a compromise position should be adopted: where the criminal circumstances are minor and criminal punishment is exempted, it should be established as a statutory non-penal disposal method; where conviction and sentencing are required, it should be evaluated as an independent discretionary lenient circumstance, thereby avoiding simply equating restoration responsibility with a fine and providing a unified normative outlet for diverse restoration methods. On this basis, judicial interpretation should clarify: make a typological distinction between direct restoration and alternative restoration for restoration circumstances; because direct restoration is closer to the essence of legal interest restoration, its sentencing value should

be higher than that of alternative restoration; establish a correspondence between restoration effects and the extent of leniency, so that offenders form stable behavioral expectations; and, referring to the incentive logic of “early plea is better than late plea” under the guilty plea and acceptance of punishment system, grant gradually decreasing leniency to those who perform restoration obligations at different stages of investigation, examination for prosecution, and trial.[5]Second, enrich the types of ecological restoration measures to ensure substantive restoration effects. Priority application of behavioral restoration measures should be strengthened. For those with conditions for on-site restoration, direct measures such as replanting and re-greening, stock enhancement and release, and soil restoration should be ordered first; develop new alternative restoration methods such as carbon sink subscription, which has considerable value for the equivalent restoration of ecological service functions such as “carbon fixation and oxygen release,” and should follow the principles of homogeneity and equivalence and functional equivalence when applied; for those truly unable to complete restoration independently, the required restoration costs may be used as a benchmark for conversion, and they may perform in installments through labor substitution with whole-process supervision. Third, establish a supervision and verification mechanism for restoration effects and strengthen third-party participation in evaluation. Technical norms such as the Technical Guidelines for Evaluation of Ecological Protection and Restoration Effectiveness(Trial) should be invoked to establish quantifiable acceptance standards; the Measures for the Management of Funds for Compensation for Ecological and Environmental Damage(Trial) should be referenced to strengthen special management of restoration funds; and a consequence mechanism for non-performance of restoration obligations should be built—making restoration performance a condition for conditional non-prosecution and a content of probation, and revoking the original leniency decision according to law for those who refuse to perform or whose performance is seriously substandard, so that ecological restoration obligations change from flexible constraints to rigid responsibilities; at the same time, build a multi-actor supervision pattern led by judicial organs, coordinated by administrative departments, and substantively participated in by qualified third-party institutions.

6. Conclusion

The optimization of handling environmental and resource-related minor offense cases is by no means a partial adjustment of individual procedural links, but a systematic project running through four dimensions: concept, compulsory measures, penal sanctions, and ecological restoration. Only by reshaping the case-handling concept with an ecological restoration-oriented approach, correcting the functional alienation of compulsory measures through leniency, optimizing the penal sanction system through gradient and refined rules, and guaranteeing the substantive implementation of ecological restoration through a mechanism covering the entire chain of incentive, performance, and supervision, can we build a systematic case-handling mechanism integrating punishment, prevention, and restoration, effectively promote the transformation of case handling in this field from “punishing crimes” to “governance,” and provide solid judicial protection for ecological civilization construction.

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