New Development of Environmental Pollution Criminal Justice: Starting With the Summary of the Symposium on Criminal Cases of Environmental Pollution in 2019

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Abstract. The Summary of the Symposium on Criminal Cases of Environmental Pollution in 2019 has important normative and guiding significance for criminal justice of environmental pollution, further clarifies the judicial concept of recognizing the objective elements of environmental pollution by carrying out the protection purpose of ecological legal interests, clearly identifies the subjective fault of environmental pollution based on responsibility doctrine and the attempt of dealing with environmental pollution based on objectivism. Criminal forms, based on the actual results of environmental pollution to deal with environmental pollution related to illegal business and the release of dangerous substances and other criminal cooperation phenomenon.

1. Introduction
The Summary of the Symposium on Criminal Cases of Environmental Pollution (hereinafter referred to as the Summary of 2019) issued in February 2019 is the third special judicial interpretation of Environmental Pollution Crimes issued by the Supreme People's Court and the Supreme People's Procuratorate since the main charges of environmental pollution were amended by the Criminal Law in 2011, which fully reflects the great importance attached by the state to ecological protection. On the basis of the application of the Interpretation of Several Questions Concerning the Application of Law in Criminal Cases of Environmental Pollution in 2016 (hereinafter referred to as the Interpretation in 2016), the paper makes comprehensive provisions on the objective elements of environmental pollution, subjective fault, unit crime, attempted crime and concurrence of crimes, and further explains the environmental pollution that has plagued criminal justice for a long time. The conviction problem. It is of great guiding significance to the criminal justice of environmental pollution and has effectively promoted the punishment of Environmental Pollution Crimes and the protection of the development of ecological civilization.
2. Understanding and Application of the Provisions on the Objective Elements of Environmental Pollution in the Summary of 2019

On "Discharge, Dumping or Disposal". For a long time, there have been many disputes in judicial practice about how to identify the "discharge, dumping or disposal" stipulated in Article 338 of the Criminal Law. The Summary of 2019 stipulates that the acts of discharge, dumping and disposal, which are called storage, transportation and utilization, should be considered as illegal discharge, dumping and disposal, and criminal responsibility can be investigated according to law. The above provisions reflect the substantive interpretation standpoint of criminal law norms. "The substantive interpretation of criminal law pursues the appropriateness of criminal law on the premise of guaranteeing the stability of criminal law, and advocates the interpretation of criminal law from the substantive standpoint, that is, the social harmfulness (infringement of legal interests) that should be punished."[1] We should understand and apply the provisions of Article 338 of the Criminal Law on the crime of polluting the environment in the light of the substantive infringement of legal interests of environmental pollution acts. We cannot understand and apply the acts of discharge, dumping and disposal from the standpoint of form. In judicial practice, there are a large number of wastes, toxic substances or other harmful substances that are superficially stored, transported, utilized or stacked or discarded with radioactive or infectious disease pathogens, which endanger or endanger the ecological environment. They should be regarded as acts of discharging, dumping and disposal that should be punished. Even if some actors have statutory permission before discharge, dumping and disposal, they violate state regulations or industrial operation norms in the process of discharge, dumping and disposal, and cause harm or danger to the ecological environment, they should also be considered as acts of discharge, dumping and disposal which should be punished. In this sense, "the crime of polluting the environment. It may be either an act offense or a consequential offence, a dangerous offense or a real offense."[2]

About "other harmful substances". For a long time, there has been a great controversy in judicial practice over "other harmful substances" stipulated in Article 338 of the Criminal Law. The Interpretation in 2016 only deals with the provisions of principles and does not specify the scope or types of harmful substances. On the basis of summarizing judicial experience, the Summary of 2019 provides enumerative provisions for the five categories of harmful substances, which provides typological guidance for judicial discretion. The Summary of 2019 stipulates that the main common harmful substances are: industrial solid waste other than industrial hazardous waste; untreated domestic waste; harmful atmospheric pollutants, controlled ozone-depleting substances and harmful water pollutants; other substances that are bound to produce toxic and harmful substances in the
process of utilization and disposal; and the competent department of ecological environment protection under the State Council jointly defends with the State Council. Relevant substances in the list of toxic and harmful pollutants published by the competent department of health, etc. When identifying the specific harmful substances involved in environmental pollution, we should understand the harmful substances stipulated in the Summary of 2019 as scope enumeration rather than specific categories enumeration. We need to understand the harmful attributes of environmental pollution substances as ecological hazards or dangers. We need to pay attention to whether the above-mentioned contents belong to the attention regulation or legal fiction. Firstly, when environmental pollution substances can be identified as hazardous substances according to the relevant regulations of the state, the above contents belong to the provisions of attention. For example, in January 2019, the Ministry of Ecology and Environment jointly with the Health and Health Commission issued the List of Toxic and Hazardous Atmospheric Pollutants (2018), 11 pollutants are listed in the list, which clearly belong to the harmful substances within the scope of the above provisions. Secondly, if there is no state regulation that clearly belongs to harmful substances, the above-mentioned content does not belong to the attention regulation, but belongs to the legal fiction. It needs to be judged whether it belongs to harmful substances according to the specific circumstances. For example, "untreated domestic waste" stipulated in the "Summary of 2019", according to many local legislation and international experience, many untreated domestic wastes belong to non-polluting recyclable waste, which generally does not have the nature of polluting the environment. Discharge, dump and dispose of recyclable garbage from domestic waste, even if the garbage is not disposed of, or has not been discharged, dumped or disposed of with legal permission or has not complied with legal regulations, but because of its non-environmental pollution nature, it is difficult to be considered as a harmful substance.

3. Understanding and Application of the Provisions on Subjective Faults in Environmental Pollution in the Summary of 2019

Subjective fault is one of the most controversial issues in the theory of criminal law to identify environmental pollution crime. There are four viewpoints: negligence theory, mixed theory, Ambiguity Theory and intentional theory. The theory of negligence holds that "the actor should foresee the consequences of serious environmental pollution caused by the act of discharging, dumping or disposing of harmful substances by himself, because he neglected to foresee, or had foreseen and credulous to avoid it". [2] The mixed theory holds that the subjective aspect of the amended crime of polluting the environment includes both intent and negligence. [3] The theory of ambiguity holds that the form of the crime of polluting the environment is a kind of ambiguous crime, which is similar to at least the fault in the aggravated consequential crime. [4] From the content of the provisions of the Summary of 2019, the Summary of 2019 is based on the position of accountability and tends to deliberately say. The Summary of 2019 stipulates that judging whether the perpetrator has intent to commit environmental pollution crime should be based on a comprehensive analysis of nine situations. If the perpetrator fails to give a reasonable explanation under one of the eight circumstances stipulated in the "Summary of 2019", he may be determined that he intentionally commits a crime of environmental pollution, except that there is evidence to prove that he really knows nothing about it. Determining the subjective fault of environmental pollution crime as intentional clearly reflects the position of criminal liability doctrine, which provides consistent guidance for the judicial discretion of subjective fault of environmental pollution crime, is conducive to the centralization and unification of national judicial authority in the construction of ecological civilization, and is conducive to the implementation of the strictest environmental protection judicial system and the most stringent concept of environmental protection rule of law.

In practice, most cases of environmental pollution are carried out by units. Our criminal law also clearly stipulates that units can constitute crimes of environmental pollution, but in judicial practice, it is generally difficult for units to be prosecuted for crimes of environmental pollution. According to scholars' research, only 10 of the 4731 first instance judgments of environmental pollution crimes made by the national courts constitute unit crimes from 2014 to 2017, accounting for only 0.21% of
the total number of judgments. [5] This phenomenon does not conform to the reality of environmental pollution in modern society, nor is conducive to the true realization of criminal rule of law. In order to implement the criminal policy of combining punishment with leniency and prevent inappropriate narrowing of the scope of criminal responsibility, the Summary of 2019 stipulates that the investor, operator and main beneficiaries who focus on combating (involving environmental pollution crimes) and carry out environmental pollution acts for the benefit of the unit should be recognized as unit crime if they have one of the four situations stipulated. The above content is not only the reiteration of the provisions of the crime of environmental pollution constituted by the relevant units in the criminal law, but also the development of the objectivism standpoint of the conditions for the establishment of the unit. Firstly, interest attribution is the basic condition for judging the establishment of environmental pollution crime. The implementation of environmental pollution behavior for the benefit of the unit has the significance of both subjective and objective conditions. It includes not only that the interests formed by environmental pollution belong to the unit, but also that the unit has the subjective knowledge of gaining benefits through environmental pollution. Secondly, the subjective understanding of environmental pollution can be inferred from the internal decision-making performance of the unit. If the unit's decision-making organ decides in accordance with the decision-making procedure or is decided or agreed by the unit's actual controller, principal person in charge or authorized person in charge, or commits a crime of environmental pollution to the individual members of the unit, without stopping or taking timely measures, but recognizes, connives or acquiesces, it belongs to the unit crime. Thirdly, the unit's environmental pollution behavior should be judged according to the characteristics of the unit's external activities. Those who use business licenses, contracts, official seals and seals of units to carry out activities abroad and commit crimes of environmental pollution by using vehicles, ships, production equipment, raw and auxiliary materials of units shall be recognized as unit environmental pollution crimes.

The summary of 2019 defines the subjective fault of environmental pollution crime as intentional, and in fact lays a foundation for resolving the controversy of the ceased form of environmental pollution crime. As mentioned earlier, many scholars have affirmed that the crime of environmental pollution has subjective negligence. As the general theory of criminal law holds that negligence crime does not stop, it leads to the impossibility of punishing the attempted offence of environmental pollution crime, which is not conducive to the strict criminal law network and the realistic need of maintaining the construction of ecological civilization. For this reason, the 2019 Summary stipulates that the perpetrator has already started to unlawfully discharge, dump and dispose of toxic and harmful pollutants. If the relevant departments fail to succeed due to investigation and punishment or other reasons other than will, they may be prosecuted for the crime of environmental pollution (attempted). The above unsuccessful situation should be understood in conjunction with the relevant provisions of the Interpretation 2016. Firstly, the perpetrator has already started to unlawfully discharge, dump and dispose of toxic and harmful pollutants. The act itself conforms to the provisions of Article 1 (1) to (7) of the 2016 Interpretation and has committed an act. If the danger of environmental pollution has not yet arisen due to the investigation and punishment of the relevant departments or other reasons beyond the will, it shall be a crime of environmental pollution (attempted). Secondly, the perpetrator has already begun to unlawfully discharge, dump and dispose of toxic and harmful pollutants, which is in line with the provisions of Article 1 (8) to (17) of the 2016 Interpretation and has caused the danger of serious harmful consequences. If the consequences of environmental pollution have not yet appeared due to the investigation and punishment of the relevant departments or other reasons beyond the will, they shall be considered as the crime of environmental pollution.

4. Understanding and Application of Competition and Cooperation Provisions on Environmental Pollution in the Summary of 2019

There are a lot of problems of competition and cooperation in environmental pollution cases, which have greatly troubled criminal judicial practice. The prominent manifestations are that the rate of correction of environmental pollution cases in the second instance is too high, [6] especially the...
In recent years, illegal management of toxic and harmful substances has become increasingly rampant, which has gradually become the source of crime of environmental pollution and poses a major threat to the construction of ecological civilization. In order to cut off the criminal chain of environmental pollution and control the crime of environmental pollution from the source, the Summary of 2019 makes a comprehensive provision on it. Firstly, it adheres to the principle of substantive judgment and makes substantive judgment on the social harmfulness of the illegal operation of hazardous waste by units or individuals. Units or individuals may not be punished for the crime of illegal operation if they have not obtained the license for the operation of hazardous waste according to law, but their business activities of collecting, storing, utilizing and disposing of hazardous waste have not exceeded the standard for discharge, unlawful dumping of pollutants or other illegal causes of environmental pollution. Secondly, we should adhere to the principle of comprehensive judgment and judge the social harmfulness of illegal operation of hazardous wastes by units or individuals according to their position and role in the criminal chain. Existing evidence can prove that the actor's undocumented operation of hazardous waste is part of the illegal operation of hazardous waste industry chain, and has formed a relatively stable criminal chain with division of labor, responsibility, benefit-sharing, and the actor or its closely related upstream or downstream links have the situation of unlawful discharge, dumping and disposal of hazardous waste causing environmental pollution, while trading prices. Obviously abnormal, the perpetrator can choose a felony in the crime of pollution of the environment and the crime of illegal business operation according to the specific circumstances of the case. The above provisions reflect a distinct tendency of objectivism in criminal law. The interpretation and application of criminal law should be guided by the current objective needs of ecological civilization construction, which is in line with the substantive purpose of protecting the interests of ecological law.

In judicial practice, environmental pollution, especially water pollution, often occurs, which endangers both ecological legal interests and public safety. Therefore, it involves the concurrence of crimes, usually manifested as the concurrence of the crime of polluting the environment and the crime of throwing dangerous substances. To deal with this phenomenon, there are different judgments in judicial practice. In 2013, the Supreme People's Court announced that one of the four typical cases, the "2.20" extraordinarily heavy water pollution accident in Yan Cheng, Jiangsu Province, in 2009, was convicted of the crime of putting dangerous substances into the water. [7] However, in a similar case in He Ze, Shandong Province, the court of second instance changed the judgment of the court of first instance on the crime of putting dangerous substances into the water and sentenced it as the crime of polluting the environment. In order to safeguard the centralization and unification of national judicial authority in the construction of ecological civilization, the Summary of 2019 stipulates that environmental pollution should be allowed to endanger public safety and cause serious consequences. If the punishment for the crime of pollution of the environment is obviously insufficient for the crime, it can be convicted and sentenced according to the crime of throwing dangerous substances.

The conviction of environmental pollution in China's criminal law generally has a light sentence, especially the most common crime of environmental pollution in criminal justice. The maximum legal penalty for this crime is only seven years, and the corresponding penalty range is especially serious. For the implementation of environmental pollution acts endangering public safety, causing heavy casualties, heavy losses of public and private property and other serious consequences, the maximum penalty for the crime of pollution of the environment can only be seven years' imprisonment, which obviously does not conform to the principle of compatibility between crime, responsibility and punishment. Therefore, it is necessary to make the above provisions in the "Summary of 2019". It should be noted that the above phenomena are only coincidence of laws and regulations, [8] or imaginary coincidence, [9] the way of dealing with them is not comprehensive. If environmental...
pollution can endanger public safety and cause serious consequences, it may be concurrence of laws or imagination. Firstly, if environmental pollution can endanger public safety, causing serious consequences of heavy losses of public and private property, and causing no serious casualties, and if the loss of public and private property does not exceed one million yuan, it may be recognized as constituting the crime of environmental pollution. Secondly, if environmental pollution can endanger public safety, causing serious consequences of heavy losses of public and private property, and causing no serious casualties, and the losses of public and private property exceed one million yuan, it may be recognized as constituting the crime of putting dangerous substances into use. Thirdly, if environmental pollution can endanger public safety and cause serious casualties, it may be recognized as constituting the crime of putting dangerous substances into operation. Fourthly, the implementation of environmental pollution behavior allows it to endanger public safety, resulting in serious consequences, which are in line with the provisions of Article 1 (1) to (7) of the 2016 Interpretation. If the punishment for the crime of environmental pollution is obviously insufficient, it can be convicted and sentenced according to the crime of putting dangerous substances.

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