On Linking Administrative Law Enforcement and Criminal Justice in Environmental Management

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Abstract. Linking administrative law enforcement and criminal justice in environmental management promotes the cooperation between environmental administrative law enforcement departments and criminal justice institutions in combating environmental crimes and ensuring environmental safety. Problems arise in their joint efforts in combating environmental crimes in recent years, such as low case-transfer rate, unclear transfer criteria, difficulty in evidence conversion and test identification, as well as unavailability to network information-sharing platforms. It is imperative to build up evaluation system, standardize case transfer criteria, clarify evidence conversion rules, and establish network information-sharing platforms. Only in this way can the two laws converge effectively, and a harmonious environmental management order be maintained.

1. Introduction
Environmental management in China has experienced unprecedented pressure and challenge than ever before. Major environmental accidents occur frequently, which not only forms a health hazard to public lives but hinders economic development. It is imperative to curb the growth of environmental crimes by means of both administrative and criminal justice. The convergence between these two laws has become an important means to strengthen the judicial protection of the ecological environment.

To promote the rule of law and the construction of ecological civilization, the Chinese government has given increasing attention to the convergence of environmental administrative law enforcement (ALE, for short) and criminal justice (CJ, for short). In 2015 the CPC and the state council issued Opinions on speeding Up the Construction of Ecological Civilization and Overall Plan for the Reform of the Ecological Civilization System successively and demanded to improve the connection between these two laws, which was reiterated by the state council in 2016 in its 13th five-year plan for ecological environment protection. In 2017 the Ministry of Environmental Protection, the Supreme People's Procuratorate and the Ministry of public security issued Measures for linking ALE of environmental protection with CJ. It is apparent that the Chinese government has realized the value of linking these two laws and is determined to combat environmental crimes to protect ecological environment. Therefore, it is of profound significance to seek actively the smooth convergence between ALE and CJ in environmental management and to improve their convergence so that environmental damage can be curbed, and environment can be protected.

2. The necessity of converging the two laws in environmental management
Currently, traditional civil administration is far from regulating behaviours of damaging the environment. Countries across the globe have realized more than ever the role of criminal law in
environmental protection. Chinese criminal law stipulated the crime of destroying the protection of environment and resources. Its Amendments to Criminal law (VIII) changed “serious environmental pollution crimes” to “environmental pollution crimes” [1]. In 2013 the Supreme People's Court (SPC, for short) and the Supreme People’s Procuratorate (SPP, for short) jointly issued Provisions on handling criminal cases of environmental pollution by law. Nevertheless, there is a breakage between the judicial and administrative handling of environmental management cases. Thus, linking ALE and CJ in environmental management effectively is indispensable to protect environment and to fight against environmental crimes.

2.1. To expand case sources, discover and crack down on environmental crimes in time
Environmental crimes in China have outnumbered environmental cases settled by CJ as many cases are only subject to administrative punishment and have not yet entered the judicial process. The linking of ALE and CJ can discover and crack down on environmental crimes in time. According to statistics, there were 139059 cases of environmental administrative punishment in 2013, of which only 37 cases of environmental crimes were subject to the first instance of environmental criminal trials. This number increased to 663 cases in the first half of 2019 and the number of environmental administrative punishment dropped to 10854 [2]. It is shown that linking the two laws in environmental crime crackdown is effective, especially in regulating environmental cases.

2.2. To enforce strictly and supervise environmental protection effectively
In local ALE, some cases were not transferred to relevant departments and punishment was replaced by fines. Some areas only focus on economic development while neglecting the protection of ecological environment, which turns to strong resistance to environmental protection. If administrative law and criminal judicial law are well linked, the judicial departments can supervise the law enforcement by the administrative offices, forming effective restrictions conducive to standardize the law enforcement by administrative departments.

2.3. To tackle environmental crime cases in a scientific way and standardize environmental protection case-handling criteria
In environmental crimes, it takes expertise in the field of environment protection to identify and collect evidence of ecological damage and causality of crimes. Linking these two laws to handle environmental cases gives rise to problems such as inaccessibility of information assistance and dissonant evidence convergence, which makes it necessary to improve the environmental legal literacy of public security and judicial institutions and to strengthen the construction of specialized teams. The construction of the linking mechanism between ALW and CJ is conducive to the establishment of a holistic standard for handling environmental cases.

3. Current situation of linking the two laws in environmental management
Chinese laws and regulations have made different provisions in order to clarify the case-handling functions of ALE agencies and judicial institutions and to effectively link up the "two laws". After the comprehensive construction of the convergence mechanism of the "two laws", the Third Plenary Session of the 18th Central Committee of the Communist Party of China proposed to improve the connection mechanism between ALE and CJ in 2013. In addition, SPC and the SPP issued Interpretation on several issues concerning the application of law in handling criminal cases of environmental pollution in the same year. Meanwhile, the Ministry of Environmental Protection (MEP) printed and distributed Notice on strengthening the connection between environmental ALE and CJ, providing a solid basis for converging the two law. In 2014, the Fourth Plenary Session of the 18th CPC Central Committee reinstated to strengthen the linking environmental ALE and CJ and made it the top strategic priority in promoting the rule of law in an overall way. Provinces and cities all cross China successively announced Opinions and approaches on the convergence of the "two laws". The prosecutorial institutions carried out a special case filing and supervision activity for eight months on
crimes of damaging environmental resources and endangering food and drug safety, where special supervision effectively deterred criminals' arrogance, promoted strict and fair law enforcement as well as the construction of a long-term mechanism linking these two laws. In January 2020, the Ministry of Public Security, SPP, and MEP jointly issued the Measures for the convergence of environmental protection ALE and CJ with the purpose to punish environmental crimes by law. In terms of legislation, the linking between the two laws has been deepened, though not smooth enough. Therefore, Four Mores and Four Less have come into being, which are more cases but less investigation and punishment, more passive disposal but less active supervision, more administrative treatment but less criminal pursuit, more requests for transfer but less successful transfer [3].

4. Major issues in linking the two laws in environmental management

Despite the achievements mentioned above, environmental management faces many issues and challenges.

4.1. Unsound legal basis

The norms of the newly established two-law convergence mechanism are administrative rules and regulations, which are far from enough in terms of effectiveness. Administrative rules and regulations have binding force on administrative departments, but with increasing emphasis on the independence of the judiciary, these rules and regulations are insufficient to coordinate judicial offices. In view of the current high incidence of illegal crimes in food and medicine, safe production, environmental protection, labor security, sea waters and islands, it is necessary to regulate the mechanism of linking two laws legally, which benefits the efforts of strengthening environmental protection in China.

Considering the lack of necessary coercive means and measures by environmental authorities to curb environmental violations timely, the Standing Committee of the National People's Congress has amended the Environmental Protection Law to empower environmental protection departments to exercise administrative coercive measures. In accordance with the provisions of Article 25 of the Environmental Protection Law, the environmental protection departments in charge and other departments responsible for the supervision and management of environmental protection can shut down and sequestrate facilities and equipment that emit pollutants. In practice, it is unavoidable to enforce coercive measures. In regard of local protection, the environmental protection departments dare not exercise their power to regulate some medium and large enterprises, which make it even more important for environmental protection departments to able to enforce laws independently.

4.2. Discordance between environmental administrative and law enforcement agencies

China's Environmental Protection Law stipulates that both the environmental protection department and other agencies responsible for supervision and management of environmental protection take charge of environmental protection. The model of multi-department management gives rise to frequent interest conflicts, overlapping authority, and unclear responsibilities. With responsibilities unclarified among departments and agencies, the efficiency of ALE will be negatively affected. When problems occur, all departments and agencies are prone to shift responsibilities, resulting in loopholes in punishing environmental violations, which is not conducive to the investigation and handling of environmental offences with criminal responsibility.

4.3. Incompatibility of case evidence in two laws

If an environmental violation constitutes a crime and needs to be investigated for criminal responsibility, it shall be handled in accordance with the Criminal procedure law of the People's Republic of China. If environmental protection departments in charge and other departments or agencies responsible for environmental protection supervision and management suspect any environmental violations in law enforcement, they should transfer the case to the public security organization in a timely manner. Because the investigation and handling of environmental crimes is highly technical, the standard of evidence in environmental protection ALE may be inconsistent with
the evidence provisions of criminal procedure law. In addition, in administrating law enforcement, law enforcement officials may not have the awareness to fix and preserve relevant evidence. Therefore, problems in evidence may arise when linking these two laws [4].

4.4. Information transmission problems among departments related to the "two laws"
With increasing environmental protection violations, transferring cases by traditional ALE units cannot meet the urgent need to combat environmental violations. Online convergence and information sharing platforms have not been fully developed. On one hand, there is the lack of financial security. On the other hand, the technical problems of the construction of the network information sharing platforms need to be examined and considered. Without sufficient communication, it is impossible for the judicial organizations to carry out active supervision. As environmental crime cases are mainly transferred by ALE units, replacing punishment with fines has become the norm.

5. Ways to improve the convergence mechanism in environmental management
As environment is related to people's livelihood, national and social harmony and stability, environmental security and ecological civilization has become a top priority and been paid much attention to by Chinese leaders. It is not only stated in many important documents but has been integrated into the national public security system. Environmental ALE departments, public security and judicial organizations are obliged to control and handle environmental crimes legally. Facing the severe situation of environmental security, it is vital to settle the difficulties in linking environmental security ALE and CJ, effectively sort out the key nodes of the "two laws" convergence mechanism, and to improve the effectiveness of environmental crime control.

5.1. Establishing an evaluation mechanism to facilitate case transference
To effectively solve the problem of difficult transference of or unforwarded cases while linking the "two laws", it is suggested that environmental ALE departments and public security organizations improve the evaluation mechanism of rewards and penalties. If the linking of the two laws can be integrated into the end-of-year performance appraisal system, we can implement accountability mechanism, which can urge relevant departments and their staff to raise their awareness of law enforcement, being aware of the bottom line, enforce the law strictly, enhance enthusiasm for work, and resolutely put an end to power abuse and dereliction of duty.

Meanwhile, public security organizations should refresh their understanding of environmental protection and fulfil their responsibilities well. On one hand, they shall file, investigate, report, and transfer the case to ALE agencies by law, based on the clues provided by ALE departments. On the other hand, public security organizations play an important role in crime prevention. Instead of waiting for transferred cases, they should take initiatives. By finding clues to criminal cases, exchanging case clues timely with ALE departments, and resolving cases in a joint effort, can responsibility-shirking and slackness be avoided.

5.2. Standardizing the criteria of case-transferring to promote the rate of transfer acceptance
Due to the difficulty in confirming whether it is a crime and deciding which crime it should be, as well as other human factors such as the mastery of criminal law by environmental ALE personnel, it is suggested that ALE departments establish a close working relationship with public security organizations, prosecutorial organizations and other related departments. It is also advised to stipulate Suspected environmental safety crime case transfer-filing standard, which can elaborate on the prosecution standards of environmental safety criminal cases and provide reference for environmental ALE departments. With the basis and standards for investigating and dealing with environmental violations, the enthusiasm of ALE departments and personnel will be greatly promoted, which will motivate them to make greater efforts to crack down on crimes. Moreover, agencies involved can enhance their cooperation and fulfil the smooth linking between them.
However, two situations shall be paid attention to in judicial practice. One is the ALE department should transfer the case to the public security organization immediately once they suspect the case to be a crime by the standard of prosecution in environmental security criminal cases in law enforcement inspection. If the case is not held for further investigation, the public security organization cannot file the case for investigation instantly, which will negative impact the effectiveness of the crackdown against crime.

The other situation is that the public security organization sometimes do not actively accept cases transferred by ALE departments but wait until ALE departments have collected sufficient evidence or examined the case well. If ALE departments are allowed to investigate and collect evidence in such a case, the public security organizations have turned to be the "second hand" in case-transfer, which should never happen and be forbidden.

5.3. Standardizing evidence conversion rules
Evidence is the key medium to link the two laws in environmental management. First of all, local governments should establish a special fund system for law enforcement to provide support in human resources, material resources and finance, and to enhance the ability of ALE departments to collect fixed evidence. Secondly, environmental ALE departments and personnel should have evidence awareness, learn to distinguish cases and identify case nature accurately, increase their procedural awareness of evidence-collect, fixation and preservation via systematical professional training.

Thirdly, environmental ALE departments and personnel shall set up specialized agencies to conduct special evidence reviews, examine the transferred cases more rigorously. By focusing on the objectivity, legality, procedurality and evidence credibility, and to maintain timely contact with the public security organs, environmental ALE departments and personnel should keep in touch with the public security organs. Once the evidence is found to be defective, it shall be promptly corrected or explained.

Fourthly, when the public security organizations intervene in the case, ALE departments and personnel should take the initiative to exert their professional advantages and cooperate with the public security organizations to investigate and collect evidence. Public security organizations should also give full play to their advantage in criminal evidence collection and handling, guiding ALE departments and personnel to collect evidence and apply rules strictly and striving to achieve a normative interface between law enforcement evidence and criminal evidence.

Lastly, ALE departments and public security organs should strive to establish unified conversion rules for ALE evidence and criminal evidence based on practical operation in their long-term cooperation, which makes the evidence conversion between "two laws" effective.

Specifically, the conversion rules of physical evidence should be based on the mode of “direct conversion". Due to its objectivity and stability which cannot be compared by other forms of evidence, the basic attributes of physical evidence will not change because of different procedures, methods and subjects of evidence collection [5]. What public security and judicial organs should do is to review the legality of the physical evidence collected by the ALE departments in the process of law enforcement, complete necessary legal procedures, and adopt the evidence. There is no need to recollect evidence, which costs human resources and money.

But if collected physical evidence is found to be defective and cannot be corrected or reasonably interpreted, it should not be directly converted. In this case, evidence needs to be recollected as converted evidence has become an exception and cannot be adopted. As verbal evidence is more subjective and vulnerable to the influence of declarants, collection method and procedures, it is not stable or objective. Therefore, the public security and judicial organs should recollect evidence of speech so that the verbal evidence collected by ALE departments in law enforcement can be verified and examined.

However, there are exceptions. If the verbal evidence is confirmed to be reliable, necessary, and impartial, it cannot be excluded. Of course, the non-excluded verbal evidence can be used as criminal evidence only if it can be triangulated with other evidence. Expert opinions can be used upon
reviewing. As the test and appraisal of environmental safety is highly professional, the appraisal opinions need no further verification as long as the referee and the appraisal authority entrusted by ALE departments in accordance with the law have the corresponding qualifications to provide appraisal opinions and the procedure is fair. If the appraisal opinion is found defective to affect the fair handling of the case and the inspection materials can be reused, it can be re-appraised. The on-the-spot documentary evidence made by the ALE department is similarly subject to different conversion ways. The on-site investigation record, inspection record and on-site recording and video materials, which are essentially physical evidence, can be converted to be used. In exceptional circumstances, no conversion shall be done or used if the reasonable doubts of physical evidence cannot be ruled out. The transcripts of on-site inquiries, which are essentially verbal evidence, shall be re-collected. They can be used if review can exclude reasonable doubts.

5.4. Establishing network information platform to enjoy smooth information sharing
The linkage of the "two laws" is critical to environment protection management by law as it runs through evidence conversion, case transfer, case investigation, and prosecution trial. Establishing network information platform can effectively facilitate information sharing between the ALE departments and public security and judicial organs in the transfer and filing of cases, and comprehensive tracking of case process. The establishment of network information platform can effectively realize the transfer and filing of cases between ALE departments and public security judicial organs, case process tracking and other information sharing. It can assist the public security and judicial organs to obtain the information of suspected criminal cases and record them on file. It also helps ALE departments to identify information from the cases handled by the public security and judicial organs and form an interactive information sharing mechanism. As only a few provinces have established network information sharing platforms, most areas still share information by means of case inquiries, joint meeting system, and case transfer letters and other forms of convergence, which is far from the desired goal. To establish a quality information sharing platform, the following measures shall be taken.

Firstly, it is necessary to promote the construction of network information sharing platform across China gradually by strengthening infrastructure construction and intension-type development, which can help the platform to run efficiently and orderly. Secondly, it is important to further standardize the entry subject, scope, time and criteria of the information sharing platform. Currently, the entry data misalign the actual crime number displayed in the information platform resulting from mindlessness at work due to no uniform requirements for information entry. Environmental ALE departments shall abandon the single obligatory access model and switch to the cooperative model among ALE departments, public security and prosecutorial organs.

Thirdly, it is vital to implement the joint meeting system and information notification system among all departments. The newly created joint conference system has not yet formed a long-term working mechanism. Most work stays at the superficial level. Only when emergency arises will the joint meeting be held. A system shall be created so that each party is clear of who, when, and how to hold joint meetings and that joint meetings can be held from time to time. An interim joint meeting can be convened at any time for major complex or difficult cases to consult and form a joint strike force. Communication and inspection results shall be clarified, and false reporting, fraud, and notification lag shall be resolutely avoided.

Lastly, network information sharing platform management shall be strengthened and achieve the goals of online transfer, online acceptance and online supervision. By clearing the "roadblocks" of the effective convergence of the two laws, ALE departments and public security and judicial organs can coordinate well in combating environmental crimes and protecting environmental security.

6. Conclusion
Constructing the linking mechanism between the "two laws" is essential for ecological harmony and environmental safety. The investigation and handling of environmental management cases is
conducive to the deepening of environmental protection work in China, whose success lies in the effective linking between ALE and CJ. Laws and regulations issued in recent years in China have contributed to this success. But the situation of environmental crimes is very grim, which constantly arouses the public attention and imposes great pressure on ALE departments and the public securities and judicial organizations. The smooth linking mechanism between the "two laws" proves to be vital to control environmental illegal and criminal activities, which requires ALE departments shall investigate and handle strictly illegal cases legally and transfer the suspected criminal cases with efficiency. Accordingly, the public security and judicial organs shall strictly file the case for investigation, prosecution and trial and supervise it well. By linking the "two laws" effectively can all the parties cooperate well and fulfil their respective responsibilities with the common goal to control environmental crimes and to improve environmental management

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