

Research on the Reverse Transfer System between Administrative and Criminal Justice in Environmental Pollution Cases

Wei Yu, Jiao Luo

Department of Law, China Jiliang University, Hangzhou, Zhejiang, China

Abstract: Under the governance concept of protecting the ecological environment through the strictest systems and the most rigorous rule of law, the effective connection between administrative law enforcement and criminal justice has become an important institutional guarantee for strengthening accountability for environmental violations. For a long time, theory and practice have mainly focused on the forward transfer of cases from administrative agencies to criminal justice authorities, while insufficient attention has been paid to the reverse transfer of cases back to administrative procedures after the conclusion of criminal proceedings. Environmental pollution cases have special attributes such as strong technical evidence, latent damage consequences, and diverse responsible parties. As a result, after criminal proceedings conclude due to insufficient evidence, minor circumstances, or exemption from criminal punishment, administrative penalty procedures are often not initiated in a timely manner, easily creating an accountability gap where there is neither criminal prosecution nor administrative penalty, thereby weakening the deterrent effect and institutional effectiveness of environmental rule of law. This paper takes environmental pollution cases as the research object, combines their special case attributes, and conducts a systematic study on the theoretical basis, practical operation, and improvement paths of the reverse transfer system. By analyzing the theoretical foundations, including legal liability theory and the principle of proportionality, and examining practical difficulties in procedural initiation, evidence conversion, liability pursuit, and supervision, this paper proposes institutional improvements such as refining procedural rules, establishing evidence conversion mechanisms, strengthening the administrative liability system, and enhancing

procuratorial supervision. Through typified case analysis and examination of local practices, this paper aims to construct a well-coordinated accountability mechanism for environmental violations, thereby improving the overall governance effectiveness of environmental rule of law.

Keywords: Environmental Pollution; Administrative-Criminal Linkage; Reverse Transfer; Procuratorial Supervision; Legal Liability

1. Introduction

Under the national strategy of “using the strictest systems and the most rigorous rule of law to protect the ecological environment,” China’s environmental legal system has entered a stage of refined governance. In environmental pollution control, China has built a legal framework covering air, water, soil, and solid waste, integrating administrative, civil, and criminal liabilities. Criminal sanctions serve as the final line of defense in the “most rigorous rule of law.” The Eighth Amendment to the Criminal Law in 2011 lowered the threshold for criminalization, and subsequent judicial interpretations further refined the standards for conviction and sentencing, strengthening accountability for environmental crimes.

The rigor of the rule of law, however, depends not only on legislative design but also on implementation effectiveness. Under a system of multiple responsibilities, environmental violations are typically first supervised by administrative agencies and transferred to the judiciary when criminal standards are met—this constitutes the “forward transfer.” In judicial practice, when the procuratorate decides not to prosecute or the court exempts the defendant from criminal punishment, the case must be transferred back to the administrative procedure through “reverse transfer” to impose administrative liability. Ensuring smooth

operation in both directions is essential for forming a complete closed-loop accountability system.

Since the Regulations on the Transfer of Suspected Criminal Cases by Administrative Agencies were issued in 2001, China's administrative-criminal connection system has been preliminarily established. The revised Administrative Penalty Law in 2021 added Article 27, Paragraph 2, which for the first time clarified the legal status of reverse transfer. The Working Measures on the Coordination of Environmental Protection Administrative Law Enforcement and Criminal Justice, jointly issued by the former Ministry of Environmental Protection, the Ministry of Public Security, and the Supreme People's Procuratorate in 2017, systematically stipulated case transfer, legal supervision, and evidence collection and use in the environmental field. Nevertheless, the current system has long focused on the "forward transfer" link, leaving many procedural details for "reverse transfer" unspecified. This institutional gap has led to difficulties in practice.

The core question of this study is: in handling environmental pollution cases, how can the reverse transfer system be improved to address the problem of "no criminal prosecution, no administrative penalty," ensuring that every environmental violation is subject to legal evaluation and sanction, and ultimately achieving a seamless closed loop of environmental accountability? This paper focuses on environmental pollution cases because they have distinct characteristics—latent harm, high technical thresholds, and complex subject relationships—which make the difficulties faced by reverse transfer particularly evident in this field.

2. Theoretical Basis and Institutional Connotation of Reverse Transfer

The formation of the reverse transfer system is grounded in existing legal principles and normative structures. Clarifying its academic foundation and defining its core concepts and institutional boundaries is the logical starting point for the study.

2.1 Definition of Core Concepts

The connection between administrative law enforcement and criminal justice is an institutional arrangement gradually developed in

China to address the intersection between administrative violations and criminal offenses. From a jurisprudential perspective, a complete legal liability system requires a reasonable connection between administrative and criminal liabilities to ensure effective coordination across different types of legal liability[1].

The 2021 revision of the Administrative Penalty Law added Article 27, Paragraph 2, establishing the relevant institutional arrangement and clarifying the legal requirement for transferring cases to administrative agencies after criminal proceedings conclude. With this provision, China's administrative-criminal connection system has gradually shifted from a one-way model focused on case transfer to a two-way structure emphasizing procedural coordination[2]. Forward transfer and reverse transfer together constitute important components of this system, which is significant for improving accountability mechanisms for environmental violations.

Compared with general illegal and criminal cases, environmental pollution cases have distinct characteristics in behavior patterns, evidence forms, damage identification, and liability structure. These characteristics make such cases face more complex institutional challenges in the connection process, particularly in the reverse transfer link after criminal proceedings conclude. Environmental pollution cases mainly refer to acts that damage the environment and are suspected of constituting the crime of environmental pollution under Article 338 of the Criminal Law and other related environmental crimes. Fact-finding in such cases often relies on professional technical materials such as environmental monitoring data, environmental damage judicial appraisal opinions, hazardous waste attribute identification conclusions, and pollution diffusion simulation analysis. These technical evidences not only constitute an important basis for fact-finding but also play a key role in the connection process between administrative law enforcement and criminal justice[3].

2.2 Jurisprudential Basis of Reverse Transfer

Administrative liability and criminal liability are both important forms of legal liability in public law and are important institutional tools for the state to impose sanctions on illegal acts. The relationship between the two constitutes the

basic jurisprudential basis of the reverse transfer system. The institutional legitimacy of reverse transfer is based on a comprehensive understanding of this relationship: there is not only a clear institutional distinction between the two but also necessary functional complementarity, and under specific procedural conditions, the conversion of liability evaluation is realized.

Clarifying the boundaries of these two liabilities is a prerequisite for related discussions. Administrative liability and criminal liability belong to different normative systems, with obvious differences in normative purposes, constituent elements, proof standards, and procedural guarantees. Administrative liability is mainly aimed at acts that violate administrative management order, with its institutional goal being to timely correct illegal acts and restore administrative order, with the overall value orientation more focused on efficiency and order maintenance. Criminal liability arises from the infringement or threat to legal interests protected by the criminal law and has obvious ethical condemnation attributes. Criminal procedure must strictly follow the principles of legality of crimes and punishments and the presumption of innocence, requiring proof to meet the high standard of “clear facts, sufficient and reliable evidence, and beyond reasonable doubt.” The fact that an act is not criminally prosecuted does not necessarily mean it is not an administrative violation. A finding of “not guilty” or “non-prosecution due to insufficient evidence” in criminal proceedings often only indicates that the degree of social harm has not reached the level requiring criminal punishment, or that the existing evidence is insufficient to meet the criminal standard of proof[4].

In procedural operation, reverse transfer is mainly reflected as the conversion of liability pursuit procedures. When criminal proceedings end with non-prosecution, not guilty verdict, or exemption from criminal punishment, the criminal procedure has completed its evaluation of the act’s criminal illegality. At this point, case materials can be transferred to the administrative agency according to institutional provisions, which will then continue to judge whether the act constitutes an administrative violation. This institutional arrangement does not constitute repeated evaluation of the same act but rather a legal evaluation at different levels for different legal attributes of the act. In comparative law,

the “double jeopardy” principle in American law and the “ne bis in idem” principle in civil law systems mainly prohibit repeated criminal prosecution for the same criminal act and do not necessarily exclude administrative penalties after criminal proceedings conclude. China’s theory and practice generally recognize this procedural conversion mechanism between criminal liability and administrative liability[5].

In specific application, care should still be taken to avoid substantive double sanctions. For example, when a criminal judgment has fully evaluated the act and imposed criminal punishment, the application of administrative penalties should be cautious to prevent disguised double punishment. The principle of proportionality is an important basic principle in public law, generally including three levels: appropriateness, necessity, and proportionality. The principle of proportionality between offense and punishment is an important principle established by the Administrative Penalty Law, requiring that the type and degree of administrative penalties be compatible with the facts, nature, circumstances, and degree of social harm of the illegal act. From the perspective of institutional operation, the initiation of the reverse transfer mechanism itself reflects the requirements of the principle of proportionality and the principle of proportionality between offense and punishment[6]. If the state completely abandons sanctions for acts not criminally prosecuted due to minor circumstances, it is difficult to achieve governance goals such as punishing violations, preventing recidivism, and restoring order, nor can it meet the appropriateness requirements of the principle of proportionality. In contrast, imposing administrative sanctions of lower severity than criminal punishment by initiating administrative penalty procedures can not only deny the illegality of the act and eliminate illegal gains but also form necessary warnings for potential violators, which is more in line with the requirements of the principle of proportionality and the principle of necessity.

3. Practical Dilemmas in the Operation of Reverse Transfer

Although the Administrative Penalty Law has established the legal status of the reverse transfer system, and norms such as the Working Measures on the Coordination of Environmental Protection Administrative Law Enforcement and

Criminal Justice have constructed its institutional framework, the operation of the current system still faces multiple practical difficulties.

3.1 Procedural Initiation Dilemma

In the operation of the reverse transfer system, procedural initiation as the primary link often encounters problems in practice. On one hand, judicial authorities lack enthusiasm for case transfer; on the other hand, administrative agencies are passive in case reception and handling, making it difficult for the reverse transfer procedure to start in a timely manner. From the perspective of judicial authorities, the lack of transfer motivation and unclear transfer standards are the main reasons. After the procuratorate makes a decision not to prosecute, the criminal procedure ends, and the assessment task of the case in the criminal justice system has been completed. At this point, producing procuratorial recommendations, organizing transfer materials, and communicating and coordinating with administrative agencies are additional tasks, usually not included in core business assessment indicators. Under the current realistic pressure of heavy caseloads in the judicial system, prosecutors lack incentives to actively carry out transfer work. After a court makes a not guilty verdict or exempts from criminal punishment, it often believes that its adjudicative duties have been completed, and actively issuing judicial recommendations for transfer is relatively limited.

At the same time, the transfer standards themselves have uncertainty. Article 27 of the Administrative Penalty Law uses “should be given administrative punishment” as the basis for transfer, lacking a specific definition of the scope of application of “should” in the provision. In practice, prosecutors often need to combine criminal evidence to judge whether the act meets the constitutive elements of an administrative violation. For cases with clear violation characteristics such as unlicensed operation, this judgment is less difficult; while environmental pollution cases usually involve complex technical issues and professional evidence, making it difficult for prosecutors to directly judge whether the act necessarily constitutes an administrative violation and to predict the corresponding penalty range[7]. This uncertainty of judgment weakens the enthusiasm for initiating the transfer procedure to some extent,

gradually forming a tendency in practice of “transfer if possible, but if not, do not transfer.” Moreover, some procuratorial agencies have not yet established a systematic reverse transfer review mechanism internally, lacking unified norms for whether cases not prosecuted need to be transferred to administrative agencies, document approval processes, and case archiving assessments, resulting in transfer work largely depending on the personal experience and sense of responsibility of the undertaking prosecutor.

3.2 Evidence Conversion and Identification Dilemma

Even if the procedure is initiated, after the case enters the administrative law enforcement system, the problem of converting criminal evidence into administrative evidence needs to be solved. Due to differences in evidence rules and proof standards between criminal proceedings and administrative penalties, a large amount of evidence formed in criminal proceedings is difficult to use directly in the administrative penalty stage, which has become a significant technical obstacle in reverse transfer.

Criminal proceedings apply the standard of proof beyond reasonable doubt, with high requirements for the legality of evidence collection procedures; administrative penalties are based on the basic standard of clear facts and sufficient and reliable evidence. Although there are differences in proof intensity between the two procedures, administrative penalties still need to meet the basic requirements of legality, objectivity, and relevance. This institutional difference is mainly manifested in three aspects in practice.

First, there are problems with the legality of evidence. Evidence obtained through technical investigation in the criminal investigation stage often lacks corresponding procedural basis in administrative law enforcement, and such evidence is difficult to re-obtain through administrative law enforcement methods. Therefore, administrative agencies usually maintain a cautious attitude towards such evidence in practice. Second, the stability of verbal evidence is weak. When the suspect’s confession and witness testimony enter the administrative procedure, the parties may change their original statements. If criminal interrogation records are directly adopted, it may

be inconsistent with the requirements of hearing statements and defenses in administrative procedures, but if they are completely not adopted, it may lead to difficulty in determining key facts[8]. Third, there is not a complete correspondence between the object of criminal proof and the constitutive elements of administrative violations. Criminal proceedings focus on proving the constitutive elements of the crime, such as the result element of serious environmental pollution, while administrative penalties pay more attention to specific illegal acts, such as excessive emissions or the illegal act of discharging pollutants themselves. In the process of collecting criminal evidence, the detailed indicators required for administrative penalties, such as emission multiples, are often not collected, which may lead to insufficient proof in the administrative penalty measurement stage.

In environmental cases, the reuse of environmental damage assessment reports is particularly prominent. As important professional evidence for identifying pollution consequences and assessing ecological losses, such reports are usually completed by judicial appraisal institutions in criminal proceedings. When the case is not prosecuted because it does not meet the criminal prosecution standard, the legal status of the appraisal report in the administrative penalty procedure is not clear. Some views hold that judicial appraisal opinions issued by qualified institutions have high professionalism and can be used as the basis for punishment after formal review by administrative agencies; other views argue that such appraisals mainly serve criminal proceedings, and their commissioning subjects and proof purposes revolve around criminal offenses, so administrative agencies should commission another appraisal[9]. If re-appraisal is required, it not only increases law enforcement costs but may also produce different conclusions due to differences in appraisal methods, affecting the efficiency of case handling.

3.3 Legal Liability Pursuit Dilemma

After the procedure is initiated and evidence conversion is completed, the case enters the administrative penalty stage, but at this time, liability pursuit still faces many substantive law-level institutional obstacles, mainly concentrated in two aspects: the administrative

pursuit time limit and the identification of liable parties.

Regarding the pursuit time limit, Article 36 of the Administrative Penalty Law stipulates that the time limit for administrative penalty pursuit is generally two years, calculated from the date of the illegal act; for continuous or continuing illegal acts, it is calculated from the date of the act's termination. In the context of reverse transfer, there are different understandings in practice as to whether the duration of criminal proceedings affects the administrative penalty time limit. One view holds that after a case is transferred to the judicial authority, the administrative penalty procedure should in principle be suspended, and criminal proceedings are state public power prosecution activities, so their operation period should not be counted towards the administrative penalty pursuit time limit. If not handled this way, many environmental pollution cases from filing for investigation to making a non-prosecution decision often take a long time, and when the case is returned to the administrative agency, it may have exceeded the pursuit period, making it difficult to implement liability. Another view advocates a strict interpretation of the current law. Since the legal provisions do not explicitly stipulate that criminal proceedings can suspend the administrative penalty time limit, it is not appropriate to expand the scope of application through interpretation. If the long duration of criminal proceedings causes the administrative penalty to exceed the time limit, the administrative agency can only terminate the penalty procedure according to law. Due to the lack of unified rules, practices vary across regions, affecting the stability of legal application[10].

Moreover, the issue of liability succession after the change or extinction of the subject of the unit violation is also prominent. Environmental pollution acts are mostly committed by enterprises, and criminal proceedings often take a long time. During this period, enterprises may merge, split, or be deregistered, and some subjects even evade liability through company deregistration. In the case of enterprise merger or division, the legal person or other organization that succeeds to its rights and obligations generally bears the corresponding liability. However, in practice, the determination of the succession relationship and the execution of punishment are difficult. If the enterprise has

been deregistered, the problem becomes more complex. Some believe that after the legal personality of the company is extinguished, the subject of administrative punishment no longer exists, and the penalty procedure should be terminated; but this approach may allow illegal enterprises to evade liability through deregistration. Others propose that under certain conditions, the liability of shareholders, actual controllers, or liquidation committee members can be pursued, and illegal gains can be recovered according to law, but relevant rules still need further legal clarification[11].

4. Improvement Paths for the Reverse Transfer System

Given the above practical dilemmas, improving the reverse transfer system for environmental pollution cases requires a systematic approach covering concept renewal, institutional refinement, and supporting mechanisms.

4.1 Concept Renewal: Establishing a Balanced Responsibility Concept

The effective operation of the reverse transfer system first depends on forming a unified responsibility concept in law enforcement and judicial practice. In the handling of environmental pollution cases, some practices still have a tendency to emphasize criminal punishment over administrative punishment or to regard the termination of criminal proceedings as the end of case handling. This perception weakens the fundamental role of administrative law enforcement in environmental governance to some extent. Therefore, in the process of institutional operation, it is necessary to gradually establish a responsibility concept that values both criminal prosecution and administrative sanctions. On one hand, it should be recognized that both administrative punishment and criminal punishment are important forms of state public law liability, but there are differences in their applicable conditions and functional orientations. Environmental violations usually first enter the scope of administrative law evaluation, and only when the act reaches the level of criminal illegality does it enter the criminal justice procedure for handling. After criminal procedure review, some acts may not be criminally prosecuted due to insufficient evidence, minor circumstances, or exemption from criminal punishment, but the relevant acts may still

constitute administrative violations. In this case, transferring the case back to the administrative law enforcement system through the reverse transfer mechanism is an important means to achieve full coverage of environmental violation liability[12].

On the other hand, in institutional design, the administrative-criminal connection system structurally includes both forward transfer and reverse transfer, which together constitute a complete procedural chain for handling environmental violation cases. When criminal proceedings end by non-prosecution, not guilty verdict, or exemption from criminal punishment, the administrative liability review procedure should be initiated in a timely manner to avoid poor connection between cases in different procedures.

4.2 Core Institutional Improvement

Concept renewal needs to be implemented through specific institutional rules. From the perspective of practice, the current reverse transfer system still lacks unified and clear rules in terms of procedural initiation, evidence connection, and liability pursuit, which to some extent affects the stability of institutional operation. Therefore, it is necessary to further improve the relevant rule system based on the existing institutional foundation.

First, the procedural initiation rules should be refined and unified. The transfer responsibilities of judicial authorities in reverse transfer should be clarified. After the procuratorate makes a decision not to prosecute, if it believes that the relevant act may still constitute an administrative violation, it should legally issue a procuratorial recommendation to the relevant administrative agency. After the court makes a not guilty verdict or a decision exempting from criminal punishment, if the case still has the nature of an administrative violation, it can transfer the case clues to the administrative agency through judicial recommendations. After the public security authority makes a decision not to file a case or withdraws a case, if it believes that the relevant act meets the conditions for administrative punishment, it should also legally transfer the case materials to the relevant administrative department. A unified case transfer and acceptance mechanism should be established. After receiving case materials transferred by judicial authorities, administrative agencies should register them according to law

and initiate the review procedure. For cases that meet the conditions for administrative punishment filing, they should be filed and handled in a timely manner; for cases that are considered not to meet the conditions for administrative punishment after review, the reasons should also be explained, and the handling results should be promptly reported to the transferring authority[13].

Second, evidence conversion and transformation rules should be constructed. For objective evidence such as physical evidence, documentary evidence, audio-visual materials, electronic data, inspection records, and on-site records, due to their strong objectivity and stable attributes, administrative agencies can, after verifying the legality of the source and the compliance of the extraction procedure, directly use them as evidence in administrative penalty cases without the need for re-collection or procedural transformation. For appraisal opinions and professional assessment reports, the principle of conditional admissibility can be applied. Judicial appraisal opinions for environmental pollution damage in criminal proceedings should generally be recognized for their professionalism and authority, and can in principle be adopted across procedures. Only when there is contrary evidence sufficient to overturn the legality of the appraisal conclusion is it necessary to restart the appraisal procedure. For verbal evidence such as confessions and witness testimony, the principle of prudent use and necessary transformation should be adopted. When administrative agencies use verbal evidence formed in criminal proceedings, they should legally re-interview and produce corresponding records[14].

Third, the legal liability pursuit system should be improved. Regarding the relationship between the administrative penalty pursuit time limit and criminal proceedings, it can be considered to clarify institutionally that after a case enters criminal proceedings, the administrative penalty pursuit time limit is suspended accordingly and continues to be calculated after the conclusion of criminal proceedings. Regarding the liability succession rules when the enterprise subject changes, when the enterprise merges or divides, the environmental violation liability borne by the original enterprise can be continued by the enterprise that succeeds to its rights and obligations, to prevent evasion of legal liability through corporate structural changes. In addition,

in the handling of environmental pollution cases, the connection between criminal liability, administrative liability, and ecological environmental damage compensation liability should be coordinated, achieving comprehensive governance of environmental violations through the coordinated application of multiple liability forms[15].

5. Conclusion

The completeness of the administrative-criminal connection system is a key element in measuring the rigor of environmental rule of law. This study focuses on environmental pollution cases, examines the reverse transfer link, analyzes the causes behind the accountability failure of “no criminal prosecution, no administrative penalty,” and attempts to find a path for improvement in the new context of the promulgation of the Ecological Environment Code.

First, reverse transfer is a key link in achieving a closed loop of environmental legal liability accountability. Forward transfer ensures that cases are transferred from administrative to criminal authorities, preventing the substitution of punishment for penalty; reverse transfer ensures the continuous implementation of administrative liability after the conclusion of criminal cases, filling the accountability gap. The two complement each other and are indispensable. Environmental pollution cases have strong technical evidence and complex damage identification, so the independent status of reverse transfer should be clarified rather than being regarded as a secondary link subsidiary to forward transfer.

Second, there is systemic failure in reverse transfer in practice, with dilemmas overlapping in multiple aspects. Procedurally, the detailed rules between judicial authorities and administrative agencies for case transfer are not unified; evidentially, criminal and administrative evidence are poorly connected, often leading to repeated investigations of the same case; in terms of liability, the rules for interrupting the administrative pursuit time limit with criminal proceedings are unclear, and changes or deregistration of unit subjects hinder liability pursuit; in supervision, procuratorial recommendations lack binding force, and there is a lack of accountability mechanisms for administrative inaction. The root causes lie in the lack of detailed institutional rules, fragmented working mechanisms, outdated

concepts, and the mismatch between law enforcement capabilities and institutional requirements.

Third, improving the reverse transfer system must systematically address four levels: concept, rules, mechanisms, and legislation. Conceptually, establish the principle of balancing criminal prosecution and administrative sanctions; in terms of rules, refine procedural, evidentiary, and liability standards, clarify the time limits and document specifications for transfer, acceptance, processing, and feedback, establish rules for evidence conversion and administrative pursuit time limit interruption, and explore penetrating accountability for maliciously deregistered enterprises; in mechanisms, strengthen procuratorial supervision, incorporate it into administrative public interest litigation, build a unified national information platform to achieve full-process online circulation and intelligent supervision, and incorporate connection work into the assessment and accountability system; legislatively, implement operational details through judicial interpretations and administrative regulations to provide legal guarantees for the stable operation of the system. Overall, improving the reverse transfer system for environmental pollution cases is an important step in promoting the modernization of environmental governance. Through concept renewal, rule improvement, and technological empowerment, a stricter liability system can be gradually constructed, helping to prevent environmental violations from evading legal accountability and providing a more solid legal guarantee for ecological environmental protection.

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