

# On the Introduction of Relatively Strict Liability in Environmental Crime

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## Abstract

With the rapid development of economy, the situation of environmental crime in our country is becoming more and more serious. Intensifying the fight against environmental crimes is conducive to protecting environmental rights and interests and providing a good environment for the development of market economy. At present, there are some problems in China's environmental crime, such as narrow criminal law, difficult to prove subjective intention, and low judicial efficiency. The introduction of relatively strict responsibility can transfer the responsibility of proving the subjective state to the defendant, so as to reduce the judicial cost, improve the judicial efficiency, reasonably make up for the defects in the criminal circle, tighten the criminal law network, and implement the criminal policy of combining leniency with severity.

## Keywords

Environmental crime; Relatively strict liability; The judicial efficiency; Criminal policy.

## 1. THE RELATIVELY STRICT DEFINITION OF RESPONSIBILITY

Relative strict liability is different from absolute strict liability of Anglo-American law system, it means that in the public prosecution of environmental crimes, due to it is difficult to prove the subjective intention of the defendant, so the proof of the subjective intention is reversed to the defendant, by the defendant to prove that there is no intentional and negligence subjectively. The absolute strict liability in Anglo-American law system means that the defendant will be investigated for criminal responsibility as long as there is a criminal act and the consequences of the crime, regardless of whether it is intentional or negligent subjectively. Absolute strict liability removes the subjective elements of crime, which is in conflict with the theoretical system of criminal law in China. Therefore, it is not suitable to be introduced. However, the relatively strict liability does not violate the theoretical system of our criminal law, just transfers the subjective burden of proof to the defendant. As Rosen Baker puts it: "there is nothing unfair about asking the defendant to bear the burden of proof, because he is no further from the case than the plaintiff, and he may have no less evidence than the plaintiff [1].

## 2. THE NECESSITY TO INTRODUCE RELATIVELY STRICT LIABILITY

1. In recent years, China's environmental crime situation is more serious, but the criminal crackdown is insufficient, judicial efficiency is low. Environmental pollution has developed from a problem in the field of natural ecology to a social problem, causing serious harm to people's lives, health and property, and posing a serious threat to economic and social development [2]. In order to give full play to the social defense function of the criminal law, the standing committee of the National People's Congress (NPC) adopted The Resolution On Comprehensively Strengthening Ecological And Environmental Protection And Promoting The Fight Against Pollution Prevention And Control on July 10, 2018. The supreme people's court, the supreme people's procuratorate, the ministry of public security, the ministry of justice, and

the ministry of ecology and environment jointly issued the "Summary of the Symposium on Handling Environmental Pollution Criminal Cases", The summary pointed out that on the basis of implementing the criminal policy of "combining leniency with strictness", increasing the intensity of environmental pollution criminal cases will be the focal point and entry point of judicial handling. The severity of the current situation of environmental crimes and the low judicial efficiency provide a necessary basis for the introduction of relatively strict liability. Relatively strict liability takes into account the substantial benefits brought by industrial production to enterprises, and should be distributed according to the fair concept of "who benefits, who should bear the risk". While destroying the environment in the production process and obtaining huge economic benefits, enterprises should bear certain risks in the accountability stage.

## 2. The Introduction of Relatively Strict Responsibility

### Improve judicial efficiency

The public prosecution of environmental crimes involves a large amount of knowledge of biology, chemistry, physics and other science and engineering, and the prosecutor often does not have relevant knowledge. Therefore, the traditional burden of proof borne by the procuratorial organ will increase the judicial cost and reduce the judicial efficiency. Delayed Justice is injustice. The introduction of relatively strict liability will greatly improve litigation efficiency, save litigation costs, avoid the emergence of difficult cases, reduce litigation delay, and shorten the litigation cycle. The enterprise itself is familiar with its own management mode, and clearly knows whether it is the negligent crime caused by management confusion or the intentional crime caused by emission in the production process. If the subjective is not intentional, there is no fault, and then with their own first-hand information can easily prove innocence. Therefore, the burden of proof on the defendant will greatly improve the efficiency of litigation.

### 2. Highlight tough criminal policy

Criminals will carry out necessary value measurement before committing a crime. When the cost of breaking the law is far higher than the economic benefit, people will not break the law; On the contrary, when the cost of breaking the law is low and the economic benefits brought by breaking the law are great, people will take the risk and choose to break the law. Especially when environmental violation is only adjusted by civil law, rational economic man will transfer economic expenditure such as fine to consumers as a necessary production cost. At this time, the illegal cost is gradually minimized and the benefit is gradually maximized. Criminal law as the most severe department law, the cost of criminal law cannot be transferred. While most environmental crimes are committed by elites, criminal punishment means that they may lose precious business opportunities, a clean record and the freedom that elites care most about, which are costs that elites are not willing to pay. The relatively strict liability increases the defendant's burden of proof, highlights the strict criminal policy, and gives full play to the social defense function of the criminal law. This will greatly reduce environmental crime. For such crimes, imposing the responsibility and consequences of prevention on the potential perpetrators will make crime prevention more effective [3].

### Balancing litigation power

In litigation, from the abstract perspective, the enterprise is the weak, and from specific case perspective, the enterprise has three advantages: The first is the economic strength is strong. Most polluting enterprises in their administrative regions are large tax payers, and local governments often acquiesce in their emission behaviors for the sake of political achievements; The second is to have a strong professional knowledge, master first-hand information that their own no fault; The third is for protecting trade secrets to block investigations. However, grassroots judicial organs have four disadvantages, The first is the lack of specialized knowledge;

Second, the judicial resources available are extremely limited, Specific performance is the case funds is limited; The powers to co-ordinate the interests of departments are limited; Caseworkers are in short supply. The 3rd it is to handle case pressure bigger, limitation of action is limit. The fourth is to face the case across the region is wide, latent is strong, the prosecution is tricky. It is clear which side is stronger or weaker. It exaggerates the power of the state in the abstract and deliberately portrays the enterprises in environmental crimes as the weak and kidnaps in the name of justice. Therefore, the introduction of relatively strict liability is not a unreasonable inversion of the burden of proof, but a scientific and reasonable distribution of the burden of proof after the reasonable analysis of the litigation strength of all parties in specific crimes.

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