

New Developments of Environmental Policy and Environmental Criminal Law in the People's Republic of China*

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I. Introduction

The Chinese Environmental Protection Law was formally promulgated in 1989.¹ This Law builds up the legal framework and supervisory system to protect the environment in China, stressing that the major work for environmental protection is to prevent environmental pollution. However, due to the great demands of economic development, a move towards environmental protection has been quite difficult until recent years.

Now, environmental protection has become an important topic in the daily life of Chinese people. In recent years, people in Beijing face serious problems such as sand-storms in spring, periods of heat in summer, shorter beautiful days in autumn and dry-cold-wind in winter. In addition, the crises caused by pollution to air, food, water, and poisoning of children² have stricken our heart so often!

Fortunately, however, the Chinese public and the government have woken up and realized the importance of environmental protection to our life and society. Climate, environment, and resource protection have become important topics of day-to-day discussion already! China has taken the issues of environmental protection more and more seriously.

II. The New Development of Environmental Policy in China

Now, the theory and practice of sustainable development strategy have made significant progresses in China and greatly pushed forward the works of Chinese environmental protection. This tendency is supported by the new philosophical outlook of the ruling Communist Party of China (hereafter CPC) on Scientific Development.³ In 2007, the CPC has accepted the concept of "Eco-civilization" as the new style of social morphology in its Report of the 17th National Congress. It has begun its efforts to shift the Chinese society from industry-civilization to eco-civilization, and to change the economic model from a resource-economy to a knowledge-economy. Accordingly, China shall follow the route of sustainable development and shall be built as a country where people live in harmony with natural environment and where

eco-consciousness becomes the leading social philosophy. Recently, the low carbon economy has become the key word to characterize the industrial system and consumption in China.⁴ For example, this new policy was explained in the governmental agenda announced by the Prime Minister in the 3rd Session of the 11th National People's Congress, held in March, 2010.⁵

The new environmental policy of the CPC has a great impact upon all sides of China. Legislatively, it guides China to improve its legal system of environmental protection. The Standing Committee of the National People's Congress of China approved the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and the State Council verified the Kyoto Protocol in 2001. By now, there are about thirty laws in China, specifically or collectively handling issues of environmental protection. However, to achieve effective environmental protection, more detailed regulations are required. Under the new policy of environmental protection, the State Council and the key ministries shall take more carefully devised measures to guide their day-to-day works.

It is true that the Chinese government has taken more and more important measures for environmental protection, according to the new policy of the environmental protection and the requirements of laws. These administrative measures have developed a great number of more detailed requirements for environmental protection. Of them, there is the 11th Five-Year (2006-2010) Planning Outline of National Economy and Social Development,⁶ in which the goal of reducing energy consumption per unit of GDP by 20 % was set with legally binding power. Accordingly, there are ten key energy-saving projects being carried out in Chinese industry. These projects will play an important role in environmental protection. As an example, in the coal-firing industrial boiler/kiln furnace renovation project, old or inefficient industrial boilers will be replaced or improved by more advanced ones. In the regional cogeneration project, a central heating system for a large district will be built up to replace small heating boilers that only work over a small area. In the residual heat and over-pressure utilizing project, the areas near the large industrial

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¹ Wang, EurJCrimeCrimLawCrimJustice 12 (2004), 150.

² It has been reported in recent years that many children in China were found with lead concentrations in their blood.

³ Central Literature Research Bureau of the Chinese Communist Party (comp.), *Treaties on Scientific Development* by Zedong Mao, Xiaoping Deng and Zemin Jiang, 2008, pp. 63-133.

⁴ Hu, Report to the 17th National Congress of the Communist Party of China on 15.10.2007, in: *Collection of the Documents of the 17th National Congress of the Communist Party of China, 2007*, p. 20.

⁵ Wen, Working Report of Government on the 3rd Session of the 11th National People's Congress on 5.3.2010, in: *General Office of the Standing Committee of the National People's Congress (comp.), Collection of the Documents of the 3rd Session of the 11th National People's Congress, 2010*, p. 5.

⁶ The 11th Five-Year (2006-2010) Planning Outline of National Economy and Social Development, in: *General Office of the Standing Committee of the National People's Congress (comp.), Collection of the Documents of the 4th Session of the 10th National People's Congress, 2006*, p. 86.

centre, such as steel processing, chemistry production or textiles, will have more benefits from what used to be the pollution emitted from the factories. In the petroleum-saving and-replacing project, new energies such as solar and clean coal technology will be developed. In the motor system's energy-saving project, the motor system with more efficient capacity will be adopted. In the energy system's optimizing or energy-saving project, the new software, designs and technology will be encouraged. In the building energy-saving project, the issues of energy-saving in the construction must be considered. In the green lighting project, the techniques and the products of green lighting will be supported. Governmental units shall become a model for environmental protection in the government organization's energy-saving project. Laws and technical standards as well as the supervisory systems shall be improved in the construction project of energy-saving monitoring and the technical service system.

As a clear tendency, Chinese industry has begun serious efforts in building a circular economy in order to reuse and recycle resources. Clean energy, such as nuclear power, wind power and solar power are favored. Clean coal technology is pushed forward for more efficient industrialization. Besides that, China will also establish systems of monitoring, checking, and supervising the energy savings and emissions reductions. For the important cities like Beijing and Tianjin or environmentally sensitive areas, eco-construction projects like reforestation will be carried out to prevent further desertification. Furthermore, national programs shall be conducted in order to deal with the climate change problem. And China shall strengthen its basic research and improve its capacity on subjects such as meteorology, earthquakes, disaster prevention and reduction, surveying and mapping the environment.

Now, the Chinese environmental policy is not only a clear policy but also a task to be taken seriously by the State. Environmental protection is not a simple topic but a comprehensive one, involving not only science and technology, laws and policy, but also culture and common consciousness. Without the efforts of the government and the support of society, environmental protection would be very difficult to accomplish.

In China, as well as in Germany, people agree that criminal law should play a secondary role in protecting the environment. This is particularly true in China, since so many state organs are involved in the work of environmental protection.

As to developing policies, the Environment and Resources Committee of the National People's Congress is a central organ in China.

As to legislation, the Legislative Affairs Committee of the Standing Committee of the National People's Congress is responsible for the law-drafting, while the Legislative Affairs Office of the State Council is responsible for making administrative regulations.

As to the daily implementation, the Ministry of Environmental Protection exercises the general supervisory power in accordance with the Environmental Protection Law. It is the organ responsible for administrative matters. When there is a case involving an administrative violation, it will be handled

by the police. When there is a case involving a crime, however, the power to decide whether to initiate prosecution for environmental crime is always in the hand of people's prosecutor. The power to try the case belongs to people's court.

As environment protection affects many aspects of life, the administrative duties are distributed among different ministries. The Ministry of Transportation is in charge of preventing water pollution in harbors and docks. The Ministry of Agriculture is in charge of protection of grassland, fisheries and stockbreeding. Ministries of Public Security and Railway, as well as the General Administration of Civil Aviation, are jointly charged with preventing sound pollution by motor vehicles and administration of solid waste. The Ministry of Water Resource is responsible for water utilization and water conservancy construction. The comprehensive nature of environmental protection makes the power of the administration distributed in various areas.

Besides that, the administrative power concerning the environmental protection can also be found in other governmental organs.⁷ The National Development and Reform Commission is in charge of planning and balancing the policy of environment protection with social and economic development and of establishing standards to be met by enterprises. The Ministry of Construction is in charge of city planning, domestic waste, scenic attraction and gardening. The Ministry of Commerce is responsible for administration of businesses. The Ministry of Health is in charge of occupational disease control and public health administration. The Ministry of Culture is responsible for protection of cultural or natural heritage. The General Administration of Quality Supervision, Inspection and Quarantine is in charge of establishing standards and examining and approving the quality of products, categories of animals and plants for import and export. The Ministry of Land and Resources is responsible for the protection of natural resources. China Meteorological Administration and China Earthquake Administration shall undertake the responsibility for preventing the natural disasters in respective areas. There is also a State Forestry Administration, which has a special Forestry Police Bureau to undertake the work of enforcement in the forestry field.

Certainly, environmental protection is continually progressing in China. The environmental protection laws and regulations are also improving. For example, The Ministry of Commerce and the State Development and Reform Commission rewrote the Catalogue for the Guidance of Foreign Investment Industries in the end of 2007. Accordingly, all of the commercial and industrial areas are listed respectively into three categories: encouraged, limited and prohibited. Now, joint ventures of an environment-friendly-nature contained in the Catalogue will be encouraged. The environment-friendly joint ventures are particularly welcome in the Chinese central-western region. In 2008, China issued a special guideline in the Catalogue of Advantaged Industries for Foreign Investment in the Central-Western Region. Accordingly, privileges shall be given to those joint ventures which are

⁷ Cf. Jin Wang (ed.), *Principles of Environmental Law of China*, 2006, pp. 50-53.

good for the purposes of preventing environmental pollution and protecting Chinese natural resources.⁸

The comprehensive nature of environmental protection is a symbol of recent development, but it is also a challenge for the Chinese government and society. The new policy of environmental protection plays important role of directing, organizing and encouraging. As China is such a large county with such a large population, a clear and advanced policy of environmental protection is necessary to achieve this set of goals.

III. The New Development of Environmental Criminal Law in China

There is still a debate as to the adequate scope of environmental criminal law among the Chinese scholars. However, people agree on two basic characteristics of environmental criminal law:

Firstly, it should be *criminal law*. In the Chinese legal system, all provisions concerning crime and punishment are stipulated in the Chinese Criminal Code (hereafter CCC). More clearly, any criminal punishment shall only be imposed according to the Criminal Code and its amendments or legislative explanations.⁹ Judicial explanations, which are given by the Supreme People's Court and Supreme People's Procuratorate, are not law in the formal sense. However, judicial explanations shall be examined in order to understand criminal law, since they are concerned with crime and punishment and they have binding power for judges and public prosecutors.

Secondly, environmental criminal law should relate to environmental protection. In the Specific Part of the CCC, there are nine provisions from Art. 338 through 346 in Section 6: Crimes of Impairing the Protection of Environment and Resources. Section 6 is a part of Chapter VI: Crimes of Obstructing the Administration of Public Order.¹⁰ These crimes are the core of the environmental criminal law in China, though they might not be deemed as the complete set. The important crimes are Art. 338 and 339 CCC, both of which are crimes of environmental pollution. Art. 338 CCC prohibits anyone in violation of state regulations to release, dump, or dispose of radioactive wastes, wastes containing pathogen of contagious diseases, and toxic materials or other dangerous wastes into land, water, and the atmosphere. The criminal punishment shall be imposed when one causes major environment pollution accidents, heavy losses to public and private property, or grave consequences of personal deaths and injuries. Art. 339 CCC has three paragraphs. Para. 1 prohibits anyone in violation of state regulations to have

waste from abroad dumped, piled up, or treated within the territory of China. Para. 2 prohibits anyone, without the approval of the responsible authority of the State Council, to import solid waste materials as raw materials and cause serious environmental pollution. Para. 3 stipulates that it shall be deemed as smuggling to import wastes, irregardless of whether they are solid, liquid or gas, as raw materials under the color of making use of raw materials if these wastes cannot be used as raw materials.

The scope of environmental criminal law is not a purely academic question. It concerns the cooperation of various governmental organs in charge of environmental protection in all aspects. In 2007, an agreement was reached between the State Environmental Protection Administration (SEPA), which was in 2008 upgraded as the Ministry of Environmental Protection (MEP), and the Ministry of Public Security and the Supreme People's Procuratorate. The agreement concerns the question under which circumstances the environmental administration shall hand over the case of environmental violations to the policemen and prosecutor for the purpose of criminal investigation and prosecution. Accordingly, cases will no longer be treated as administrative violations and shall be handled by the authorities in charge of criminal investigation and prosecution, if the case involved any crime of smuggling wastes (Art. 152 CCC), severe environmental pollution (Art. 338 CCC), illegally disposing imported solid wastes and importing solid wastes without authorization (para. 1 and 2 of Art. 339 CCC), abusing power or neglecting duties by State personnel (Art. 397 CCC), serious irresponsibility by the State personnel in charge of environmental protection and supervision (Art. 408 CCC), and other crimes involving the environment. The category of "other crime" is still necessary, since most Chinese environmental crime is negligent crime. If a person, for example, intentionally discharges pollutants and causes a serious result such as a death, he shall not be charged only for a negligent crime such as environmental pollution under Art. 338 CCC. On the other hand, it is universally agreed that smuggling rare plants or rare animals and their products such as the fur of panda or ivory is environmentally harmful, but this type of crime itself is not listed as an environmental crime rather than a kind of smuggling crime.

It is true that, before 2000, cases of environmental pollution were almost exclusively treated as an environmental violation. At that time, there was only one judicial explanation concerning environmental crime issued by the Supreme People's Court in 1996. In this judicial explanation, it was explained how to try the cases on illegally importing wastes. However, this explanation was on the basis of an anti-smuggling decision of 1988 and the offence of illegally importing wastes was held to be a problem of violating customs administration; it was not yet clearly a problem of endangering the environment. But in this explanation, the Supreme People's Court recognized that the offence might cause problems not only to the customs control but also to the environmental safety which was included in the name of public security. It was only in 1997 that the separation of Customs administration and the environmental protection was recog-

⁸ Both of two legal documents can be found in <http://www.lawinfochina.com/>.

⁹ In the Chinese Law on Legislation, Art. 42 stipulates that the Standing Committee of the National People's Congress shall provide an explanation if: (1) a provision of a law needs a further clarification on its concrete meaning; (2) after a law is promulgated, a new situation emerges which needs to clarify the legal basis for application.

¹⁰ Wang, EurJCrimeCrimLawCrimJustice 12 (2004), 150 (157-159).

nized. While illegally importing solid waste was stipulated in para. 3 of Art. 155 CCC as a type of smuggling, illegally disposing imported solid waste was also set as an environmental crime in para. 1 of Art. 339 CCC. Para 2 of Art. 339 CCC was added to exclude the excuse of importing waste as raw materials for industrial usage.

In 2006, obviously urged by the new policy of environmental protection, the Supreme People's Court issued its first judicial explanation on criminal cases of environmental pollution. In the Chinese legal system, the line separating administrative violation and crimes is the degree of culpability. This is a key point to divide the responsibility between the administrative and judicial authorities in implementing environmental protection and triggering criminal proceedings. The criterion generally followed is the amount of loss caused by that pollution. This criterion has been consequently used by the Supreme People's Court. The Supreme People's Court relied on the amount of money, land, wood and trees lost. In cases involving death or bodily harm, the Court will consider the numbers. If the events create dangerous toxins or increase the prevalence of infectious disease, the Court will consider if the event has reached the level provided in the State Preparation Program for the Contingency of Public Hygienic Events. All of the requirements on these amount, number and statutory level are listed in two categories of circumstances: "serious consequences" or "exceptionally serious consequences". In Arts. 338, 339 and 408 CCC, criminal punishment shall be imposed according to different circumstances in the major environment pollution accidents.

Accordingly, the following circumstances were considered to be "serious consequences":

Loss to private and public property: more than 300,000 RMB (about 30,000 Euro¹¹), including the direct losses from the pollution and the costs of the necessary and reasonable countermeasure taken to prevent the expansion of and remove the pollution;

Loss of the functionality of land: more than 5 mu (about 3,333 m²) of basic cultivated land, more than 10 mu (about 6,666 m²) of other land for agricultural purpose, or more than 20 mu (about 13,333 m²) of land;

Destroying a forest: more than 50 m³ or 2500 of young trees;

People: more than one person dead, more than 3 seriously injured, more than 10 lightly injured, or more than one serious injured and more than 5 light injured;

Event: public hygienic events reaching Level III stipulated in the State Preparation Program for the Contingency of Public Hygienic Events. Accordingly, there appears a relative serious risk for the spread of the dangerous disease;

Besides these, other circumstance causing the serious consequence of death or injury or other situation endangering public health shall be considered.

On the level of "exceptionally serious consequences", the amount or number is increased as followings:

Loss of property: more than 1,000,000 RMB (about 100,000 Euro);

Loss of land: more than 15 mu (10,000 m²) of basic cultivated land, more than 30 mu (20,000 m²) of other land for agricultural purpose, or more than 60 mu (40,000 m²) of land;

Destroying a forest: more than 150 m³ or 7,500 of young trees;

People: more than 3 person dead, more than 10 seriously injured, more than 30 light injured, or more than 3 serious injured and more than 10 light injured;

Event: public hygienic events reaching Level II stipulated in the State Preparation Program for the Contingency of Public Hygienic Events. Accordingly, the risks for the spread of the dangerous disease are "quite seriously";

Besides these, other exceptionally serious circumstance shall be considered.

These criteria are also applied to the crime committed by a unit (legal person's crime).

With this judicial explanation and these criteria, the enforcement of criminal law has been considerably strengthened. According to the Statistics given in the Annual Reports of the Supreme People's Procuratorate,¹² the suspects who were under arrest for environmental violation were 7,974 in 2006, increasing 15.4 % more than the number in 2005, 37,272 in 2007, and 15,137 in 2009. In 2008, the cases under criminal investigation for dereliction of governmental duty in environmental protection reached the number of 2,637. The numbers of the decision to initiate prosecution for environmental crimes by the people's procuratorate were 12,240 in 2006, increasing 24.8 % over the number in 2005, 53,745 in 2007, and 2,966 in 2009.

After 2000, the legislative efforts in improving the environmental criminal law focused mainly on cracking down on the smuggling of wastes and on strengthening the protection of land and forests. The prohibition of smuggling solid wastes was in 2002 replaced by the prohibition of smuggling wastes in any forms of solid, liquid and gas. China still allows enterprises to import waste as raw materials. However, it is a crime to import wastes as raw materials that actually cannot be used for this purpose.

Besides the strict control of wastes, the scope of criminal protection of the environment has been expanded. In 2001, the Standing Committee of the National People's Congress issued a legislative explanation and a criminal amendment, clarifying that the term "land" in criminal law shall be the same one as it is in the laws and regulations on land administration. Accordingly, the "land" in the criminal law should cover grass land and forest land as well. But land for agricultural purposes was given stricter protection. As to the protection of forests, the prohibition of illegal logging and damaging valuable trees was expanded to processing and selling these trees. As for ordinary trees, the prohibition of purchasing timber from illegal logging was also extended to transporting such timber. The former requirement of the purpose to make profit was deleted. However, the actor shall still be

¹¹ This is based on the exchange rate in early 2010.

¹² See Annual Reports of the Supreme People's Procuratorate submitted to the National People's Congress from 2006 to 2009, in <http://www.spp.gov.cn/site2006/region/00018.html>.

required to know what he purchased or transported is the timber from illegal logging.

The consequences of the new development of Chinese environmental criminal law are that the protection of the environment has been considerably improved. There is now a much closer cooperation between enforcement authorities. The definitions of the crimes have become much clearer, stricter and more rational, which is good for environmental protection as well as the progress of rule of law in China.

IV. The New Development of Environmental Criminal Enforcement in China

In accordance with the new policy of environmental protection and the practical improvement of the environmental criminal law, the enforcement of the environmental criminal law has been strengthened.¹³ The judgment of a case of pollution in Yan Cheng City, Jiangsu Province in 2009 is good example.¹⁴ This is still a first instance judgment. However, the application of criminal law in this judgment has caused quite a strong impact upon Chinese environmental protection.

Defendants were Mr. Wenbiao Hu, the legal representative of Biaoxin Chemistry Lt. Co., and Mr. Yuesheng Ding, the agent in charge of the production in the company. The Company and its factory was located at a place where there is a small river flowing down to a waterworks about 11 km away, which is the main water supplier for Yan Cheng, a city with 300,000 population. The license issued by the environmental protection authority indicated that this company and its factory shall not be allowed to emit its waste water into the river. On February 17 and 18, 2009, however, Mr. Ding decided to emit 30 tons of high concentrative potassic waste water full of phenolic compound outside his factory into the river, causing the waterworks to stop supplying water for Yan Cheng City for more than 66 hours. Further investigation showed that Mr. Hu had ordered emission of the waste water since November 2007. The direct damages confirmed in the judgment of the first instance were more than 5.4 million RMB (about 540,000 Euro). Both Mr. Hu and Mr. Ding were respectively sentenced to 10 and 6 years imprisonment. Both defendants appealed but the final judgment has not yet been reported.

This judgment has a great impact upon the society, since it was the first time that a people's court held a pollutant case not as a crime of environmental pollution (Art. 338 CCC of the crime of causing major environmental accident), but rather as a crime of endangering public security (Art. 115 CCC of the crime of throwing dangerous substance¹⁵). The most significant difference between these two articles rests on punishment: Art. 115 CCC is a crime equipped with the death penalty while Art. 338 CCC has only a maximum of 15 years!

People are interested in two important issues in this case. One is whether it is a case of an intentional crime or a negligent crime. The other is whether it is a unit crime (legal person's crime).

As far as the mental state is concerned, Art. 14 of the CCC 1997 provides that a crime committed with knowledge that one's own act will cause socially dangerous consequences but with indifference as to the occurrence of those consequences shall be considered an intentional crime. Under Art. 15 CCC, a negligent crime requires that the actor foresees the socially dangerous consequences but readily assumes he can prevent them. In either type of the crimes, the actor has at least foreseen the danger that the socially dangerous consequences might occur. According to Chinese criminal law theory, however, the principal differences between the intentional crime of indifference and the negligent crime of having foreseen rest on two tests. The first one is whether the occurrence of the consequences would be tolerated or absolutely rejected. The former is for intentional crime while the latter is for negligent crime. The second test is whether the actor has relied upon some kind of conditions which would have prevented the consequence from happening. If he did so, he acted negligently, otherwise he acted intentionally.

In this case, there was evidence to show that the defendants had already been sanctioned by the administrative authority for illegal emissions and been required for correction within a time limit, for which, however, they just did nothing. The prosecutor also presented evidence that the defendants had bribed the local official of environmental enforcement who was also convicted for the crime of dereliction of duty and that the defendants knew very clearly of the toxic nature of the waste water their factory produced and the consequence that the emission of the waste water will pollute the source of water for the waterworks. However, the society was still shocked to know the facts that there was a mass of chemical factories around that waterworks. The defense lawyers stressed that their clients did not "clearly know of the harmful consequence", i.e., the defendants had no idea of the result of serious environmental pollution.

As to the question of the unit crime or legal person's crime, Art. 30 of the CCC 1997 provided the criminal liability for a unit such as a company, enterprise, institution, organization, or group, which commits an act endangering society that is considered a crime under the criminal law. Accordingly, a unit can commit a crime only when the law so provides. In Art. 115 CCC, according to which Mr. Hu was convicted for endangering public security, the law does not provide such a unit crime, while in Art. 338 CCC, the law provides a criminal liability for individuals and the relevant corporation. In case a crime is deemed as a unit crime, the directly responsible person in that crime might be also convicted, but the punishment will be much lighter. Mr. Hu's lawyers argued that it was the company that was criminally responsible. However, evidence showed that it was Mr. Hu who ordered the emission of waste water into river. In addition, a unit crime can be constituted only when the profit belong to the company in accordance with Chinese criminal law theory and regulations. It was a fact that the Biaoxin Ltd.

¹³ Cf. *Richter*, Umweltstrafrecht in der Volksrepublik China, 2002, p. 225 f.

¹⁴ Cf. *Guo Fengding*, China Environment Daily 25.8.2009, p. 3.

¹⁵ The former name of Art. 115 is the crime of poisoning.

Co. was privately owned by Mr. Hu only. Therefore, there was no difference whether the company or Mr. Hu would get the profits gained from the emission of the waste water without treatment.

In the first instance, the judgment held that both of Mr. Hu and Mr. Ding were guilty for committing the crime provided in Art. 115 CCC, intentionally and personally.

This case demonstrates China's newfound emphasis on environmental criminal law:

Firstly, this case clearly indicates that criminal law is starting to play an important role in environmental protection. According to some scholars, it might be a signal indicating that it is no longer sufficient to rely solely on civil or administrative law as measures to prevent environmental pollution.¹⁶ Effective protection of the environment must rather rely on criminal sanctions.

Secondly, this case might be of great help in changing the traditional attitude that China does not care about the environment. When the protection of criminal law is not strong enough, it will lead to high social costs for those who follow the law and create an undue advantage for those who violate the law. Weak enforcement of environmental criminal law has seriously prevented enterprises from modernizing their facilities even though this might be expensive. Strong enforcement of criminal law shall encourage people and enterprises to follow the law and enhance the social consciousness to support the protection of the environment.

Thirdly, this case may encourage the Chinese public and enterprises to pay more attention to environmental law. People condemned the violator and seriously criticized the dereliction of the supervision in this case. The society was shocked by the phenomenon that there are so many chemical factories around the waterworks. The effectiveness of the environmental law has become popular.

However, there are still some serious problems to be resolved for better environmental protection in China:

Firstly, the general legal structure for environmental protection is still administratively orientated. Criminal law can only play its role in punishment and not in prevention. The Chinese administrative supervision over environment has serious problems in its capacity for implementation.¹⁷ If criminal law is used only for punishing those who have caused serious events of pollution, the state will heavily rely on the criminal law's function of general prevention. It might push the criminal law punishment to go harsher and harsher. However, the environmental situation might still be not really improved.

Secondly, there is still not a formal guilty line stipulated for the case of water pollution. In recent years, the criminal cases of water pollution are almost all reaching such a terrible level that water is not drinkable! In the Law on the Preven-

tion and Control of Water Pollution, which was newly revised in 2008, the definition of water pollution was provided in Art. 91 as a phenomenon of deterioration of water quality, which is caused by the intervention of certain substances so that the chemical, physical, biological or radioactive character of waters is changed. This affects the effective utilization of such water, causes harm to people's health or damages the ecological environment. However, the conduct of discharging highly toxic waste liquid into waters is only subject to warnings and administrative fines of 50,000 to 500,000 RMB (Art. 76 the Law on the Prevention and Control of Water Pollution). Criminal liability is provided in Art. 90 but it is still unclear when the case shall be handed over to the police authority.

Thirdly, the problem of public as victim of environmental pollution might still be serious. In the end of 2009, the Tort Law was promulgated. It is good that this Law has provided a special chapter (Chapter Eight) for Liability for Environmental Pollution. Accordingly, the polluter shall assume the tort liability for environmental pollution and shall undertake the burden to prove that his conduct shall be not liable or be mitigated for liability according to law or to prove that there is no causation between its conduct and the harm. However, an individual person harmed by pollution currently has little legal recourse.

China is a country developing significantly with its open and reform policy. In recent years, China made some progress in environmental protection under the guidance of new environmental policy. However, the problems involved in ensuring environmental protection are still very serious. The environmental protection in China needs further improvement.

¹⁶ "Special Visit: The Trial of Water Pollution Case in Yan Cheng City Is A Signal", in Prosecutor's Daily 27.8.2009, p. 3.

¹⁷ See the speech of Mr. *Lijun zhang*, Vice-minister of the Ministry of Environmental Protection, China Environmental News 23.4.2010, p. 1.