

The Application and Improvement of the Prohibition Order System in the Field of Wildlife Conservation

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Abstract: The Eighth Amendment to the Criminal Law, promulgated in 2011, formally incorporated the prohibition order system into the criminal law statutes. In the same year, the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the “Provisions (Trial) on the Application of Prohibition Orders to Offenders Sentenced to Probation or Given Suspended Sentences” (hereinafter referred to as the “Prohibition Order Provisions”), providing relevant guidance for the implementation of this system. However, fifteen years later, due to the lack of clear application rules and standards in the field of wildlife protection, the heavy reliance on judges’ discretionary powers, and weak enforcement and oversight mechanisms, the prohibition order system has seen low adoption rates and has become largely symbolic. Therefore, by clarifying application rules and standards, strengthening enforcement and oversight, and integrating ecological restoration measures, people can fully harness the educational, preventive, and corrective functions of the prohibition order system, thereby achieving multiple objectives: punishing crime, preventing recidivism, and protecting wildlife resources.

Keywords: Wildlife conservation field; Injunction system; Application of injunctions

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1. Problem statement: The current status of the application of injunctions

In China, illegal hunting, consumption, and encroachment on wildlife habitats remain persistent issues. These crimes predominantly occur in rural and wilderness areas where supervision is weak. Coupled with the perpetrators’ lack of legal awareness—often valuing wildlife solely for its edible or economic worth—such illegal acts are difficult to detect and punish promptly. Furthermore, with the exception of a small number of professional criminals, sentencing in these cases generally tends to be lenient (e.g., the application of suspended sentences). This leniency makes it difficult for offenders to deeply recognize their mistakes, leaving the root causes of the harm unaddressed.

Against this backdrop, the prohibition order system holds unique institutional value in the field of wildlife protection. It serves not only as a supplementary constraint on the execution of penalties but also as a significant innovation in penal enforcement methods. By introducing this system to provide legal education to offenders and supervise their subsequent conduct, it can effectively fulfill educational and preventive functions, thereby enhancing the awareness of both offenders and their surrounding communities regarding the importance of wildlife resources and ecosystem stability.

Although China has increasingly emphasized wildlife conservation in recent years, the application rate of prohibition orders in wildlife crime cases remains low due to factors such as insufficient clarity in relevant legal regulations, vague conditions for their application, and weak enforcement and oversight mechanisms, thus failing to fully realize their intended effectiveness^[1].

2. Dilemmas in the application of prohibitory orders in the field of wildlife conservation

The Eighth Amendment to the Criminal Law, promulgated in 2011, formally incorporated the prohibition order system into statutory provisions, explicitly establishing this system in Article 38, Paragraph 2, and Article 72, Paragraph 2 of the Criminal Law. In the same year, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the "Regulations on Prohibition Orders", which, using a combination of enumeration and generalization, clearly defined the scope of application of criminal prohibition orders and provided clear guidance on their implementation. However, these provisions and regulations alone are insufficient to meet the needs of applying this system in specific judicial practice.

2.1. The applicable standards are not clearly defined

Existing laws only provide relatively general provisions regarding the application of the prohibition order system. Whether to apply it is entirely subject to the judge's discretion based on the circumstances of the crime, which leads to a lack of a unified standard in understanding and grasping the criminal circumstances in wildlife protection cases.

Specifically, factors such as the quantity of the crime, the consequences of the harm, subjective culpability, and the likelihood of recidivism are often used as standards for measuring whether to apply a prohibition order in judicial practice. However, due to the lack of unified adjudication guidelines, there may be significant disparities in how different regions and different judges interpret these factors^[2].

2.2. Weak implementation and supervision mechanisms

The effectiveness of the prohibition order system relies heavily on its supervision mechanisms. However, regarding the execution and supervision of these orders, Articles 9 and 10 of the "Prohibition Order Provisions" only offer a rough outline—stipulating that community correction agencies are responsible for the simultaneous execution of prohibition orders and suspended sentences, under the supervision of the People's Procuratorates. Unfortunately, such general provisions have left significant gaps in the specific execution and supervision mechanisms for prohibition orders within the field of wildlife protection^[3-4].

2.2.1. Community correction institutions lack the capacity to enforce restraining orders applicable to the field of wildlife conservation

Prohibitory orders related to wildlife conservation often target specific industries, particular regions, or certain types of behavior. Meanwhile, the daily work of community correction institutions typically focuses on routine tasks such as ideological education and behavioral management of individuals under community correction—tasks that lack specialized knowledge in wildlife conservation and relevant industry oversight experience. As a result, these institutions find it difficult to accurately identify and effectively monitor the specific behaviors restricted by the prohibitory orders ^[5].

2.2.2. The oversight mechanism lacks specific operational guidelines and feedback channels

Although there are regulations regarding the supervision by the People's Procuratorates over the execution of prohibition orders by community correction agencies, specifics on how to conduct normalized supervision, as well as the frequency and methods of such supervision, remain undefined. In practice, procuratorial organs largely rely on periodic reports from community correction agencies, lacking proactive and dynamic supervisory measures, which makes it difficult to grasp the real-time implementation of prohibition orders. Meanwhile, regarding violations of prohibition orders by individuals under community correction, apart from the provisions in the Criminal Law for serious circumstances—which warrant the revocation of suspended sentences and the execution of the original penalty—there is a lack of clear punitive measures for minor violations, which tends to undermine the deterrent effect of the supervision.

2.2.3. Lack of a coordinated and collaborative mechanism with relevant functional departments

The enforcement of restraining orders in the field of wildlife conservation often requires cooperation from specialized departments such as forestry and agriculture & rural affairs. However, current laws do not clearly define mechanisms for information sharing and collaborative coordination between community correction agencies and these departments. As a result, during enforcement, community correction agencies are unable to promptly transmit information about court-issued restraining order rulings to the relevant departments, nor can they timely obtain updates on enforcement status reported by those departments, making it difficult for them to perform their duties effectively. Ultimately, this leads to restraining orders often becoming mere formalities in practice.

2.3. Insufficient integration with ecological restoration measures

The prohibition order system applicable in the field of wildlife conservation primarily focuses on restricting community correction subjects from engaging in certain activities. However, given the damage these activities inflict on wildlife resources, requiring offenders to undertake ecological restoration measures alongside the enforcement of prohibition orders would be more effective in serving as a deterrent, providing education, and preventing recidivism ^[6]. Take, for example, crimes involving the destruction of environmental resources: in some cases, courts have introduced ecological restoration measures in their verdicts, mandating that offenders compensate for the harm they have caused to the ecological environment by means such as tree planting and habitat restoration. Yet in wildlife-related crimes, similar ecological restoration measures are rarely mentioned, leaving the function of prohibition orders confined solely to behavioral restrictions and failing to address the root causes of ecological resource degradation ^[7].

3. Recommendations for improving the prohibition system in the field of wildlife conservation

In response to the practical dilemmas regarding the low application rate of prohibition orders in wildlife crimes, ambiguous rules and standards, as well as weak enforcement and supervision, people can proceed from the following four levels to construct a comprehensive optimization plan that covers the entire process from institutional application to execution and supervision.

3.1. Clearly define the applicable rules

To address the low rate of application of restraining orders in the field of wildlife conservation, the procuratorial organs and the people's courts should strengthen their coordination in applying restraining orders during the handling or adjudication of cases. For instance, when the procuratorial organs submit recommendations for probation or suspended sentences in criminal cases involving crimes that harm wildlife resources, they should simultaneously recommend the application of restraining orders and clearly specify such recommendations in the indictment. If the procuratorial organs fail to make a recommendation for the application of restraining orders, the people's court, when sentencing to probation or suspended sentence, shall nonetheless issue a ruling ordering the application of restraining orders.

Meanwhile, although the current Eighth Amendment to the Criminal Law and the Prohibition Order Regulations have established the prohibition order system, the provisions are rather general and lack specific implementation rules. Therefore, the application of the prohibition order system in this area could be clarified through judicial interpretations or amendments to relevant laws and regulations, thereby enhancing the practicality and operability of the law.

3.2. Clearly define the applicable standards

In the field of wildlife conservation, the criteria for applying injunctions need to be standardized to address the issue of inconsistent rulings in similar cases caused by excessive judicial discretion. Currently, there is no consensus in judicial practice regarding the criteria for determining whether to impose an injunction—particularly when weighing factors such as the number of offenses committed, the severity of the harm caused, and the subjective maliciousness of the offender. Different regions and individual judges place varying degrees of emphasis on these factors. To address this, it is recommended that a unified set of application standards be established, comprehensively taking into account the aforementioned factors and providing judges with clear guidelines for making their decisions. For instance, through the issuance of guiding cases or the formulation of judicial interpretations, specific priorities could be clarified for each factor when applying injunctions in particular types of cases. By adopting this approach, not only can the precision of injunction applications be enhanced, but also the consistency and authority of judicial rulings can be strengthened.

3.3. Strengthen the implementation and supervision mechanisms

The effective implementation of the restraining order system depends on robust enforcement and oversight mechanisms. However, China's current enforcement and oversight mechanisms are weak, significantly undermining the effectiveness of restraining orders. To address this issue, the author recommends strengthening the enforcement and oversight mechanisms in the following aspects.

Strengthen the professional capacity-building of community correction institutions by organizing specialized training sessions and engaging expert consultants, thereby enhancing their awareness of issues related to wildlife conservation.

Clearly define the specific operational guidelines for the supervision mechanism, such as establishing regular inspections and random spot checks, to ensure that the prohibition order is effectively enforced.

Establish a collaborative and coordinated mechanism between community correction agencies and departments such as forestry and public security, thereby fostering a positive situation of joint management by multiple sectors. In China, some provinces and cities have actively explored this approach. For example, the court system in Zhejiang Province has established a specialized enforcement mechanism, in collaboration with community correction agencies, forestry departments, and environmental protection organizations, for enforcing prohibition orders in the field of wildlife conservation. This mechanism ensures timely information sharing and effective implementation of prohibition orders.

The author encourages industry self-regulatory organizations and the general public to engage in oversight and reporting. This diversified form of social participation not only enhances public awareness of wildlife conservation but also strengthens the deterrent effect of the prohibition orders, thereby promoting the development of China's wildlife conservation efforts.

3.4. Integrate ecological restoration measures

In the field of wildlife conservation, the application of injunctions should not be limited merely to restrictions on conduct; rather, they should be closely integrated with ecological restoration measures to fully leverage their deterrent, educational, and preventive effects against recidivism^[8–10]. Currently, in China, court rulings in wildlife crime cases tend to focus primarily on human interests—such as imposing imprisonment or fines on the defendants—while neglecting ecological restoration for the affected wildlife populations. This approach clearly fails to address the root causes of ecological damage.

Therefore, it is recommended that while applying the prohibition order system, ecological restoration be incorporated as an additional component. It is crucial to clearly define key aspects such as the methods, standards, timeframes, and acceptance evaluation procedures for such restoration.

For instance, in cases of illegal hunting, the defendant could be required to carry out wildlife habitat restoration work in designated areas; for illegal trafficking, they could be ordered to participate in wildlife conservation publicity and education activities.

Through this approach, not only can the educational function of the prohibition order be enhanced, but defendants can also be compelled to deeply recognize the harm their actions have caused to the ecological environment. This will effectively prevent recidivism and achieve the long-term goals of ecosystem restoration and wildlife protection^[11].

4. Conclusion

The refinement of the prohibition order system in wildlife conservation is an important component of building a rule-of-law framework for ecological civilization. It can effectively achieve multiple objectives, including punishing crimes, preventing recidivism, and protecting ecosystems. However, in judicial practice, the prohibition order system still faces numerous challenges, such as low application rates, unclear standards, and weak enforcement and oversight. Therefore, to truly bring out the educational, preventive, and

corrective functions of the prohibition order system, people should establish a scientific and rational system for its application through measures that include clarifying applicable rules and standards, strengthening enforcement and oversight, and introducing ecological restoration mechanisms. This will ensure that the system achieves a balance between punishment and education, as well as between prevention and restoration. Only by combining the hard constraints of the law with the soft restoration of ecosystems can people truly curb the spread of wildlife crimes and achieve long-term protection of wildlife resources.

Disclosure statement

The author declares no conflict of interest.

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