

Research on the Judicial Application of Responsibility for Ecological Environment Restoration of arable Land in the Context of Food Security

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Abstract

Food security in China is closely related to issues concerning the agricultural sector and national security. With the advancement of industrialization, the ecological restoration of arable land faces new challenges, including legislative deficiencies, inadequate financial management, and unfavorable coordination between related laws. Solutions may include establishing unified legal standards, strengthening financial supervision, exploring diverse responsibilities in land restoration, and improving regulatory mechanisms.

Keywords

Food security; ecological environment restoration responsibility; arable land restoration; supervision.

1. Introduction

Food security is a fundamental issue concerning human survival. In China, food security is intricately linked to agricultural issues and national security. The report from the 20th National Congress of the Communist Party of China states, "We must comprehensively strengthen the foundation of food security, firmly uphold the red line of 1.8 billion acres of arable land, and ensure that the Chinese people hold their own rice bowls." The Food Security Guarantee Law was passed on December 29, 2023, and will take effect on June 1, 2024. Ensuring the stable and safe supply of food and important agricultural products has always been a significant strategic issue. In September 2024, the General Office of the State Council issued the "Opinions on Practicing the Concept of Big Food and Building a Diversified Food Supply System," proposing improvements in land use policy by prioritizing reasonable land use needs for the integration of primary, secondary, and tertiary industries in rural areas when arranging annual land use plans. In fact, this opinion also serves to implement and detail the previously established concepts regarding the "big food view," food security, and land policy.

2. Historical Evolution of Legal Issues Concerning Arable Land Restoration Responsibility

The food self-sufficiency rate in various provinces of China can be distinctly categorized into three tiers: the provinces of Heilongjiang, Jilin, and Inner Mongolia, which have self-sufficiency rates exceeding 400%, stand alone in the first tier. The second tier includes provinces with self-sufficiency rates above 100%, meaning they not only meet their own needs but also have surplus to support other provinces; these include Xinjiang, Anhui, Henan, Liaoning, Shandong, Hebei, Ningxia, Gansu, Jiangxi, Hubei, Hunan, Jiangsu, Sichuan, Yunnan, and Shanxi. The

remaining provinces fall into the third tier, relying entirely on external sources for food supply, resulting in a clear pattern of grain transportation from the north to the south.

There has been much debate regarding the grain transportation from the north to the south. Provinces that cannot achieve complete self-sufficiency worry about food security: what if Zhejiang faces a food shortage one day and grain cannot be transported from far-off Heilongjiang? Additionally, the procedures for intra-provincial grain allocation are complex and may encounter various issues, such as food safety scandals that frequently make headlines. There are also income challenges; areas with high production often suffer from low income, making cross-regional compensation mechanisms a persistent difficulty. Guangdong's primary source of grain is Hunan, but Hunan is also the province with the most severe soil pollution in the country. In 2009, heavy metals like lead, cadmium, and arsenic were found in rice samples from Shenzhen, Guangzhou, and Dongguan, all traced back to Hunan. In 2020, another scandal emerged when heavy metal contamination was discovered in rice from Yiyang, Hunan, emphasizing the urgent need for soil restoration.

Land is the mother of wealth, and arable land is the foundation of food. As industrialization progresses, the ecological restoration of arable land in China faces new challenges. In 2023, the high-profile "toxic land" case involving Shanghai Lujiazui Financial Trade Zone Development Co., Ltd. suing Jiangsu Sugang Group Co., Ltd., Suzhou Municipal Government, and third-party institutions for over 10 billion yuan highlighted the complex issue of soil pollution and the massive compensation amounts involved. On September 22, 2024, the Ministry of Public Security announced six typical criminal cases endangering food security, including the illegal occupation of agricultural land in Shanxi and the illegal extraction of black soil in Liaoning. The Civil Code, implemented in 2021, established ecological restoration responsibility as the primary form of accountability for ecological damage. This responsibility entails that the perpetrator of ecological damage must undertake a series of remedial measures to restore the damaged ecological environment to baseline levels. Article 1234 of the Civil Code specifies the conditions for the application of ecological restoration responsibility, applicable subjects, and restoration methods, reflecting the green principle established at the beginning of the Civil Code, thus promoting the achievement of ecological protection and restoration goals in China.

In the 1970s, the international community formally introduced the "polluter pays" principle, which stipulates that those who pollute should be responsible for managing the pollution. In 1979, at the beginning of China's reform and opening up, the "Environmental Protection Law (Trial)" stated that "units that have already caused pollution and other public hazards to the environment should formulate plans and actively manage the pollution according to the principle of 'whoever pollutes should manage'." Subsequent laws, including the "Environmental Protection Law," as well as laws on water, solid waste, air, soil pollution prevention and control, and other related stand-alone laws, established the polluter pays principle as one of the essential principles of environmental law. In 2013, the Third Plenary Session of the 18th Central Committee proposed the construction of an ecological civilization, emphasizing the need to establish a systematic and complete ecological civilization institutional system, implement the strictest source protection system, damage compensation system, and accountability system, and improve environmental governance and ecological restoration systems to protect the ecological environment through institutional means. The 2014 "Environmental Protection Law" stipulated in Article 6, Paragraph 3 that "enterprises, public institutions, and other producers and operators should prevent and reduce environmental pollution and ecological damage, and shall bear legal responsibility for the damage caused." Paragraph 2 of the same article stated that "local people's governments at all levels should be responsible for the environmental quality in their administrative regions," indicating that the government plays a "safety net" role in environmental pollution management and restoration to meet environmental quality standards.

In 2015, the "Environmental Protection Law" established the primary remedy for ecological environment issues as the responsibility for ecological restoration. In the same year, the Supreme People's Court issued an interpretation on "Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation," explicitly designating ecological restoration responsibility as a form of tort liability. The "Soil Pollution Prevention and Control Action Plan" was introduced in 2016. In 2018, the General Office of the CPC Central Committee and the General Office of the State Council released a "Reform Plan for the Ecological Environment Damage Compensation System," clearly stating that the method of bearing responsibility for ecological environment damage includes restoring the ecological environment. The implementation of this plan marked the transition of the ecological environment damage compensation system reform from pilot trials to nationwide practice. Through nationwide trials, the efficiency of ecological environment damage compensation and restoration will be continuously improved, effectively addressing the predicament of "enterprise pollution, public suffering, and government footing the bill," while actively promoting the development of related industries, such as ecological environment damage assessment and ecological restoration, thus strongly protecting the ecological environment and the environmental rights of the people.

In 2018, the "Soil Pollution Prevention and Control Law" established the responsibility system for soil pollution from a national legislative perspective for the first time, but it did not stipulate that the government is responsible for soil environmental quality, only stating in Article 5 that local governments should take responsibility for soil pollution prevention and control and safe utilization within their administrative regions. Provisions in Article 5 of the "Soil Pollution Prevention and Control Law" and Article 10, Paragraph 3 of the "Management Measures for Soil Environmental Management of Contaminated Sites (Trial)" that "when the responsible party ceases to exist or is unclear, the county-level people's government in the area shall bear the responsibility for soil remediation" supplement the "polluter pays principle."

In 2019, the Supreme People's Court proposed replacing the obligation to restore the original state with the responsibility to restore the ecological environment as the primary form of liability in its "Several Provisions on the Trial of Cases for Ecological Environment Damage Compensation (Trial)." In 2020, the Supreme People's Court clarified the differences between restoration and remediation in its interpretation of legal issues related to environmental tort liability disputes, unifying the term "remediation" in the system. In 2021, the "Civil Code" designated the responsibility for ecological restoration as the primary form of liability for ecological environment relief, providing a higher legal basis for ecological environment damage relief.

3. Issues in the Judicial Application of Arable Land Restoration Responsibility

The judicial exploration of ecological environment restoration responsibility is a result of the development of environmental judicial concepts and innovations in environmental justice. The application of ecological environment restoration responsibility in judicial practice precedes legislative provisions, but the overall effectiveness of judicial application in environmental tort cases, including in the area of arable land restoration responsibility, is relatively poor.

Inconsistent Legal Applicability Standards. Ecological environment restoration is a systematic project. Although China's legal framework provides principled guidance on the responsibilities for ecological environment restoration, it lacks clear, specific, and actionable regulations and guarantees. The conflict between the Supreme People's Court's interpretation on the application of laws in environmental civil public interest litigation and Article 1234 of the Civil Code, which stipulates different priority for liability, has resulted in differing rulings in judicial

practice for similar cases. In the field of cultivated land restoration, cases found on the China Judgment Online show that different courts not only differ in their application of the responsibilities for ecological environment restoration and economic liabilities but also only provide simple rulings that require the infringer to directly restore the land or compensate for labor. However, there are no specific regulations on how the responsible parties should implement land restoration or labor compensation. In practice, the characteristics such as the wide impact of cultivated land damage, difficulty in definition, and challenges in restoration make the direct restoration approach flawed and inadequate. It not only requires consideration of the standards for cultivated land restoration and its effectiveness but also raises questions about the ability of the responsible parties to act.

2.2 Deficiencies in Ecological Compensation Legislation. The higher-level legal norms related to cultivated land ecological compensation are scattered across the Agricultural Law, Land Management Law, Implementation Regulations of the Land Management Law, Environmental Protection Law, Cultivated Land Occupation Tax Law, and Implementation Measures for the Cultivated Land Occupation Tax Law. Under the guidance of normative documents at the central level, provinces such as Beijing, Zhejiang, and Jiangsu have been improving local legislation on cultivated land ecological compensation, not only at the provincial level but also at the municipal level within their administrative regions. For example, they have issued regulations such as the "Suzhou Ecological Compensation Regulations," "Wuxi Ecological Compensation Regulations," and "Opinions of the Haidian District People's Government of Beijing on Establishing an Ecological Compensation Mechanism for Farmland in Haidian District." However, the existing substantive legislation on ecological compensation mostly takes the form of macro-level implementation opinions, notices, and decisions, lacking dedicated legislation specifically for cultivated land ecological compensation. Specifically, on one hand, the normative documents presented in the form of implementation opinions, decisions, and notices have a lower level of legal authority. The frequent issues of legal hierarchy application and conflicts lead to conflicts of interest among different administrative departments regarding ecological elements. On the other hand, the central government's relatively macro and fragmented regulations on cultivated land ecological compensation result in a lack of more targeted guiding documents at the local level, which in turn affects the overall promotion of this work across the country. This legislative status is also at odds with the goals of the rural revitalization strategy.

2.3 Issues in the Connection Between Law Violations and Criminal Offenses in the Field of Cultivated Land Restoration. Litigation related to cultivated land restoration in China includes five types: environmental civil public interest litigation, procuratorial environmental civil public interest litigation, ecological environment damage compensation litigation, ordinary criminal litigation, and criminal attached civil public interest litigation. In China, there is a distinction between "illegal acts" and "crimes," where a person's illegal actions may violate both administrative laws and criminal laws, leading to the competition of administrative penalties and criminal penalties. This involves the connection mechanism between "administrative law enforcement and criminal justice" (hereinafter referred to as the "Two Laws"), commonly known as "case transfer" in practice. Administrative law enforcement is the main method for the government to manage the economy and society. However, the quality of administrative law enforcement personnel varies greatly, resulting in numerous issues within administrative law enforcement, such as inaction allowing illegal activities to proceed unchecked, unjust enforcement leading to selective and disproportionate actions, non-standard enforcement affecting the image of law enforcement, and opaque enforcement undermining the rule of law. In the field of cultivated land protection, some administrative law enforcement departments and even the government do not fully recognize the significance of the connection between the Two Laws, failing to proactively and positively accept supervision from Prosecution, often

responding passively or even refusing to participate. The procedures for case transfer and acceptance in the connection mechanism in the field of cultivated land damage are not rigorous, and the role of information-sharing platforms still needs improvement. Local protectionism and departmental interest protectionism hinder the resolution of issues such as cases not being transferred or difficulties in transferring cases, as well as the phenomenon of substituting fines for criminal penalties. The deep-rooted worship of GDP sometimes leads to suppression of the connection mechanism between the Two Laws regarding cultivated land damage, under the guise of attracting investment or considering the overall situation.

2.4 Inadequate Management Mechanism for Restoration Funds.As early as 2014, the Supreme People's Court proposed exploring the establishment of a special fund for environmental public interest litigation, with environmental compensation funds specifically allocated for ecological restoration and maintenance of public environmental interests. However, many courts have not fully implemented this regulation. Article 1235 of the Civil Code outlines the scope of compensation for ecological and environmental damage, while Article 24 of the Supreme People's Court's interpretation on the application of law in environmental civil public interest litigation specifies the use of restoration funds. In practice, the regulatory bodies for these funds include the treasury, accounts for criminal cases under the court's custody, designated accounts by the court, accounts from the Prosecution, accounts from the agricultural and rural affairs bureau, and accounts from the ecological environment bureau, among others, with varying regulations on fund usage.

2.5 Singular Responsibility Bearers and Incomplete Liability Mechanisms.The Civil Code establishes that the primary bearers of ecological restoration responsibility are the tortfeasor. However, ecological damage to arable land often arises from common practices, with many situations not caused solely by the tortfeasor. For instance, in the aforementioned contaminated land case, the specific pollution transfer involves multiple stages, from sale, transportation, to disposal and storage, with various entities involved, many of which could be considered potential liable parties. However, the law does not establish a system for potential liability. Different environmental elements have different restoration needs, and judicial pragmatism may lead to a formalization of restorative responsibilities.

4. Suggestions for the Judicial Application of Arable Land Restoration Responsibility

Arable land is a non-renewable resource. In the great practice of building modern civilization for the Chinese nation, the protection and development of arable land are of significant concern. The judicial application of arable land restoration responsibility is crucial for constructing the legal foundation of a strong economy.

3.1 Unification of Legal Application Standards is Needed.The judicial identification, liability assumption methods, and effect evaluation of ecological restoration responsibility are important topics in environmental law research. To better achieve ecological restoration, it is necessary to clearly stipulate ecological restoration responsibilities in the code, optimize judicial adjudication concepts, and establish a scientific evaluation system for the effects of ecological restoration. Overall, ecological restoration responsibility in China is still in the exploratory stage. Due to inconsistent standards for arable land restoration, the high degree of professionalism required, and the numerous steps involved, the process often takes a relatively long time, with restoration difficulty and costs being quite high. Even when the Prosecution act according to the law and provide official suggestions, there are instances where arable land remains improperly restored after the relevant deadlines. It may be beneficial to refine overly general provisions in existing laws, clarify conflicts between higher and lower laws, and specify judgment standards through judicial interpretation to unify legal application standards. In the

future, efforts should be made to promote codification and systematization, pushing for clear provisions regarding ecological restoration responsibility within the code and building a systematic environmental restoration responsibility framework.

3.2 Improve the Management Mechanism for Arable Land Restoration Funds. The effective, reasonable, legal, and standardized use of these funds is crucial. First, to increase revenue, the funding sources should not only rely on the ecological restoration fees paid by responsible parties but also enhance social donations and government financial allocations to fill the funding pool. Second, strengthen centralized management by exploring a model where the provincial ecological environment department oversees arable land restoration responsibility funds, with the Prosecution supervising the use of these funds.

3.3 Strengthening Top-Level Design for the Connection Mechanism of Two Laws on Arable Land Restoration, Given National Conditions. Arable land restoration work is related to various administrative functions such as horizontal ecological environment management, urban planning, cultural tourism, and urban management, with low public participation. The procedures for administrative enforcement agencies to transfer criminal cases are unclear—for example, the standards for case transfer, deadline limitations, and legal responsibilities for failing to transfer or accept transfers lack rigid and clear regulations. Moreover, there are no clear rules regarding the acceptance procedures of criminal judicial authorities for cases transferred from administrative enforcement agencies. This leads to significant discretion for both transfer and receiving authorities, which can foster inaction or illegal negligence, greatly undermining the functionality and effectiveness of the connection mechanism between the two laws.

Administrative departments at all levels must attach great importance to the connection work of the "two laws" concerning arable land restoration. Given the broad scope of "two laws" connection work and the vertical leadership system implemented by some entities, it may be considered to establish a leadership group for "two laws" connection work. The group office should be set up in an appropriate department and authorize that department to act as the lead unit for joint meetings, thereby enhancing the authority of the leading unit and facilitating the convening of joint meetings and the implementation of normative documents formulated by such meetings. Strengthening the legal supervision of Prosecution, utilizing means such as case filing supervision to meet the target.

3.4 Explore more diverse approaches to responsibility in the field of arable land restoration, such as administrative orders and carbon sink subscriptions, as well as the optimization and improvement of these methods in practice. Establish an evaluation system for the effectiveness of arable land restoration, including innovations in assessment standards, methods, and technologies. Coordinate the relationship between restoration responsibilities and technological development; as environmental restoration technologies evolve, it is crucial to improve the means of assuming responsibility for restoration to adapt to new technological conditions and environmental demands. At the same time, address the judicial coordination of cross-regional ecological and environmental restoration, as effective coordination and cooperation among judicial bodies in different regions is also an important issue. Improve ecological compensation legislation in the area of arable land restoration, strengthen supervision, and establish a long-term monitoring mechanism for arable land restoration. The types of disputes related to arable land restoration are complex, covering a wide range of issues, and the difficulty and duration of restoration make it hard to achieve good results solely through judicial means. It is necessary to continuously strengthen the division of labor and collaboration among public security, prosecution, judiciary, and government departments, closely coordinate efforts, and enhance the supervision and follow-up of arable land restoration, while regularly requiring reports on the fulfillment of restoration obligations.

3.5 Explore the establishment of land courts. As China transitions from a phase of rapid economic growth to a stage of high-quality development, the volume of land-related cases has significantly increased, making urban renewal imperative. The various land and arable land cases result in numerous property disputes, often leading to stalemates in urban renewal. This represents a typical problem within China's complex dual land system. Due to the significance and complexity of land issues, related disputes often require inter-institutional coordination and departmental collaboration for resolution. Establishing specialized institutions or departments within courts to handle land disputes is a direction worth considering. Internationally, some countries have established specialized courts or tribunals to resolve land disputes, providing more specialized solutions. Domestically, there are precedents for establishing specialized courts or tribunals to address unique or emerging types of disputes, such as financial courts, intellectual property courts, and internet courts. Therefore, establishing land courts at the appropriate time is also a suitable path for addressing land and arable land issues.

3.6 Improve public participation and oversight mechanisms, strengthen legal awareness campaigns, enhance public awareness of arable land restoration and protection, and attract widespread participation from various sectors of society in the revitalization and utilization of arable land resources. At the same time, adopt multiple measures to increase penalties and maintain a tough stance against illegal and criminal activities that damage arable land. Further leverage the public's role in the process of fulfilling ecological and environmental restoration responsibilities by inviting media and internet platforms to monitor and follow up on the restoration process and outcomes, thereby improving the transparency of restoration efforts and public satisfaction, while expanding the educational significance of the effects of arable land restoration. By guiding public and societal participation, continuously enrich the means of supervising the results of the arable land restoration process, strengthen oversight, and contribute to the establishment of a sound long-term monitoring mechanism for arable land restoration.

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