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Challenges and Solutions: China's Illegal Hunting Crime from the Perspective of Ecological Civilization Development

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ABSTRACT: In recent years, the number of crimes involving illegal hunting in China's judicial system has steadily increased, giving rise to numerous disputes. The root of these disputes lies in the fact that China's Criminal Law lags in terms of animal protection legislation, failing to strike a balance between wildlife protection and human rights. This disconnection is particularly evident in the legislation and judicial practice regarding illegal hunting crimes and the value principles of ecological civilization strongly advocated by China. Moreover, China's legal framework and judicial practices concerning illegal hunting crimes suffer from low thresholds for conviction and a lack of comprehensive investigations into the subjective intentions of offenders. Chinese legislators and judges should consider international experiences in combating illegal hunting crimes, elucidate the right to defend oneself against wildlife in certain dangerous situations, and thoroughly revise legal provisions, including the definition of illegal hunting and related judicial interpretations. Additionally, greater efforts should be made to disseminate public legal knowledge regarding illegal hunting crimes.

Keywords: Illegal hunting crime; Environmental criminal law; International experience; China



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1. Introduction

The importance of environmental protection is undeniably a global focus, and as the world's leading manufacturing hub, China's environmental situation has attracted significant international attention. Among the many topics related to China's environmental protection, those most closely associated with people's daily lives, such as climate change, carbon emission, energy transition, water pollution, and soil pollution, are undoubtedly the most prominent. However, while the importance of China's animal protection issue is no less than the aforementioned topics, it does not receive the required attention.

Animals, as an essential part of the ecosystems, maintain ecological balance through their roles in the food chain [1–3]. Different types of animals play various ecological roles, ranging from predators to herbivores and decomposers to pollinators [4]. The presence and diversity of animals are crucial for maintaining the health and stability of ecosystems [5,6]. Over the past few decades, however, China's ecological balance has been severely disrupted due to the excessive exploitation of natural resources, industrial pollution, and the invasion of alien species. This disruption has led to a sharp decline in biodiversity, with many species facing the risk of endangerment and extinction, resulting in dangerous consequences. Biodiversity is closely linked to public health, food security, and human mental well-being [7–9]. For example, the SARS outbreak in China in the early 21st century was believed to have been caused by the excessive encroachment of human activities on wildlife habitats, which increased contact between humans and wild animals, allowing pathogens to cross species barriers and ultimately leading to the outbreak [10,11]. Moreover, diseases such as mad cow disease (bovine spongiform encephalopathy), foot-and-mouth disease (*Aphthae epizooticae*), and avian flu (avian influenza) are also closely related to wild animals [12–14]. The COVID-19 outbreak in early 2020 in Wuhan, China, was also once thought to be closely related to wildlife [15]. These findings indicate that animal protection is not just

related to the survival of animals but is also closely related to human health, sustainable living, and development, making it a highly important environmental issue worthy of attention and study [16,17].

Fortunately, with the convening of COP15 in China and the subsequent signing of the Kunming–Montreal Global Biodiversity Framework, the issue of animal protection has gained increasing attention in China [18–21]. With respect to animal protection, China’s legal system is currently composed of several key environmental and criminal laws, which directly or indirectly provide a relatively systematic and detailed legal framework for the protection, management, and sustainable development of China’s wildlife (see Table 1).

Table 1. Laws related to wildlife protection in China.

| Name of Legislation | Time of Legislation and Last Revision |
|-----------------------------------|---------------------------------------|
| Wildlife Protection Law | 1988/2023 |
| Environmental Protection Law | 1989/2014 |
| Marine Environment Protection Law | 1982/2017 |
| Animal Epidemic Prevention Law | 1997/2015 |
| Animal Husbandry Law | 2005/2023 |
| Forestry Law | 1984/2019 |
| Grassland Law | 1985/2013 |
| Yangtze River Protection Law | 2021 |
| Yellow River Protection Law | 2022 |

Among the many legislation related to animal protection, criminal punishment is undoubtedly the most powerful. In China’s Criminal Law, the primary provisions related to animal protection are found in Article 341, Paragraphs 1 and 2. The former stipulates the crime of endangering valuable and endangered wildlife, mainly protecting animals, such as pandas and tigers. In contrast, the latter stipulates the crime of illegal hunting, which protects more common animals, such as frogs, lizards, and sparrows [22,23]. Because animals protected by the illegal hunting crime law are more common, sending defendants who hunt these animals to prison has sparked great controversy. This, in turn, provides a deeper understanding of the characteristics of China’s animal protection legislation. In recent years, many highly controversial cases related to the illegal hunting crime in China have been reported. A representative case in Henan Province in 2021 involved a heated dispute. Specifically, two defendants, whose dozens of acres of farmland were destroyed by wild boars, killed eight wild boars to protect their farmland and crops. They were ultimately convicted of the illegal hunting crime, which sparked widespread debate in China regarding the association between animal protection and human rights protection from a legal perspective [24,25].

At first glance, the disputed cases of illegal hunting crime reflect a certain lag in China’s Criminal Law regarding the legislation of animal protection crimes. This study emphasizes that these controversial cases, at a deeper level, reflect that China’s criminal legislation on animal protection has yet to fully integrate the essence of ecological civilization, which China has vigorously promoted over the past decade. In 2007, China formally introduced the concept of ecological civilization construction, which is currently one of the five pillars of socialism. Complete with Chinese characteristics, it was written into China’s Constitution in 2018 [26]. It can be argued that ecological civilization is the highest guiding principle in China’s environmental protection field, with its advocacy of a “community of life between humans and nature” and its emphasis on harmonious coexistence forming the basis of contemporary environmental policies and laws in China [27]. In this context, the root of the dilemma facing China’s law regarding illegal hunting is that China’s legislation and judiciary have not fully embraced the core principles of ecological civilization. In other words, there is a failure to balance wildlife protection with human rights protection, and lawmakers and judges still believe that harsh punishment is mandated for those who violate the law of unilateral wildlife protection, a concept derived at the beginning of the 21st century. It is argued that this is a conflict that environmental researchers should seriously consider and offer corresponding countermeasures.

2. Legislative Evolution and Criminal Standards Regarding the Crime of Illegal Hunting in China

As early as 1979, Article 130 of China’s Criminal Law stipulated the crime of illegal hunting. In 1997, when the Criminal Law in China was revised, the crime of illegal hunting was listed in Paragraph 2 of Article 341. Judging from the previous revisions of the provisions of the illegal hunting crime in Criminal Law, the crime has always been aimed at protecting wildlife resources [28,29]. According to the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Destroying Wildlife Resources, the object of the crime of illegal hunting in the current Criminal Law refers to the animals listed in

the “List of Terrestrial Wild Animals with Important Ecological, Scientific and Social Values under State Protection”, which is commonly known as “Three Have Animals”¹. The following table shows the evolution of legislation and judicial interpretation of the crime of illegal hunting in China (see Table 2).

The content of the crime of illegal hunting in the current Criminal Law of China is as follows: “Anyone who violates hunting laws and regulations, hunts in a game-forbidden area or during a game-forbidden period, or uses prohibited tools and methods to destroy wildlife resources if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance, or a fine”. The constitutive requirements of the crime are as follows: first, illegal hunting; second, violation of hunting laws and regulations; third, violation of at least one of the game reserve’s regulations or hunting using prohibited tools and methods; and fourth, serious circumstances. Furthermore, under the subject of the crime of illegal hunting, Article 346 of the Criminal Law stipulates that “If a unit commits the crimes specified in Articles 338 to 345 of this section, it shall be fined, and the directly responsible person in charge and other directly responsible personnel shall be punished according to the provisions of each article of this section”.

Table 2. The evolution of legislation and judicial interpretation of the crime of illegal hunting in

| Legislation Time | Issuing Authority | Canonical Name | Relevant Provisions |
|------------------|---|--|--|
| In 1979 | The Second Session of the Fifth National People’s Congress | Penal Code | Article 130 stipulates as follows: Whoever violates the regulations, hunts in prohibited hunting areas or during prohibited seasons, uses prohibited tools and methods, and destroys animal resources, if the circumstances are serious, shall be sentenced to imprisonment of not more than 2 years, criminal detention, public supervision, or a fine. |
| In 1997 | The Fifth Session of the Eighth National People’s Congress | Penal Code | Article 341, Paragraph 2, stipulates as follows: Whoever violates the regulations and regulations, hunts in prohibited hunting areas or during prohibited seasons, uses prohibited tools and methods, and destroys animal resources, if the circumstances are serious, shall be sentenced to imprisonment of more than 3 years, criminal detention, public supervision, or a fine. |
| In 2000 | Supreme People’s Court | Interpretation of Several Issues Concerning the Specific Application of Laws in the Trial of Criminal Cases of the Destruction of Wildlife Resources (Legal Interpretation (2000)) | Article 6 stipulates as follows: Anyone who violates the regulations, hunts in prohibited hunting areas or during prohibited seasons, uses prohibited tools or methods, under the following circumstances, shall be convicted of illegal hunting if the circumstances are serious: (1) in violation of hunting regulations and methods to hunt in prohibited hunting areas or during prohibited seasons; (2) in violation of hunting regulations and methods to hunt in prohibited hunting areas or during prohibited seasons; (3) other serious circumstances. |
| In 2020 | Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security and Ministry of Justice | Guiding Opinions on Punishing Illegal Wildlife Trading Crimes According to Law (Gong Tong Zi (2020) No.19) | Article 1 stipulates as follows: Severely illegal hunting and the killing of wild animals according to the provisions of the Law and the killing of wild animals according to the provisions of the Law. Whoever hunts in prohibited hunting areas or during prohibited seasons, uses prohibited tools and methods, and destroys animal resources, if the circumstances are serious and conform to the provisions of the Criminal Law, shall be convicted of illegal hunting. |
| In 2022 | Supreme People’s Court and Supreme People’s Procuratorate | Interpretation of Several Issues Concerning the Application of Laws in Handling Criminal Cases of Destruction of Wildlife Resources (Legal Interpretation (2022) No.12) | Article 7, Paragraph 1, stipulates as follows: Whoever violates the regulations, hunts in prohibited hunting areas or during prohibited seasons, uses prohibited tools and methods, and destroys animal resources, if the circumstances are serious, shall be convicted of illegal hunting, and shall be sentenced to imprisonment of more than 3 years, criminal detention, public supervision, or a fine. If the circumstances are particularly serious, shall be sentenced to imprisonment of more than 3 years, criminal detention, public supervision, or a fine. |

The provisions regarding the crime of illegal hunting in China's Criminal Law are relatively broad, leading to a lack of clear criteria for conviction. In 2000, the Supreme People's Court of China issued "Interpretation on Several Issues Concerning the Specific Application of Laws in the Trial of Criminal Cases of Destruction of Wild Animal Resources" (Legal Interpretation (2000) No. 37, hereinafter referred to as the 2000 Interpretation). Article 6 of this document specifies the quantitative and plot standards constituting this crime, i.e., violating hunting laws and regulations and using prohibited tools in a game reserve or during a game reserve hunting season. This includes (1) illegal hunting of more than 20 wild animals; (2) violation of hunting regulations and use of prohibited tools or methods for hunting in prohibited hunting areas or during prohibited hunting seasons; and (3) other serious circumstances. In more than 20 years of judicial practice, illegal hunting of more than 20 wild animals has become the main criterion for the crime of illegal hunting. After causing many controversies, the Supreme People's Court and the Supreme People's Procuratorate of China jointly issued the "Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Destruction of Wildlife Resources" (Legal Interpretation (2022) No. 12, hereinafter referred to as the "2022 Interpretation") in 2022. The criminalization standard for the crime of extraordinary hunting was adjusted to "Those who violate hunting regulations, engage in hunting in prohibited hunting areas or during prohibited hunting seasons, use prohibited tools or methods, and destroy wildlife resources shall be deemed as "serious circumstances" as stipulated in Article 341, Paragraph 2, of the Criminal Law and shall be convicted and punished for the crime of illegal hunting as follows: (1) illegally hunting wildlife with a value of more than 10,000 yuan; (2) hunting using prohibited tools or methods in prohibited hunting areas; (3) hunting using prohibited tools or methods during prohibited hunting seasons; (4) other serious circumstances, e.g., the previous standard of conviction based on the number of animals involved in the case has been changed to using the value of the animals involved as the standard of conviction. This change means that the mode of quantity criminalization has been changed to value criminalization, no longer relying solely on quantity criminalization. This is an important change in the criteria for determining the crime of illegal hunting.

3. Judicial Dispute over the Crime of Illegal Hunting in China

In China's judicial practice, the number of cases of illegal hunting crimes is increasing annually, and many judgments that have aroused heated discussions and even doubts among the public have not been widely recognized. From 2020 to the end of 2022, China's COVID-19 pandemic prevention and control policies led to a considerable reduction in social mobility. Thus, the relevant data did not reflect the normal judicial state. Therefore, this study only summarizes 10,012 judgments on illegal hunting crimes in China from 2012 to 2020. See Table 3 for specific data.

Table 3. List of the number of illegal hunting crimes in criminal judgment in China from 2012 to 2022.

| Year | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|----------|------|------|------|------|------|------|------|------|------|------|------|
| Quantity | 8 | 50 | 383 | 691 | 1034 | 1251 | 1424 | 2083 | 3088 | 1305 | 281 |

Table 3 shows that the criminal crackdown on illegal hunting in China has increased annually. According to the 2000 Interpretation, the threshold for criminalising illegal hunting behavior was set to only 20 protected animals, leading to many controversial cases. However, this article lists only a few representative cases to illustrate the disputed situation.

Case 1: In October 2013, two defendants used flashlights for lighting and illegally hunted 21 birds using tools such as slingshots and steel bullets. The species of the bird was technically identified as tree sparrow (*Passer montanus*), which belongs to the national list of "Three Have Animals". Both defendants were fined 2000 yuan.

Case 2: In July 2014, the defendant hunted toads in Renzhuang West Group, Tanlou Village, Liuzhuang Town, Queshan County. A total of 87 toads and the defendant's hunting tools were found at the site. Forestry technical engineers in Queshan County identified the toads as Chinese toads. The defendant was sentenced to 3 months of detention.

Case 3: In the autumn of 2021, a couple in Xichuan County, Henan Province, lost more than 70 acres of corn, more than 30 acres of wheat, and almost no crops because of a wild boar. The husband and wife killed eight wild boars in 3 months to protect their crops. The Circuit Court of Xichuan County Court held that the husband and wife had committed the crime of illegal hunting. The husband was sentenced to 1 year and 6 months with a suspended sentence of 2 years, and the wife was sentenced to 1 year with a suspended sentence of 1 year. They were also required to compensate the state for losses and expenses in the amount of 4000 yuan. Once the media reported the case, it sparked significant public controversy over the judicial decisions [30].

The above are representative cases. Through a comprehensive analysis of China's judicial practices, it can be deduced that judicial disputes regarding the crime of illegal hunting in China can be summarized as follows: the actual punishments are lighter than the administrative punishments, the subjective differences among the actors have not been effectively identified, and people misjudge the scope and value of wild animals.

3.1. Penalty Is Lighter than Administrative Punishment

Based on the differences in the prerequisites, the differences among the implementing agencies, and the application of punishments for the types of crimes, the threshold of the crime of illegal hunting should be higher than that of administrative, legal punishment for illegal hunting; moreover, the punishment for illegal hunting should be stricter than the administrative, legal responsibility regarding illegal hunting. In China, administrative penalties refer to punishments imposed by administrative agencies for violations of administrative regulations and rules. In contrast, punishments for crimes are imposed according to the provisions of the Criminal Law, which is the most serious norm in all legal settings [26]. As previously mentioned, the scope of punishment for illegal hunting has appeared to coincide with administrative legal regulations. In practice, there are cases where the fines for punishing administrative penalties are essentially equal to or less than the fines for punishing crimes. In other words, the resulting punishment for a case following a criminal trial is equivalent to an administrative violation and even lower than an administrative punishment. In such cases, the necessity and value of the existence of criminal proceedings are difficult to reflect. On this basis, compared with entering the administrative punishment procedure, the actor is more likely to enter a criminal procedure with lower levels of punishment, leading to limitations in the role of China's Criminal Law and Wildlife Protection Law.

3.2. Subjective Differences of Actors Have Not Been Effectively Screened

In practice, many controversial cases are caused by the subjective aspects of the actors, which mainly include two categories. First, the subjective aspects of the actors are difficult to accurately identify. For example, in the 2015 Henan Bird Digging Case, the intensely debated plot was that the defendant dug up the bird in the bird nest outside his house and sold it online for 1080 yuan. Later, it was found that the bird hunted by the defendant was a national second-class protected animal, Yanfalcon. In this case, the defendant knew that the bird he hunted was a swallow falcon. Still, whether he knew that the swallow falcon belonged to the national second-class protected animal category could not be determined. In this case, the ambiguity of the subjective identification of the defendant does not affect the crime establishment. Even if the defendant does not know the level of protection of the Yanfalcon, it is perceived as a legal misunderstanding, which does not affect the identification of the crime of illegal hunting [31].

Even if it is illegal hunting, the starting point of the accused in different cases is also different. Illegal hunting includes not only the intentional hunting of wild animals for the purpose of killing and eating but also some activities that do not conform to the traditional public understanding of "illegal hunting", such as the killing of wild boars that frequent people's gardens to protect their crops, which, in fact, is an act of defense. After being reported by the media, such cases have been vigorously debated as they are inconsistent with the public's understanding of illegal hunting. For example, according to media reports, to prevent birds from pecking at apples, the defendant set up nets to catch birds in his private orchard, resulting in the deaths of 11 wild birds, including a national first-class wild protected animal. First, he paid 55,200 yuan to compensate for the damage to the ecological environment. Later, the court ruled that he was guilty of endangering precious and endangered wild animals and illegal hunting. The two crimes, when combined, resulted in a 3-year suspended prison sentence and a fine of 4000 yuan [32]. The defendant knew the type of bird he was hunting but was unaware that hunting such a bird was illegal. Ultimately, knowledge of the latter was unnecessary to establish the elements of the crime. In different hunting behaviors where the purpose is to eat the wild animal, differences also exist in the subjective aspects of the actors. Some actors pursue only wild game. For example, in Hubei Province, Li Mou used online hunting traps to catch three wild boars for food (three men were arrested). In other instances, some actors have used medicine to treat diseases. For example, many Chinese people believe in traditional folk medical methods. For example, Xu from Shandong followed a folk remedy claiming that geckos can be used to treat certain medical conditions. He subsequently captured 199 geckos to help sick relatives [23]. When the parties involved in a case aim to prevent the invasion of wild animals or to use wild animals for medicinal purposes, etc., the degree of discussion and persistence of the case is much greater than that of a case aimed at killing or selling a wild animal for profit.

3.3. Scope and Value of Wild Animals Are Misjudged by People

The judicial dispute concerning the crime of illegal hunting not only exposes the problems of legislation and adjudication but also shows that the public knows little about the laws and cases related to the crime of illegal hunting [33]. At the public level, the public has questioned the judgments in cases of illegal hunting offenses in numerous ways, including but not limited to the following: First, the public does not have a clear understanding of the scope of the protection regarding the offense of illegal hunting; it is also unaware that common frogs, geckos, and parrots belong to the three types of animals protected by the offense of illegal hunting and that catching these animals constitutes an offense. Second, the law criminalizes the hunting of animals, such as rabbits, which were once a common food on rural tables. As such, it does not grant the people a sense of rarity, which deviates from the common sense and basic knowledge of most of the public. Third, the severity of the penalties is contrary to the common sense of the public, who believe that the law's assessment of the penalties for illegal hunting is confusingly harsh and that there is no need to take criminal means but rather to use lower-order punishments, such as fines and education. These three reasons, when combined, demonstrate the problem of the public's unclear perception of wildlife and its value. Regarding the value of wildlife, Article 7(1) of the 2022 Interpretation stipulates the criminalization criteria of illegally hunting wildlife with a value of RMB 10,000 or more. The public may, therefore, mistakenly believe that illegal hunting of wild animals with a market price of less than 10,000 yuan does not meet the criteria of illegal hunting. However, the value of wild animals is not equivalent to their price on the market, and the difference between the two may be substantial. The conviction and sentence for illegal hunting consider the value of wildlife resources, not the price. A few sparrows are sold for less than 100 yuan based on market prices. However, according to the Standard Catalog of the Baseline Value of Terrestrial Wildlife and the Measures for the Assessment of the Value of Wild Animals and Their Products, the baseline value of sparrows is 300 yuan per sparrow, and illegal hunting of a few sparrows may meet the incrimination standard for the crime of illegal hunting. This has led to a situation in judicial practice where the market price is quite low. Still, the appraised value is extremely high at the time of conviction and sentencing causing misunderstanding among the public [34].

4. Analysis of the Existing Problems Associated with Illegal Hunting Crimes in China

As mentioned, there are some issues with the crime of illegal hunting in legislation and judicature, and analyzing the causes behind these problems is the key to solving them.

4.1. Threshold for Illegal Hunting Crimes Is Low

4.1.1. Judicial Interpretation has Changed the Criminal Conditions of the Crime of Illegal Hunting

In 2022, Items 2 and 3 of Paragraph 1 of Article 7 of the Interpretation stated “whether the circumstances are serious” in the crime of “hunting in a game reserve, during a game reserve or using prohibited tools and methods, and the circumstances are serious” as “hunting with prohibited tools or methods in a game reserve” and “hunting in a game reserve”.

4.1.2. Judicial Interpretation Expands the Prohibition Scope of the Crime of Illegal Hunting

After the revision of the Wildlife Protection Law, the power to designate hunting areas, hunting periods, and prohibited tools and methods will be handed over to the local people's governments at or above the county level. With the promotion of the strategic decision of “vigorously promoting the construction of an ecological civilization” and the strengthening of the awareness of ecological, and environmental protection, governments at all levels have issued a series of environmental protection regulations, including wildlife resource protection [35,36]. Owing to various factors, such as political achievements, the government has expanded the extension scope of the hunting area and hunting period, as well as prohibition tools and methods and classified the time, space, tools, and methods as incriminating conditions into the prohibited scope to reduce the occurrence of illegal hunting, which is accompanied by improper expansion of the prohibited scope of illegal hunting crimes, thereby lowering the incriminating threshold of illegal hunting crimes at the level of incriminating conditions [37,38]. In particular, many governments stipulate that hunting is forbidden year-round and throughout the city, causing the public to lose time and space for legal hunting. When committing the crime of illegal hunting, the perpetrator may not realize whether he is hunting out of season or in a prohibited hunting area, and even if it does not cause any harmful consequences, he still meets the incriminating conditions for the crime of illegal hunting. Many problems that should be addressed at the level of administrative punishment must be included in the criminal procedure because failure to do so easily leads to the abuse of China's Criminal Law and the waste of judicial resources [39]. Furthermore, because the actor himself is not dangerous, there is no need to impose an extreme

penalty, as doing so makes it difficult to find a balance in the judgment of the case where fines or probation are often applied. This is one of the reasons why the penalty is lower than the administrative penalty for illegal hunting.

4.2. Crime of Illegal Hunting Does Not Comprehensively Reflect the Subjective Aspects of the Perpetrator

For the purposes of the crime, perpetrators of illegal hunting offenses can be divided into two categories: one group hunts wild animals to satisfy their appetites and gain economic benefit. One approach focuses on the illegal exploitation of wildlife resources, leading to the possession of dead or injured wild animals. Another perspective considers the infringement of property by wild animals, especially when property protection measures are in place to prevent such occurrences. In this case, the primary goal is to protect personal property from being damaged by wild animals. However, the use of improper measures during this prevention, which results in the death or injury of wild animals, constitutes a criminal offense. The other category of defendants implemented precautionary measures to protect their property from being damaged by wild animals, with their primary intent being to prevent such infringement on their personal property. However, due to improper precautionary measures, the result was the death or injury of wild animals. There is a difference between the intentional and negligent subjective motives of these two perpetrators. Still, when Criminal Law regulates their hunting behaviors, the judgment is based on whether they have caused serious damage and does not substantially consider their motives for or purpose during the act. The incriminating criteria are significantly based on the consequences of the behavior and the objective performance, which leads to an insufficient examination of the subjective aspects of the perpetrator.

From the perspective of whether the perpetrators “knew”, in terms of judicial practice, it is noted that the perpetrators of illegal hunting offenses are villagers, hunters, herders, and some tourists. Many of the perpetrators who previously hunted do not know the hunting objects Three Have Animals or that there is a hunting ban, do not realize they are in a prohibited hunting area, or do not know the prohibited tools and methods applied by the regulations. The subjective constituent element of the offense of illegal hunting is intent. Still, the normative system does not stipulate how to determine the subjective intent of the perpetrator, nor does it stipulate whether, in determining the subjective aspect of the perpetrator, the perpetrator needs to have a clear understanding of the object of the hunt and the constituent elements of the prohibited nature of the offense.

4.3. Cognitive Difficulties of the Prohibitive Provisions of the Crime of Illegal Hunting

China ranks third worldwide in terms of land area. Different regions have different hunting areas and periods due to the differences in the geographical environment and living habits of wild animals [40]. The crime of illegal hunting itself is not a felony, and illegal hunting cases are not among the most common types of criminal cases being prosecuted, i.e., the frequency of this type of case is not high. One reason for this is that local governments do not have the financial resources, material resources, or professionals to invest in the division of hunting areas and periods [29]. Moreover, there are difficulties in identifying hunting areas and periods, leading to blurred boundaries and a lack of clear standards for direct enforcement. Under this premise, in recent years, local governments’ prohibitive regulations on wildlife protection have demonstrated an unreasonable trend of improper expansion. Taking Beijing as an example, the Measures for the Implementation of Prohibiting Hunting Terrestrial Wild Animals in Beijing stipulate that the whole area of Beijing is a hunting area and that the whole year is a hunting period. Simultaneously, the prohibited tools, including common tools, such as sticky nets and slingshots, and the prohibited methods, including digging holes, are strictly limited, and the eggs (eggs) of wild animals are included in the prohibited scope. It is inferred that beating a sparrow with a slingshot, digging a hole to catch a squirrel, and picking up the eggs of a pheasant in Beijing may constitute illegal hunting crimes. This application is evidently too mechanical and does not conform to the public’s common sense. In addition, the Wildlife Protection Law authorizes the people’s governments at or above the county level to designate hunting seasons, hunting areas, and prohibited tools and methods, which inevitably makes the low-level normative documents formulated by the government the basis for conviction and sentencing of illegal hunting crimes [41]. Other normative documents formulated by the people’s government at the county level belong to the lowest level of administrative regulations and do not need to be reported to the State Council for the record. Due to the lack of filing procedures, the prohibitive provisions stipulated in normative documents may not be communicated to the public in a timely manner. Thus, the public is generally unaware of these prohibitive provisions.

4.4. Legislation of Illegal Hunting Crimes Has Not Fully Integrated with the Spirit of Ecological Civilization

In the previous discussion, we analyzed several causes of the challenges faced by the crime of illegal hunting. In this section, we explain that the deepest underlying reason for such challenges is that legislators and judicial authorities have not fully implemented China's concept of ecological civilization. It is well known that after China began its reform and opening up in the late 1970s, the development philosophy of "centering on economic growth" persisted for two or three decades, attaining remarkable developmental achievements [42,43]. However, this development came at the cost of environmental pollution and destruction, including a sharp decline in China's biodiversity [44,45]. That is, before China proposed the concept of an ecological civilization in 2007, its wildlife protection philosophy regarded wildlife mainly as a resource to be utilized. The relevant chapter of China's Criminal Law, which addresses environmental crimes, is even titled "Crimes of Destroying Environmental Resources Protection" (Section 6, Chapter 6 of the Criminal Law of China) [46]. Therefore, China's legislation and policies on wildlife were mainly aimed at regulating and limiting the overconsumption of these resources rather than achieving the ideal state of harmonious coexistence between humans and nature advocated by ecological civilizations, such as the "community of life between humans and nature".

The current issues surrounding illegal hunting crimes highlight that the early logic of resource management continues to dominate legislators' and judicial authorities' understanding of wildlife protection. As a result, they have not made targeted adjustments based on China's current biodiversity situation, which has led to criminal penalties for some minor or otherwise reasonable hunting activities. As this reality contradicts the original intention of ecological civilization, which promotes harmonious coexistence and the reasonable use of resources between humans and nature, it urgently needs to be addressed.

5. Clarification of the Direction and Specific Measures for Improving the Crime of Illegal Hunting

In China's judicial practice, the problems encountered in the offense of illegal hunting can no longer be adjusted by a single local amendment to the provisions. They should be based on the overall layout of the relevant laws and rules to carry out a comprehensive and systematic amendment to innovate the system of rules of illegal hunting and, at the same time, enhance the public legal knowledge of the offense of illegal hunting [47].

5.1. International Experience in Punishing Illegal Hunting Crime and Its Implications for China

Notably, China's stringent crackdown on illegal hunting is justified. However, increased clarity and flexibility in the legal framework are needed to improve the enforcement of this crime in China. The current strict stance on wildlife crimes in China is similar to that of the United States in the latter half of the 20th century despite the substantial differences in the judicial systems of the two countries.

The US wildlife protection legal framework comprises federal and state laws. Federal laws include the Endangered Species Act, the Migratory Bird Treaty Act, and the Marine Mammal Protection Act, among others [48]. These laws protect certain endangered or specific species and impose severe criminal penalties for illegal hunting, killing, fishing, and trading [49]. Furthermore, individual states have their wildlife protection laws, which typically cover the management of wildlife resources within the state, hunting license systems, and the establishment of hunting-free zones [50]. For example, California is one of the most stringent and progressive states in terms of animal protection legislation, with laws covering not only wildlife, pets, and livestock but also animals used in experiments and the entertainment industry.

As the birthplace of the modern environmental movement in the 20th century, the United States adopted stringent measures for prosecuting individuals committing wildlife crimes, particularly in applying the principle of strict liability in many criminal cases. This greatly reduced the burden of providing the defendant's subjective intent [51]. For example, in the case of the United States v. McKittrick, the defendant claimed that he mistakenly identified a gray wolf as a coyote during a hunt and was unaware that the animal he killed was protected under the Endangered Species Act [52]. Thus, he argued that he should not be held legally responsible. However, the court rejected McKittrick's defense, stating that, regardless of his claim of ignorance about the animal's legal status, the Endangered Species Act imposes strict liability for the protection of endangered species. As long as it was proven that the defendant committed the act, he could be guilty, regardless of his knowledge or intent; therefore, the defendant was convicted [53].

This brief overview of the approach of the United States to wildlife crime suggests that during certain periods, both the United States and China employ strict criminal measures to advance national wildlife protection policies and increase public awareness of wildlife conservation [54]. Therefore, China's harsh punishment of defendants in illegal hunting crime cases is not without justification. However, given that China's biodiversity has experienced some recovery and that certain species no longer require such stringent protection, flexibility should be introduced when

applying the crime of illegal hunting. Otherwise, while this approach may appear to protect the rights of animals, it could infringe upon basic human rights. This result contradicts the ecological civilization principles that have become the fundamental state policy in China.

Furthermore, as a civil law country, China lacks a jury system and relies on judges to render verdicts directly, which inherently limits flexibility compared with common law countries, such as those in the Anglo–American legal tradition. In view of this, we present several specific recommendations for improving the crime of illegal hunting in China.

5.2. Clarification of the Subjective Elements of the Crime of Illegal Hunting in Criminal Law

Existing legislation does not address the subjective state of the offense of illegal hunting, and this study argues that the perpetrator should be aware of prohibited hunting seasons, hunting areas, and tools and methods. In Article 7, Paragraph 1, Subparagraphs 2 and 3, only on the premise that the perpetrator knows the prohibited constituent elements can illegal hunting behavior be considered a crime. The reason is that there is a wide range of specific objective elements of the offense of illegal hunting, and it is obviously unrealistic to require people who do not have professional knowledge of wildlife protection to memorize and identify all the types of Three Kinds of Animals. Contrarily, it is easier to require people to know the time and space of hunting prohibitions and the tools and methods designated by the local government. Establishing judicial agencies to determine the subjective aspects of the perpetrator is not difficult. First, they can refer to the average cognitive level of the public to presume, for example, in general, a local person who violates the hunting ban of an area or the hunting period for that area can be more easily held accountable for the crime of illegal hunting than can foreign tourists who are unaware of the local hunting regulations. Second, if the perpetrator has prior experience breaking laws or committing crimes against wildlife, their understanding of the legal status of certain wildlife should be clearer than that of individuals without such experience. Therefore, it can be inferred that their illegal hunting of wild animals is intentional. Third, if the perpetrator has any experience of breaking the law or committing crimes against wildlife or if the perpetrator's illegal hunting behavior is contrary to the knowledge of wildlife protection propagated by the local government through multiple platforms and multiple channels, then the possibility of his or her/her knowledge is greater [39].

5.3. Further Revision of the Judicial Interpretation Involving the Crime of Illegal Hunting

Revisions to the judicial interpretation of the crime of illegal hunting and clarification of the criminal object, conviction, as well as sentencing standards and legal applications of the crime of illegal hunting are essential. Compared with the 2000 Interpretation, the 2022 Interpretation has made great progress, but some provisions are still unreasonable and unclear, which may easily lead to the deviation of court decisions from the internal logic of the legislation, thereby causing judicial and even public disputes. Thus, further revisions are necessary. First, Item 4 of Paragraph 1, Article 7, “Other serious circumstances” has been deleted. The bottom clause is set to prevent the occurrence of circumstances beyond the provisions of the preceding paragraph, and the first three items of the first paragraph include illegal hunting. Accordingly, it is unnecessary to use the bottom clause as the fourth criterion to judge whether the crime of illegal hunting is serious. Second, the criteria for conviction should be appropriately raised. In the 2022 Interpretation, the second and third items of Article 7, Paragraph 1, provide too wide an interpretation scope of the seriousness of the circumstances. The decision to convict depends on whether the behavior conforms to the prohibited hunting period, hunting area, and tools and methods, regardless of the results of the offense. The boundary between crime and noncrime should be the consequence of the behavior of the actor causing a certain number of wildlife casualties to prevent the improper expansion of the prohibited scope of illegal hunting crimes. Third, in the judicial interpretation, the connotation and extension of the crime of illegal hunting are elucidated, the object of protection of the crime of illegal hunting is delineated, and the boundary between crime and non-crime is further clarified. Paragraph 1 of Article 341 of the Criminal Law stipulates the crime of illegal hunting, and Article 7 of the 2022 Interpretation stipulates the serious circumstances of the former law; however, neither clearly defines the criminal object of this crime. Some scholars believe that the scope of protection of the crime of illegal hunting should be defined as local key protected terrestrial wild animals and Three Have Animals by combining the Wildlife Protection Law and Criminal Law; however, more scholars believe that the scope of protection of the crime of illegal hunting is Three Have Animals [55].

5.4. Clarification of Human Defensive Rights against Wild Animals under Certain Dangerous Circumstances

Criminal acts prohibited by the Criminal Law are typically initiated by humans; however, in certain circumstances, the destructive power of wild animals should not be underestimated. While the aggressive behavior of wild animals

lacks the subjective malice characteristic of human crimes, their threats to humans can still result in severe property damage, personal injury, or even death. In the aforementioned wild boar case in Henan, China, wild boars, already overpopulated in the area, almost destroyed the defendants' farmland, resulting in crop failure and posing potential threats to personal safety. In this situation, the defendants' actions of killing the wild boars in self-defense were entirely justified and fully aligned with the legislative purposes of self-defense or necessity, as outlined in the Criminal Law.

Notably, the US Endangered Species Act provides a basis for immunity from liability in cases of self-defense. Section 1540(C) clearly stipulates that if an individual, acting in good faith engages in defensive behavior to protect themselves, their family, or others from endangered or threatened species, and such actions can be used as defense. This provision is highly valuable as a reference for China. Even if China cannot immediately amend its laws, it could establish similar rules through more flexible means, such as issuing exemplary cases. In fact, as early as 2010, China developed a case guidance system intending to adopt beneficial aspects of the case-centered judicial system from common law countries, thereby increasing the flexibility of its legal system [56,57]. According to relevant regulations, guiding cases issued by the Supreme People's Court serve as factual and legal references and have a binding effect on rulings in similar cases. In general, judges are required to refer to the rulings of guiding cases when handling similar cases to ensure consistency and fairness in the application of the law [58,59]. In light of this, the Supreme People's Court of China should select some of the more controversial cases involving illegal hunting crimes, particularly those where wild animals have caused property damage or personal injury to humans. Furthermore, the laws should explain how to apply the principles of self-defense or necessity under such circumstances and establish these cases as guiding cases. This would elucidate the rights of individuals to defend themselves when facing attacks or destruction by wild animals, providing a reference for judges across China to ensure consistency in the adjudication of similar cases.

5.5. Restriction of Local Governments from Formulating Relevant Documents on the Protection of Wildlife Resources

The government's formulation of documents related to protecting wildlife resources should be strictly regulated, and unnecessary prohibitive provisions should not be set in pursuit of restrictions on hunting behavior. Hence, the government should avoid excessive legislation that creates a high-pressure and dangerous situation for the individual freedom of citizens. Local governments at or above the county level must establish specific provisions regarding the prohibited hunting period and hunting area, as well as tools and methods in the crime of illegal hunting. However, local governments may indefinitely expand the time, space, tools, and methods of no-hunting on the basis of the achievements in ecological environmental protection, thereby resulting in a long prohibited hunting period, a large prohibited hunting area, and more uncertainties regarding the prohibited tools and methods. Because the actual situation varies from place to place, it is impossible to stipulate a unified standard for the time and space of hunting bans [60]. The government should be required to jointly discuss with wildlife protection authorities, environmental protection departments, scientific research institutions, and other departments when formulating documents related to wildlife resource protection. That said, it is unnecessary to make expanded prohibitive provisions.

5.6. Increase in the Popularization of Legal Knowledge of Illegal Hunting Crimes among the Public

The formulation and revision of laws should conform to social development and public opinion [61,62]. Owing to the special nature of the crime of illegal hunting, even if the public's acceptance of the law and the judicial interpretation have been fully considered in the formulation and amendment of relevant laws, the final promulgated provisions may still be somewhat separated from the public's previous understanding. Therefore, the popularization and publicity of relevant laws, regulations, and policies should be enhanced [63]. For example, people's general awareness of the specific scope of the game-forbidden area is rather limited. On the one hand, departments represented by local governments should publicize game-forbidden areas in their administrative districts, enabling local people to be fully aware of such areas. On the other hand, based on our understanding of judicial practice, the perpetrators of illegal hunting may include not only local residents but also foreign tourists. Therefore, a national map book of game reserves can be created to expand their popularization. Furthermore, a nationwide map of game-forbidden areas can be developed and distributed, with the addition of an online reminder function integrated into electronic map applications. Through this, people will become aware when they enter or leave a game-forbidden area, which will not only strengthen people's environmental and legal awareness of protecting wildlife resources but also reduce illegal hunting behaviors caused by ignorance, lower the incidence rate of illegal hunting crimes, and promote administrative and legal regulations regarding illegal hunting behaviors [64].

6. Conclusions

Law is the institutional guarantee for advancing animal protection efforts in China, with criminal law representing the final safeguard [65]. However, current legal frameworks, such as the Wildlife Protection Law, the Animal Epidemic Prevention Law, and the Animal Husbandry Law, provide overly general and fragmented provisions on animal protection, lacking necessary coherence between them, with narrow protection scopes and limited legislative objectives. A comprehensive analysis of the legislative evolution and judicial practice regarding illegal hunting in China reveals that practical issues persist, although the legal criteria have been significantly refined [66]. These include inconsistent degrees of punishment and subjective assessments of the offender's intent, which often result in judicial controversies. Thus, it is necessary to analyze the underlying causes of these judicial disputes and address the issues in the legislation and judicial practices related to the illegal hunting crime. This would help achieve the legislative goals of preserving biodiversity, maintaining ecological balance, promoting ecological civilization, and fostering harmonious coexistence between humans and nature.

In recent years, China has introduced national innovative strategies, such as ecological civilization and dual-carbon goals, which provide an important basis for improving its animal protection laws. The protection of animals within China's environmental criminal law should be comprehensively revised to better balance animal protection with human rights. The purpose of this is not only to align the criminal legislation on animal protection with the ecological civilization ethos promoted by China over the past decade but also to fulfill its environmental commitments to the world and promote sustainable development for human society.

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Data Availability

All figures, illustrations, and datasets are open-sourced and do not require copyright approval. All are referenced within this document.

Footnote

1. "Three Have Animals" means terrestrial wild animals with important ecological, scientific, and social values. See the website of State Council, PRC. https://www.gov.cn/lianbo/bumen/202307/content_6889855.htm (accessed on 22 October 2024).

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