SPC Guiding Case No. 175: Taizhou Municipal People’s Procuratorate, Jiangsu Province v. Wang Xiaopeng and Fifty-Eight Others (Ecological Damage Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / ecological damage civil public interest litigation / illegal fishing / joint tort / compensation for ecological resource damage

Holding

1. Where a purchaser, knowing that the fry it purchases are obtained through illegal fishing, nevertheless establishes a fixed buying-and-selling relationship with the illegal fishers, forming a complete chain of interests that jointly damages ecological resources, the purchaser shall bear joint and several liability for compensation with the fishers for the loss of ecological resources caused by the jointly committed tortious acts.

2. Where an infringer uses prohibited nets to fish illegally, thereby causing loss of the specific fish resources it catches while also damaging other aquatic biological resources in the corresponding area and seriously harming biodiversity, it shall bear liability for compensation for the loss of ecological resources, including both the loss of the specific fish resources and the loss of other aquatic biological resources. Where the loss of ecological resources is difficult to determine, the people's court shall, in combination with factors such as the scope and degree of ecological damage, the scarcity of the resources, and the costs required for restoration, fully consider the characteristics of the illegal acts, such as the destructiveness of the method, the time-sensitivity, and the particularity of the location, and make a comprehensive determination with reference to expert opinions.

Basic Facts

Yangtze River eel fry are aquatic animal fry with significant economic value that are prohibited from being fished. In the first half of 2018, Dong Ruishan and 37 others, individually or jointly, used prohibited fishing gear to illegally catch Yangtze River eel fry in the main stream waters of the Yangtze River and sold them for profit. Wang Xiaopeng and 12 others, knowing that the Yangtze River eel fry were obtained through illegal fishing, individually purchased them or established partnership organizations for purchasing eel fry by signing partnership agreements, jointly contributing capital, and other means, jointly contributing capital to purchase and uniformly selling them externally, and purchased 116,999 eel fry from Gao Jinchu and 6 others and from Dong Ruishan and 38 others who illegally sold or fished. Qin Libing, knowing that the eel fry sold to him by Wang Xiaopeng and others were obtained through illegal fishing in the Yangtze River, nevertheless purchased 40,263 eel fry from Wang Xiaopeng and others on multiple occasions.

The crimes of illegal fishing of aquatic products and concealing and disguising criminal proceeds committed by Wang Xiaopeng and others had been found by effective criminal judgments in other cases. On July 15, 2019, the public interest litigation plaintiff, the Taizhou Municipal People's Procuratorate of Jiangsu Province, brought a civil public interest lawsuit on the grounds that Wang Xiaopeng and 58 others had engaged in illegal fishing, selling, and purchasing of Yangtze River eel fry, damaging the ecological resources of the

Yangtze River and harming public social interests.

Judgment

On October 24, 2019, the Nanjing Intermediate People's Court of Jiangsu Province rendered Civil Judgment (2019) Su 01 Min Chu No. 2005: (1) Wang Xiaopeng and the other 13 illegal purchasers shall bear joint and several liability to compensate RMB 8,589,168 for the loss of ecological resources caused by their illegal buying and selling of eel fry; (2) the other purchasers and fishers shall bear corresponding liability for compensation, or bear joint and several liability with the direct purchasers, based on the quantity of eel fry in which they participated in illegal buying, selling, or fishing. Wang Xiaopeng and 10 other defendants appealed. On December 31, 2019, the High People's Court of Jiangsu Province rendered Civil Judgment (2019) Su Min Zhong No. 1734: the appeal was dismissed and the original judgment affirmed.

Reasoning

The effective judgment of the court held:

I. Illegal fishing causes serious damage to ecological resources. Where sale is the sole purpose of illegal fishing, and the purchaser and the illegal fishers have formed a fixed buying-and-selling relationship, the purchase induces illegal fishing and jointly damages ecological resources, and the purchaser shall bear joint and several liability with the fishers for compensation for the loss of ecological resources caused by the jointly committed ecological damage acts.

Eel fry were listed as an endangered species by the International Union for Conservation of Nature in 2014 and are also key protected fish in Jiangsu Province. Eel fry have distinctive characteristics and cannot be directly consumed. For this particular species, without large-scale purchase, fishing is of no value whatsoever. Purchase is the only channel through which illegal fishing of eel fry can realize profit. Without purchase, illegal fishing can hardly realize economic value, and therefore cannot be carried out continuously and repeatedly. The huge market demand is the main reason that induces illegal fishing and the layer-by-layer purchase. The purchase of eel fry at issue was daily and frequent, and a high degree of organization was formed in the purchase. Each fisher and purchaser had a clear understanding of his or her position and role in the chain of interests, and of the purpose of obtaining benefits through different means such as illegal fishing, sale and purchase, selling at an increased price, and breeding and sale. The fishers used nets with extremely small mesh to catch eel fry, and the purchasers fully understood the physical characteristics of the eel fry, meaning that they knew that catching eel fry of such a small size necessarily required fishing methods different from those used for other fish in the natural ecology. The illegal fishers, during an important period for the breeding and reproduction of aquatic biological resources in the Yangtze River, especially during the fishing ban period, used "nets that wipe out everything" to illegally catch Yangtze River eel fry on a large scale and on multiple occasions in the main stream waters of the Yangtze River, which would inevitably cause loss of Yangtze River ecological resources and damage to biodiversity. The purchasers and fishers had the intent to allow the result of damage to Yangtze River eel resources and other ecological resources. Illegal fishing and purchase had formed a fixed buying-and-selling relationship and a complete chain of interests. In this chain, adjacent links all obtained benefits from the illegal fishing, and there was a high degree of coordination. There was a legal causal relationship between the acts and the result of damage to Yangtze River ecological resources, which jointly caused the damage to ecological resources. To prevent illegal fishing, the chain of interests should be thoroughly severed from the source, so that the joint tortfeasors who illegally purchase and sell eel fry pay an economic price, and bear joint and several liability with the illegal fishers for the consequences of damage to Yangtze River ecological resources within the scope of the loss of ecological resources involved in each.

II. Where the loss of ecological resources cannot be accurately calculated, it should be determined as appropriate in combination with factors such as the scope and degree of ecological damage and the scarcity of resources, fully considering the destructiveness of the method, the time-sensitivity, and the particularity of

the location of the illegal acts, and with reference to expert opinions.

Comprehensively considering that the method of illegally catching eel fry was to use nets with extremely small mesh, together with the time-sensitivity of the fishing, the high intensity of the fishing frequency, and the particularity of the fishing location, it not only posed a serious threat to the stability of the eel population, but would also inevitably cause damage to other fishery organisms, thereby damaging the diversity of Yangtze River biological resources and causing great damage to Yangtze River ecological resources. In accordance with Article 23 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases, comprehensively considering the actual damage caused by illegal fishing of eel fry to ecological resources, the loss of ecological resources was determined as appropriate at 2.5 times the value of the loss of eel resources. There were two main bases:

First, the destructiveness of the method of illegally fishing eel fry at issue. The fishers used nets with extremely small mesh to catch eel fry, and the mesh size of the nets used violated the provision of "not less than 3 millimeters" in the Notice of the Ministry of Agriculture on the Implementation of the Minimum Mesh Size System for Permitted Fishing Gear and Transitional Fishing Gear in the Main Stream of the Yangtze River, and were prohibited nets. During fishing, it would inevitably cause bycatch of aquatic species including other small fish, seriously damaging the aquatic biological resources in the corresponding area. The quantity of eel fry at issue reached 116,999, and the fishing was conducted on many occasions, with many nets and over a large area, which would inevitably cause relatively great harm to Yangtze River ecological resources.

Second, the time-sensitivity and location particularity of the illegal fishing of eel fry at issue. The fishing and purchase at issue mainly occurred during the fishing ban period of the Yangtze River, which was an important period for the breeding and reproduction of Yangtze River aquatic biological resources including eel resources. The fishing location was in the main stream waters of the Yangtze River, which is the migratory channel of the Japanese eel. Catching fry in the migratory channel, causing them to be removed from the natural water body and then sold, not only impedes the breeding of the eel population, but also simultaneously catches other fishery products bycatch, causing a reduction of other aquatic organisms, leading to insufficient bait for other fish, and further causing damage to adjacent links in the food chain of the Yangtze River waters, further causing damage to biodiversity.

Considering the balance between the protection of ecological resources and the defendants' right to survival and development, when determining the amount of ecological damage liability, the court may consider the defendants' surrender of illegal gains, and where the defendants genuinely lack the ability to perform, it may consider the method of compensation through labor, such as participating in public-interest activities for protecting the Yangtze River ecological environment or cooperating with work such as river channel management, reinforcement, and garbage cleanup along the Yangtze River, to offset a certain amount of compensation.

Relevant Legal Provisions

Article 1168 of the Civil Code of the People's Republic of China (the case applied Article 8 of the Tort Liability Law of the People's Republic of China, effective July 1, 2010).

Article 64 of the Environmental Protection Law of the People's Republic of China (2014 Amendment).

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