SPC Guiding Case No. 208: Shangrao Municipal People's Procuratorate v. Zhang Yongming, Zhang Lu, and Mao Weiming (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 / natural relic / scenic spot / amount of eco-environmental damage compensation

Holding

1. Where damage to the ecological environment is caused by damaging natural relics and scenic spots, and a state-designated organ or an organization prescribed by law requests that the infringer bear restoration and compensation liability in accordance with law, the people's court shall uphold such request.

2. With respect to the loss caused by damaging natural relics and scenic spots, where no statutory appraisal institution has conducted an appraisal, the people's court may refer to the assessment opinion made by experts using the contingent valuation method, and comprehensively consider factors such as the scientific nature of the assessment method and the uncertainty of the assessment results, as well as the rarity of the natural relic and the seriousness of the damage, to reasonably determine the amount of eco-environmental damage compensation.

Basic Facts

The plaintiff in the public interest litigation, the Shangrao Municipal People's Procuratorate, alleged that Zhang Yongming, Zhang Lu, and Mao Weiming climbed the Giant Python Peak in a destructive manner, driving 26 rock bolts into the Giant Python Peak in the core scenic area of the Sanqingshan Scenic Area, a World Natural Heritage site and World Geopark, causing serious damage and constituting serious damage to the public interest. Therefore, it requested a judgment confirming that the three persons should jointly compensate the minimum threshold of RMB 11.9 million for the loss of the non-use value of the Giant Python Peak (according to the theory of environmental resource value, non-use value is the utility people obtain from tourism resources that does not derive from their own use, mainly including existence value, bequest value, and option value); publicly apologize in nationally known media; and jointly bear the assessment expenses of RMB 150,000 paid for hiring experts.

Defendants Zhang Yongming, Zhang Lu, and Mao Weiming argued that this case was not an ecological environment public interest lawsuit and that the procuratorate could not initiate a civil public interest lawsuit; that Zhang Yongming and the others had no subjective fault and had not caused serious damage to the Giant Python Peak, and that risk is not equivalent to actual damage results, so no infringement was constituted; and that the assessment report issued by the expert group could not be admitted.

The court found upon trial: Around April 2017, defendants Zhang Yongming, Zhang Lu, and Mao Weiming, through WeChat contact, agreed to go to the Sanqingshan Scenic Area to climb the "Giant Python Emerges from the Mountain" rock column (also known as the Giant Python Peak). At around 4 a.m. on April 15, 2017, Zhang Yongming, Zhang Lu, and Mao Weiming carried electric drills, rock bolts (i.e., expansion bolts, made of stainless steel), hammers, ropes, and other tools to the foot of the Giant Python Peak. Defendant Zhang Yongming climbed first, while Mao Weiming and Zhang Lu pulled the rope below to protect Zhang

Yongming's safety. During the climb, Zhang Yongming drove rock bolts in dangerous places, using an electric drill to bore holes in the rock body of the Giant Python Peak, then using a hammer to drive the rock bolts into the holes, tightening them with a wrench, and then arranging ropes on the rock bolts. In this way, Zhang Yongming climbed to the top of the Giant Python Peak at around 6:49 a.m. Mao Weiming followed behind Zhang Yongming all along, pulling the rope to protect Zhang Yongming, and climbed to the top of the Giant Python Peak along the rope arranged by Zhang Yongming at around 7 a.m. When Zhang Yongming and Mao Weiming began climbing, Zhang Lu pulled the rope to protect Zhang Yongming, and then climbed to the top of the Giant Python Peak along the rope arranged by Zhang Yongming at around 7:30 a.m., using a drone to take photos at the top. At the top of the Giant Python Peak, Zhang Yongming gave the excess tools to Mao Weiming, who descended along the rope, took the excess tools back to the hotel, and then returned to the Giant Python Peak, climbing to more than 10 meters up the Giant Python Peak, where he was discovered by staff of the Sanqingshan Management Committee, persuaded to descend, and controlled by the police. Zhang Lu and Zhang Yongming, under persuasion by the staff, also descended to the foot of the Giant Python Peak at around 9 a.m. and 9:40 a.m., respectively, and were controlled by the police. Upon on-site inspection, Zhang Yongming had driven 26 rock bolts into the Giant Python Peak. Upon expert demonstration, the acts of the three defendants caused serious damage to the geological relic site of the Giant Python Peak.

The criminal part of this case was tried in a separate case.

On March 28, 2018, entrusted by the Shangrao Municipal Procuratorate, an expert group of Jiangxi University of Finance and Economics conducted a value assessment of the damage caused by the 26 rock bolts driven into the Giant Python Peak by Zhang Yongming and the other two during their climb, and of the damage to the Sanqingshan Scenic Area. On May 3, 2018, the expert group of Jiangxi University of Finance and Economics issued the Value Loss Assessment Report on the Giant Python Peak of Sanqingshan. The assessment report stated that, based on the determined value type, the expert group adopted the internationally accepted contingent valuation method to assess the value of the above intentional damage acts and their consequences. The assessment result of the value damage to the Giant Python Peak was that, although the acts of the three parties in the "Giant Python Peak case" did not cause the collapse of the Giant Python Peak, they caused irreparable serious damage to it, had a very negative impact on the existence of the Giant Python Peak as a World Natural Heritage site, and accelerated the possibility of mountain collapse. Therefore, the expert group held that the "value loss assessment value of the Giant Python Peak case" should not be lower than the minimum threshold of the loss of the non-use value of the Giant Python Peak caused by the event, i.e., RMB 11.9 million.

Judgment

On December 27, 2019, the Shangrao Intermediate People's Court of Jiangxi Province rendered Civil Judgment (2018) Gan 11 Min Chu No. 303: (1) defendants Zhang Yongming, Zhang Lu, and Mao Weiming shall, within ten days after the judgment took effect, publish an announcement in national media to apologize to the public, with the contents of the announcement to be reviewed and approved by the first-instance court; (2) defendants Zhang Yongming, Zhang Lu, and Mao Weiming shall jointly compensate environmental resource losses totaling RMB 6,000,000, to be paid within thirty days after the judgment took effect to the account designated by the first-instance court for public ecological environment protection and restoration; and (3) defendants Zhang Yongming, Zhang Lu, and Mao Weiming shall, within ten days after the judgment took effect, compensate the expert fees of RMB 150,000 paid by the plaintiff in the public interest litigation, the Shangrao Municipal Procuratorate. After the judgment was pronounced, Zhang Yongming and Zhang Lu appealed. On May 18, 2020, the Jiangxi Provincial Higher People's Court rendered Civil Judgment (2020) Gan Min Zhong No. 317: dismissing the appeal and affirming the original judgment.

Reasoning

The court's effective judgment held as follows:

I. On whether the people's court could uphold the ecological damage civil public interest lawsuit initiated by the procuratorial organ in this case

First, Zhang Yongming appealed that the acts of the three persons only constituted damage to natural resources rather than damage to the ecological environment, and this assertion could not be established. Article 26 of the Constitution of the People's Republic of China clearly provides that "the state protects and improves the living environment and the ecological environment, and prevents and controls pollution and other public hazards." This article divides the environment into the living environment and the ecological environment. The living environment refers to the environment related to human activities, and the ecological environment refers to the environment related to natural activities. Article 2 of the Environmental Protection Law of the People's Republic of China provides that "the environment as used in this Law refers to the totality of various natural and artificially modified natural factors that affect human survival and development, including the atmosphere, water, oceans, land, mineral deposits, forests, grasslands, wetlands, wildlife, natural relics, cultural relics, nature reserves, scenic spots, and cities and villages, etc." This article divides the environment into the natural environment and the artificial environment. The natural environment refers to the natural conditions and natural resources closely related to human survival and development, and the artificial environment refers to the environment modified by human activities. From the above analysis, it can be determined that the damage caused by the acts of Zhang Yongming and the other two in climbing by driving rock bolts to the natural relic of the Giant Python Peak constituted damage to the natural environment, that is, damage to the ecological environment.

Second, the damage caused by Zhang Yongming and the other two to the Giant Python Peak by climbing in the manner of driving rock bolts harmed the public interest. As a unique natural relic, the Giant Python Peak is a non-renewable rare natural resource asset, and its significant scientific value, aesthetic value, and economic value are not only the common wealth of the present generation, but also environmental resources that future generations should have the opportunity to enjoy. In this case, the damage caused by the acts of Zhang Yongming and the other two in climbing by driving rock bolts to the Giant Python Peak infringed the environmental rights and interests of unspecified members of the public, and the interests enjoyed by an unspecified majority of people are precisely the connotation of the public interest. The environmental rights and interests enjoyed by people include not only the essential basic elements of the environment necessary for human survival and development, such as fresh air and clean water sources, but also ecological environment resources generated from the environment that can satisfy people's higher-level needs, such as beautiful scenery, endangered animals of significant scientific research value, or rare plants or rare natural resources of ecological protection significance. Damage to these resources directly damages the naturalness and diversity of the ecological environment that people can perceive, and even produces ecological risks that people cannot perceive in a short period of time.

In summary, the damage caused by the acts of Zhang Yongming and the other two to the natural relic of the Giant Python Peak was an act damaging the public interest in the field of ecological environment resource protection, and the procuratorial organ's request that the three defendants in this case bear eco-environmental damage compensation liability for damaging natural relics and scenic spots in accordance with law should be upheld by the people's court.

II. On how to determine the amount of compensation

With respect to the quantification of the loss caused by the three actors in this case to the Giant Python Peak, it is currently difficult to find an appraisal institution nationwide to conduct an appraisal. 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, the court may, taking into account factors such as the scope and degree of damage to the ecology, the scarcity of the ecological environment, the difficulty of restoring the ecological environment, and the degree of fault of the defendant, and may refer to the opinions of relevant departments and experts to reasonably determine the amount.

On March 28, 2018, the Shangrao Municipal People's Procuratorate entrusted the expert group of Jiangxi University of Finance and Economics to conduct a value assessment of the loss of the Giant Python Peak involved in this case. On May 3, 2018, the expert group of Jiangxi University of Finance and Economics issued the Value Loss Assessment Report on the Giant Python Peak of Sanqingshan (the "Assessment Report"). The members of the expert group had professional knowledge in environmental economics, tourism management, and ecology, adopted the internationally accepted contingent valuation method to assess the value involved in this case, and all members of the expert group appeared in court to explain the Assessment Report and were subject to cross-examination by the parties. The Assessment Report complied with the "expert opinion" prescribed in Article 15 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, and could be used as a reference basis for the court's finding of facts in accordance with law.

The contingent valuation method adopted in the Assessment Report is one of the assessment methods determined in the Recommended Methods for Environmental Damage Appraisal and Assessment (Second Edition) issued by the Ministry of Environmental Protection. Although this method has a certain degree of uncertainty, its scientific nature has been recognized worldwide, and there is currently no more appropriate assessment method for the circumstances of this case. Therefore, based on the above opinions, and referring to the conclusion of the Assessment Report that "the value loss assessment value of the Giant Python Peak case should not be lower than the minimum threshold of the loss of the non-use value of the Giant Python Peak caused by the event, i.e., RMB 11.9 million," and comprehensively considering the legal, social, and economic factors of this case, specifically in conjunction with the circumstances that the three defendants had already been pursued for criminal liability, the facts found in this case, the degree of fault of the parties, the parties' ability to perform, and the level of economic development of Jiangxi, the court determined the compensation amount as appropriate to be RMB 6 million.

The judgment also made clear that the ecological environment is the foundation of human survival and development, and damage to natural resources is damage to the ecological environment. Chinese law clearly protects natural relics and scenic spots as environmental elements, and provides that all units and individuals have the obligation to protect the environment, and that anyone who causes damage by damaging the ecological environment shall bear tort liability. In particular, in the process of advancing ecological civilization construction, only by implementing the strictest systems and the most rigorous rule of law can our ecological environment be better protected. The acts of Zhang Yongming, Zhang Lu, and Mao Weiming in climbing by driving rock bolts caused irreparable permanent damage to the Giant Python Peak, harmed the public interest, and constituted joint infringement. Ordering the three persons to bear environmental tort compensation liability was aimed at guiding the public to establish a correct view of ecological civilization and to cherish and treat well the ecological environment on which human survival and development depend.

Relevant Legal Provisions

Article 2 of the Environmental Protection Law of the People's Republic of China.

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