SPC Guiding Case No. 213: Case of Huang [X]hui, Chen [X], and Six Others for Illegal Fishing of Aquatic Products (Criminal Case with Incidental 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

Criminal / criminal case with incidental civil public interest litigation / illegal fishing of aquatic products / ecological environment restoration / mitigated punishment / stocking and release

Holding

1. In a criminal case involving damage to environmental resources, where the defendant in the incidental civil public interest litigation has circumstances such as pleading guilty and accepting punishment and proactively repairing the damaged ecological environment, the defendant may be given a mitigated punishment in accordance with law.

2. Where the people's court orders a person who has infringed the ecological environment to adopt the method of stocking and release to restore aquatic biological resources and repair the water-area ecological environment, it shall follow the laws of nature, comply with the regulations on the administration of the stocking and release of aquatic organisms, reasonably determine the waters, species, specifications, population structure, time, and manner of release on the basis of professional repair opinions, and may have the fishery administrative authority assist in supervising the execution.

Basic Facts

In September 2020, defendants Huang [X]hui and Chen [X], after conspiring together, decided to fish in key waters of the Yangtze River basin that were subject to a fishing ban: the experimental zone of the East Dongting Lake Finless Porpoise Nature Reserve in Yueyang City, Hunan Province, and the East Dongting Lake national aquatic germplasm resources reserve for common carp, crucian carp, and yellow catfish. The two successively invited defendants Li [X]zhong, Tang [X]chong, Ai [X]yun, Ding [X]de, Wu [X]feng (handled in a separate case), Xie [X]bing, and Ding [X]yong to fish in the Haoba waters of East Dongting Lake, Yueyang County, Hunan Province, using tools such as gill nets and self-made electric grids. Huang [X]hui was responsible for arranging personnel on shore to transport the caught fish and sell them; Chen [X], Li [X]zhong, Tang [X]chong, Ai [X]yun, and Ding [X]de were responsible for driving boats to fish in the lake; and Wu [X]feng, Xie [X]bing, and Ding [X]yong were responsible for using tricycles to transport the caught fish. From late October 2020 to April 13, 2021, the eight defendants successively participated in illegal fishing thirty to forty times, catching more than 10,000 jin of fish and illegally profiting RMB 100,000.

On August 20, 2021, the Yueyang County People's Procuratorate commissioned an appraisal institution to assess the damage to fishery ecological resources and fishery resources caused by the eight defendants' illegal fishing of aquatic products. On October 21, 2021, the appraisal institution issued the Ecological Loss Assessment Report on the Illegal Fishing by Huang [X]hui and Others During the Closed Fishing Season, with the appraisal opinion being: of the illegal fishing acts in issue, 2,000 kilograms were caught by electric fishing and 3,000 kilograms by net fishing. Electric fishing caused a loss of approximately 8,000 kilograms of fish, and, combined with net fishing, a total of 11,000 kilograms, indirectly reducing the recruitment of 5,000,000 fish fry; it was recommended to carry out ecological restoration of the damaged fish resources

through compensatory fish release. The Yueyang County Price Certification Center determined that the value of the fishery resource loss in this case was RMB 211,000, and recommended the release of fry of grass carp, common carp, and other species into the waters of East Dongting Lake to repair the fishery resources and the water-area ecological environment.

On July 30, 2021, the Yueyang County People's Procuratorate performed the announcement procedure in accordance with law. During the announcement period, no organ prescribed by law or relevant organization provided feedback or initiated a lawsuit. The procuratorate accordingly initiated a public prosecution against the eight defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong on suspicion of the crime of illegal fishing of aquatic products before the Yueyang County People's Court, and, on the ground that their acts damaged the fishery ecological resources of the Yangtze River basin, affected the population reproduction of various aquatic animals in the nature reserve, and harmed the public interest, initiated a criminal case with incidental civil public interest litigation before the Yueyang County People's Court, requesting that the above eight defendants be ordered to apologize in municipal-level news media; that the above eight defendants be ordered, in accordance with the release species, specifications, and quantities determined in the ecological restoration recommendations in the Ecological Loss Assessment Report and the price appraisal opinion, to jointly purchase adult fish and fry of corresponding value within the scope of the fish each had caught through their participation in the illegal fishing, and release them into the waters of Dongting Lake to repair the fishery resources and the environment; that, where the defendants failed to perform their ecological restoration obligations within the prescribed period, they should jointly and severally bear the corresponding fishery resources and ecological restoration expenses of RMB 211,000 based on the market prices of the released species and quantities; and that the above defendants be ordered to jointly and severally bear the ecological assessment expenses of RMB 3,000 in this case.

Defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong had no objection to the charges and criminal facts alleged by the prosecutorial organ and voluntarily pleaded guilty; at the same time, they acknowledged the claims and factual grounds raised by the plaintiff in the incidental civil public interest litigation, had no objection to the recommendation of repairing the fishery resources and the water-area ecological environment by releasing adult fish or fry of the specified species worth RMB 211,000 into East Dongting Lake, and expressed their willingness to bear the responsibility of repairing the ecological environment.

Judgment

During the trial of the case, the Yueyang County People's Court organized mediation between the plaintiff in the incidental civil public interest litigation and the defendants in the incidental civil public interest litigation, Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong, and the two parties voluntarily reached the following agreement: 1. The defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong shall, in accordance with the release species, specifications, and quantities determined in the ecological restoration recommendations in the Ecological Loss Assessment Report and the price appraisal opinion, jointly purchase adult fish or fry that comply with the provisions on stocking and release (with the specific fish species to be based on the standards required by the fishery administration authority) within the scope of the fish each had caught through their participation in the illegal fishing, and release them into the waters of Dongting Lake to repair the fishery resources and the environment; 2. The eight defendants shall jointly bear the ecological assessment expenses of RMB 3,000 in this case, to be paid directly to the Yueyang County People's Procuratorate of Hunan Province; and 3. The eight defendants shall apologize in municipal-level news media.

After the mediation was reached, the Yueyang County People's Court of Hunan Province announced the contents of the mediation agreement in accordance with law, and the public raised no objection. After the

30-day announcement period expired, the Yueyang County People's Court of Hunan Province, upon review, considered that the contents of the mediation agreement did not violate the public interest, and issued the mediation statement in the criminal case with incidental civil public interest litigation (2021) Xiang 0621 Xing Chu No. 244, served it on the eight defendants and the Yueyang County People's Procuratorate, and made it public. On December 21, 2021, under the supervision and execution of the East Dongting Lake Fishery Administration Supervision and Enforcement Bureau of Yueyang County, and on the basis of the professional appraisal opinion, defendants Li [X]zhong, Xie [X]bing, Ding [X]yong, and the family members of the other defendants released 4.46 million fry of 3 to 5 centimeters at the Lujiao Wharf of East Dongting Lake, including 1.5 million silver carp, 1.5 million bighead carp, 1 million grass carp, and 460,000 black carp, in compliance with the provisions on stocking and release.

After the execution of the mediation statement in the criminal case with incidental civil public interest litigation was completed, on January 13, 2022, the Yueyang County People's Court rendered the judgment in the criminal case with incidental civil public interest litigation (2021) Xiang 0621 Xing Chu No. 244, holding that defendant Huang [X]hui committed the crime of illegal fishing of aquatic products and was sentenced to fixed-term imprisonment of one year and one month; defendant Chen [X] committed the crime of illegal fishing of aquatic products and was sentenced to fixed-term imprisonment of one year and one month; defendant Tang [X]chong committed the crime of illegal fishing of aquatic products and was sentenced to fixed-term imprisonment of one year; defendant Ai [X]yun committed the crime of illegal fishing of aquatic products and was sentenced to fixed-term imprisonment of eleven months; defendant Ding [X]de committed the crime of illegal fishing of aquatic products and was sentenced to fixed-term imprisonment of nine months; defendant Li [X]zhong committed the crime of illegal fishing of aquatic products and was sentenced to criminal detention of three months, with a four-month suspension of sentence; defendant Xie [X]bing committed the crime of illegal fishing of aquatic products and was sentenced to criminal detention of three months, with a four-month suspension of sentence; defendant Ding [X]yong committed the crime of illegal fishing of aquatic products and was sentenced to criminal detention of three months, with a four-month suspension of sentence; and the illegal profits of RMB 100,000 of defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong were confiscated and turned over to the state treasury, among other things.

Reasoning

The court's effective mediation statement in the criminal case with incidental civil public interest litigation held that the acts of defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong of illegal fishing of aquatic products damaged the ecological environment and harmed the public interest, and that they should bear compensation liability. The mediation agreement reached between the plaintiff in the incidental civil public interest litigation and the defendants in the incidental civil public interest litigation, Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong, did not violate the public interest, and the people's court confirmed it and issued a mediation statement.

The court's effective judgment in the criminal case with incidental civil public interest litigation held that defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, Li [X]zhong, Xie [X]bing, and Ding [X]yong, in order to seek illegal profits, used prohibited tools and methods to catch aquatic products during the closed fishing season, with serious circumstances, and violated the provisions of Article 340 of the Criminal Law of the People's Republic of China. The criminal facts were clear and the evidence was reliable and sufficient, and each of them should be held criminally liable for the crime of illegal fishing of aquatic products.

In the joint crime of illegal fishing of aquatic products, defendants Huang [X]hui, Chen [X], Tang [X]chong, Ai [X]yun, Ding [X]de, and Li [X]zhong played principal roles and were principal offenders, while Xie [X]bing and Ding [X]yong played secondary roles and were accessories, and should be given mitigated punishment. The

eight defendants truthfully confessed the criminal facts, which constituted confession, and could be given mitigated punishment; the eight defendants voluntarily pleaded guilty and accepted punishment, and were given lenient treatment in accordance with law; the eight defendants, in accordance with the contents of the court's effective mediation statement, proactively purchased adult fish or fry and released them into the waters of Dongting Lake, proactively performing their responsibility of repairing fishery resources and the ecology, and could be given mitigated punishment as appropriate. Defendants Li [X]zhong, Xie [X]bing, and Ding [X]yong had relatively minor criminal circumstances and showed remorse; combined with the opinions of the community correction investigation and assessment report of the judicial administrative authority, defendants Li [X]zhong, Xie [X]bing, and Ding [X]yong had no risk of reoffending, and imposing a suspended sentence would not have a material adverse impact on the communities where they lived, so a suspended sentence could be announced in accordance with law. The sentencing recommendations separately proposed by the prosecutorial organ against the eight defendants, based on the number of times they participated in net fishing, electric fishing, and transportation, combined with the quantity caught and the degree of participation, were appropriate, and the court adopted them in accordance with law. The illegal fishing acts of the eight defendants damaged the ecological environment and harmed the public interest, and they should bear corresponding civil liability. The claims of the plaintiff in the incidental civil public interest litigation complied with the law and were upheld in accordance with law, and the mediation reached in respect of the incidental civil matters during the course of the litigation had been confirmed in accordance with law.

Relevant Legal Provisions

Articles 53 and 93 of the Yangtze River Protection Law of the People's Republic of China.

Article 340 of the Criminal Law of the People's Republic of China.

Article 1234 of the Civil Code of the People's Republic of China.

Article 20 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases.

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