SPC Guiding Case No. 243: Application by Deng [X]hua for Compensation for Injury Caused by the Unlawful Use of Weapons by Nanchuan District Public Security Bureau

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

Keywords

State compensation; compensation for injury caused by unlawful use of weapons; endangerment of life safety; performance of duties in accordance with law; use of weapons and police implements; refusal to compensate

Holding

Where a people's policeman, in the course of performing duties in accordance with law, uses a weapon to stop a violent criminal act and keeps the use within the necessary and reasonable limit of minimizing casualties and property losses, this does not constitute "unlawful use of weapons." Where the actor applies for state compensation on the ground that the people's policeman's unlawful use of weapons caused bodily injury to a citizen, the people's court shall not support the application in accordance with law.

Basic Facts

At around midnight on June 23, 2014, the Nanchuan District Public Security Bureau of Chongqing received a report from Yang [X]zhong, stating that Deng [X]hua had overturned his barbecue stall near the Agricultural Bank in Nanping Town of that district, and requesting that police be dispatched. After discovering that Yang [X]zhong had reported to the police, Deng [X]hua chased and slashed at Yang [X]zhong with a knife. Yang [X]zhong fell while fleeing, and Deng [X]hua took the opportunity to slash and stab the fallen Yang [X]zhong, but was dodged by Yang [X]zhong. When police officer Li [X] and auxiliary police officer Zhang [X] arrived at the scene, they saw Deng [X]hua chasing and slashing at Yang [X]zhong with a knife, and ordered him to put down the knife. Deng [X]hua abandoned the continued pursuit of Yang [X]zhong but did not put down the knife. Police officer Li [X] again ordered Deng [X]hua to put down the knife, but Deng [X]hua still refused to obey; and after auxiliary police officer Zhang [X] attempted to seize the knife without success and police officer Li [X] fired a warning shot, he still did not stop the harmful acts, but instead advanced with the knife toward police officer Li [X] and auxiliary police officer Zhang [X]. After police officer Li [X] had repeatedly ordered Deng [X]hua to put down the knife without effect, he fired and wounded Deng [X]hua in the leg.

On June 23, 2014, the public security organ determined that the knife held by Deng [X]hua was a controlled knife. On June 25 of the same year, the Nanchuan District Public Security Bureau of Chongqing decided to open a case for investigation against Deng [X]hua on suspicion of provoking trouble. On December 11 of the same year, upon appraisal, Deng [X]hua's injuries were determined to constitute a grade-10 disability.

Deng [X]hua applied to the Nanchuan District Public Security Bureau of Chongqing for state compensation, and the Nanchuan District Public Security Bureau decided not to compensate after examination. Deng [X]hua was dissatisfied and applied to the Chongqing Municipal Public Security Bureau for reconsideration, which rendered the criminal compensation reconsideration decision Yu Gong Pei Fu Jue Zi [2015] No. 23: affirming the Nanchuan District Public Security Bureau's decision not to compensate. Deng [X]hua was dissatisfied and applied to the Compensation Committee of the Chongqing Third Intermediate People's Court for a compensation decision.

Judgment

On March 10, 2016, the Compensation Committee of the Chongqing Third Intermediate People's Court rendered the state compensation decision (2015) Yu San Zhong Fa Wei Pei Zi No. 7: affirming the criminal compensation reconsideration decision Yu Gong Pei Fu Jue Zi [2015] No. 23 of the Chongqing Municipal Public Security Bureau. Deng [X]hua was dissatisfied and filed a petition. On December 20, 2016, the Compensation Committee of the Chongqing Municipal High People's Court rendered the notice of dismissal of petition (2016) Yu Wei Pei Jian No. 33: dismissing Deng [X]hua's petition.

Reasoning

Article 9 of the Regulations of the People's Republic of China on the Use of Police Implements and Weapons by People's Police (hereinafter the "Regulations") provides: "Where a people's policeman has determined the existence of one of the following emergency circumstances of violent criminal acts, and the warning has been ineffective, he may use a weapon: ... (10) resisting or obstructing a people's policeman in performing his duties in accordance with law by violent means, or violently assaulting a people's policeman, endangering the people's policeman's life safety." In this case, after receiving the police dispatch task and arriving at the scene with auxiliary police officer Zhang [X], police officer Li [X] of the Nanchuan District Public Security Bureau of Chongqing saw Deng [X]hua chasing and slashing at another person with a knife, and at that time police officer Li [X] had the statutory duty to stop Deng [X]hua's unlawful acts. Deng [X]hua provoked trouble without cause and chased and slashed at another person with a knife, and his conduct had seriously endangered the life safety of others. When police officer Li [X] and auxiliary police officer Zhang [X] arrived at the scene, Deng [X]hua refused to obey orders, and even after hearing the warning shot, he still advanced with the knife toward police officer Li [X] and auxiliary police officer Zhang [X], and was subsequently wounded by police officer Li [X]'s shot. Judging from the circumstances at the time of the incident, Deng [X]hua's conduct had already endangered the life safety of the police officer performing his duties, so police officer Li [X] was permitted to use a weapon. Article 4 of the Regulations provides: "In using police implements and weapons, people's police shall take stopping illegal and criminal acts and minimizing casualties and property losses as the principle." In using the weapon, police officer Li [X] avoided Deng [X]hua's vital parts, and after Deng [X]hua was shot and squatted down so that the purpose of control could be achieved, police officer Li [X] stopped firing. It can thus be seen that police officer Li [X]'s use of the weapon did not exceed the necessary limit, conformed to the principle of proportionality, and did not violate the provisions of the aforementioned Regulations.

Article 17 of the State Compensation Law of the People's Republic of China provides: "Where, in the exercise of their powers, organs exercising investigation, prosecution and adjudication powers, as well as detention centers and prison administration organs and their staff members, have any of the following circumstances of infringing personal rights, the victim shall have the right to obtain compensation: ... (5) unlawfully using weapons or police implements causing bodily injury or death of a citizen." Since police officer Li [X]'s act of firing was not unlawful, Deng [X]hua's state compensation claim did not meet the aforementioned provisions, and the Nanchuan District Public Security Bureau of Chongqing should not bear compensation liability. The criminal compensation reconsideration decision rendered by the Chongqing Municipal Public Security Bureau had found the facts clearly and applied the law correctly, and was affirmed in accordance with law.

Relevant Legal Provisions

Article 17 of the State Compensation Law of the People's Republic of China

Article 9 of the Regulations of the People's Republic of China on the Use of Police Implements and Weapons by People's Police

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