SPC Guiding Case No. 244: Application by Hu [X]bo for Criminal Compensation for Retrial Acquittal and Deprivation of Personal Liberty

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Keywords

State compensation; criminal compensation for deprivation of personal liberty; combined punishment for multiple offenses; partial criminal facts not established; retrial changing to a lighter sentence; excessive imprisonment

Holding

Where the main criminal facts found in the original judgment are determined upon retrial not to be established, resulting in the compensation claimant's actual period of imprisonment exceeding the term of sentence determined in the retrial judgment, compensation may be awarded for the excessive imprisonment by reference to Article 6 of 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 Compensation Cases, which provides: "Where, in a case of combined punishment for multiple offenses, some of the charges are found not to be established upon retrial and the period of imprisonment exceeds the term of sentence determined in the retrial judgment, and a citizen applies for state compensation for the excessive imprisonment, compensation shall be awarded."

Basic Facts

Hu [X]bo was placed under criminal detention on October 5, 2012 on suspicion of fraud and robbery. On July 16, 2013, the Xiuyu District People's Court of Putian City, Fujian Province rendered the criminal judgment No. 160 [2013] Xiu Xing Chu Zi, finding Hu [X]bo guilty of fraud and sentencing him to one year and nine months of fixed-term imprisonment with a fine of RMB 2,000 (same currency hereinafter), and guilty of robbery and sentencing him to eleven years and six months of fixed-term imprisonment with a fine of RMB 10,000; upon combined punishment for the multiple offenses, it was decided to execute a fixed-term imprisonment of twelve years and six months with a fine of RMB 12,000. After the judgment was pronounced, Hu [X]bo was dissatisfied and appealed. On November 16 of the same year, the Putian Intermediate People's Court of Fujian Province rendered the criminal ruling No. 407 [2013] Pu Xing Zhong Zi: dismissing the appeal and affirming the original judgment.

After the judgment became effective, Hu [X]bo filed a petition. The Putian Intermediate People's Court of Fujian Province dismissed Hu [X]bo's petition. Hu [X]bo then filed a petition with the Fujian Provincial High People's Court. On March 8, 2017, the Fujian Provincial High People's Court rendered the retrial decision No. 121 [2016] Min Xing Shen, directing the Putian Intermediate People's Court of Fujian Province to form a new collegial panel to conduct a retrial.

Upon retrial, the Putian Intermediate People's Court of Fujian Province held that: the defendant Hu [X]bo, with the purpose of illegal possession, colluded with others to defraud the victim Lin [X][X] of 7,500 yuan by fabricating facts, and the amount was relatively large, so his conduct constituted fraud. The original first- and second-instance courts were correct in finding Hu [X]bo guilty of fraud, but the findings that Hu [X]bo participated in defrauding Zhu [X][X] of 23,000 yuan and participated in robbing Chen [X] of 93,000 yuan lacked a factual basis. Accordingly, on October 15, 2018, it rendered the criminal judgment No. 1 [2017] Min 03 Xing Zai: (1) revoking the criminal ruling No. 407 [2013] Pu Xing Zhong Zi of the Putian Intermediate

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People's Court of Fujian Province and the criminal judgment No. 160 [2013] Xiu Xing Chu Zi of the Xiuyu District People's Court of Putian City, Fujian Province; and (2) finding Hu [X]bo guilty of fraud and sentencing him to six months of fixed-term imprisonment (from October 5, 2012 to April 4, 2013) with a fine of RMB 1,000.

On October 15, 2018, Hu [X]bo was released. Subsequently, Hu [X]bo applied to the Putian Intermediate People's Court of Fujian Province for state compensation.

Judgment

On June 4, 2019, the Putian Intermediate People's Court of Fujian Province rendered the state compensation decision No. 1 [2019] Min 03 Fa Pei: (1) paying Hu [X]bo compensation for deprivation of personal liberty of 494,130.16 yuan; (2) paying Hu [X]bo solatium for mental distress of 50,000 yuan; and (3) dismissing Hu [X]bo's other compensation claims. Hu [X]bo was dissatisfied with the amount of compensation and applied to the Compensation Committee of the Fujian Provincial High People's Court for a compensation decision.

The Compensation Committee of the Fujian Provincial High People's Court ascertained that the period for which Hu [X]bo was actually imprisoned based on the original judgment was 2,202 days, and that the period during which his imprisonment exceeded the six-month term determined in the retrial criminal judgment, as a result of the non-establishment of some charges and the wrongful finding of criminal facts, was 2,020 days. On October 26, 2020, it rendered the state compensation decision No. 4 [2020] Min Wei Pei: (1) revoking item (1) of the state compensation decision No. 1 [2019] Min 03 Fa Pei of the Putian Intermediate People's Court of Fujian Province; (2) affirming items (2) and (3) of the state compensation decision No. 1 [2019] Min 03 Fa Pei of the Putian Intermediate People's Court of Fujian Province; and (3) ordering the Putian Intermediate People's Court of Fujian Province to pay Hu [X]bo compensation for deprivation of personal liberty of 700,435 yuan and solatium for mental distress of 50,000 yuan, totaling 750,435 yuan.

Reasoning

According to Article 17(3) of the State Compensation Law of the People's Republic of China, where a person is acquitted upon retrial through the adjudication supervision procedure and the original sentence has already been executed, the victim has the right to obtain state compensation. Article 6 of 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 Compensation Cases (Fa Shi [2015] No. 24, hereinafter the "Criminal Compensation Interpretation") provides: "Where, in a case of combined punishment for multiple offenses, some of the charges are found not to be established upon retrial and the period of imprisonment exceeds the term of sentence determined in the retrial judgment, and a citizen applies for state compensation for the excessive imprisonment, compensation shall be awarded."

In this case, the original judgment found Hu [X]bo guilty of fraud and robbery and imposed combined punishment for the multiple offenses; upon retrial, the Putian Intermediate People's Court of Fujian Province changed the judgment to find Hu [X]bo guilty only of fraud. With respect to the compensation issues arising from the revocation of the robbery charge in the original judgment, the Putian Intermediate People's Court of Fujian Province applied Article 6 of the Criminal Compensation Interpretation. At the same time, although Hu [X]bo was still found guilty of fraud upon retrial and sentenced to six months of imprisonment, the retrial criminal judgment had confirmed that the facts found in the original judgment that Hu [X]bo had participated in defrauding Zhu [X][X] of 23,000 yuan could not be established and revoked them in accordance with law; while the fraud portion for which guilt was found involved only an amount of 7,500 yuan. At this point, because most of the fraud facts found in the original judgment had been revoked, the sentencing for the fraud offense also changed accordingly. Therefore, when calculating the period of excessive imprisonment, the period during which Hu [X]bo was excessively imprisoned as a result of the revocation of part of the fraud facts could be calculated by reference to Article 6 of the Criminal Compensation Interpretation. Hence, the

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Putian Intermediate People's Court of Fujian Province, in finding the period of Hu [X]bo's excessive imprisonment to be 1,564 days merely on the basis that the robbery charge was not established, was erroneous and was corrected in accordance with law. In summary, the period during which Hu [X]bo's imprisonment exceeded the term of sentence determined in the retrial criminal judgment as a result of wrongful conviction and wrongful finding of criminal facts should be 2,020 days.

Article 21 of the Criminal Compensation Interpretation provides: "The 'previous year' referred to in Articles 33 and 34 of the State Compensation Law means the year immediately preceding the year in which the organ liable for compensation renders the compensation decision; where the reconsideration organ or the compensation committee of a people's court changes the original compensation decision, the compensation for deprivation of personal liberty shall be calculated according to the average wage standard of state employees in the year immediately preceding the year in which the new decision is rendered." When the Putian Intermediate People's Court of Fujian Province rendered the state compensation decision No. 1 [2019] Min 03 Fa Pei on June 4, 2019, the standard of compensation for infringement of citizens' personal liberty published by the Supreme People's Court was 315.94 yuan per day. When the Compensation Committee of the Fujian Provincial High People's Court rendered the state compensation decision No. 4 [2020] Min Wei Pei on October 26, 2020, the compensation standard had been adjusted to 346.75 yuan per day. According to the aforementioned judicial interpretation, because the original compensation decision had erroneously determined the period of imprisonment, and the compensation committee of the people's court changed the original compensation decision, the compensation standard applicable at the time the new decision was rendered should apply. Accordingly, the Putian Intermediate People's Court of Fujian Province should pay Hu [X]bo compensation for deprivation of personal liberty of 700,435 yuan.

Relevant Legal Provisions

Articles 17, 21, 33 and 35 of the State Compensation Law of the People's Republic of China

Article 6 of 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 Compensation Cases (Fa Shi [2015] No. 24)

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