SPC Guiding Case No. 42: Zhu Hongwei (Application for Compensation for Arrest of an Innocent Person)

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Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 25, 2014.

Keywords

State compensation / criminal compensation / arrest of an innocent person / compensation for mental distress

Holding

1. Where state organs and their staff infringe upon a citizen's right to personal freedom in the exercise of their functions and powers, seriously affecting the victim's normal work and life and causing extreme mental anguish, this constitutes causing serious consequences of mental distress.

2. The amount of the consolation payment for mental distress paid by the compensation obligation organ shall be determined based on comprehensive factors such as the specific circumstances of the infringing act, including its means, occasion, and manner; the influence and consequences caused by the infringing act; and the local average standard of living.

Basic Facts

The compensation claimant, Zhu Hongwei, applied, alleging that the procuratorial organ's wrongful detention had caused him enormous material losses and mental distress, and requested the Compensation Committee of the Supreme People's Court to uphold the Guangdong Provincial People's Procuratorate's decision to pay compensation for the infringement of personal freedom, and to decide that the Guangdong Provincial People's Procuratorate should publish an apology in a newspaper, eliminate the influence, restore his reputation, pay RMB 2 million as consolation payment for mental distress, and compensate losses such as the seized vehicle and the auctioned property.

The Guangdong Provincial People's Procuratorate responded that: Zhu Hongwei had been innocently detained for 873 days, and the Guangdong Provincial People's Procuratorate had lawfully decided to pay RMB 124,254.09 as compensation for the infringement of personal freedom, had apologized to Zhu Hongwei in person, and, to help Zhu Hongwei resume his business, had visited the relevant administration for industry and commerce departments and issued explanations to the relevant banks. The Guangdong Provincial People's Procuratorate had not participated in the seizure of the vehicle involved in the case and should not bear compensation liability therefor. Zhu Hongwei had failed to provide evidence of serious consequences of mental distress, so his request for consolation payment for mental distress should not be supported, and his other requests were not within the scope of state compensation.

Upon trial, the court found that: on suspicion of the crime of contract fraud, Zhu Hongwei was detained in criminal detention on July 25, 2005, and released on bail pending trial on August 26 of the same year. On May 26, 2006, the Guangdong Provincial People's Procuratorate approved the arrest of Zhu Hongwei by review decision Yue Jian Zhen Jian He [2006] No. 4. On June 1 of the same year, Zhu Hongwei was arrested. On September 11, 2008, the Shenzhen Intermediate People's Court of Guangdong Province acquitted Zhu Hongwei on the ground of insufficient evidence. On September 19 of the same month, Zhu Hongwei was released. Zhu Hongwei was detained for a total of 875 days. On March 15, 2011, Zhu Hongwei applied to the Guangdong Provincial People's Procuratorate for state compensation on the ground of arrest

of an innocent person. On July 19 of the same year, the Guangdong Provincial People's Procuratorate rendered criminal compensation decision Yue Jian Pei Jue [2011] No. 1: to pay RMB 124,254.09 as compensation for the infringement of personal freedom in accordance with the 2010 national average daily wage standard of employees (RMB 142.33 multiplied by 873 days); to orally apologize and, within the scope of its functions, provide convenience for Zhu Hongwei to resume production; and not to support the request for consolation payment for mental distress.

The court further found that: (1) Zhu Hongwei's daughter, Zhu Moumou, was under 18 when Zhu Hongwei was detained in criminal detention and her depression had still not been cured as of 2012. (2) Shenzhen Yihe Industrial Co., Ltd. had Zhu Hongwei as its chairman and legal representative since 2004, and had not participated in annual inspections since 2005. (3) In a separate case, Zhu Hongwei applied to the Shenzhen Public Security Bureau for compensation for the loss of the seized vehicle, and the Compensation Committee of the Guangdong Provincial Higher People's Court dismissed Zhu Hongwei's compensation application on the ground that Zhu Hongwei had no evidence to prove that he was the owner of the vehicle and had suffered actual losses. (4) On September 5, 2011, the Guangdong Provincial Higher People's Court, the Guangdong Provincial People's Procuratorate, and the Guangdong Provincial Public Security Department jointly issued the Minutes of the Symposium on Several Issues Concerning the Application of Consolation Payment for Mental Distress in State Compensation Work (Yue Gao Fa [2011] No. 382). After the issuance of the minutes, the Guangdong Provincial People's Procuratorate stated that it could pay consolation payment for mental distress accordingly.

Judgment

On June 18, 2012, the Compensation Committee of the Supreme People's Court rendered state compensation decision (2011) Fa Wei Pei Zi No. 4: upholding Item 2 of the criminal compensation decision Yue Jian Pei Jue [2011] No. 1 of the Guangdong Provincial People's Procuratorate; revoking Items 1 and 3 of that decision; ordering the Guangdong Provincial People's Procuratorate to pay Zhu Hongwei RMB 142,318.75 as compensation for the infringement of personal freedom; ordering the Guangdong Provincial People's Procuratorate to pay Zhu Hongwei RMB 50,000 as consolation payment for mental distress; and dismissing Zhu Hongwei's other compensation requests.

Reasoning

The Supreme People's Court held that: Zhu Hongwei, the compensation claimant, filed a compensation request with the compensation obligation organ, the Guangdong Provincial People's Procuratorate, on March 15, 2011, so the revised State Compensation Law of the People's Republic of China should apply to this case. Zhu Hongwei was actually detained for 875 days; the Guangdong Provincial People's Procuratorate's calculation of 873 days was erroneous and should be corrected. In accordance with Article 6 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Implementation of the State Compensation Law of the People's Republic of China by People's Courts, where the compensation committee changes a compensation decision of the compensation obligation organ that has not yet taken effect, the compensation standard shall be the national average daily wage of employees of the preceding year, namely RMB 162.65 for 2011, at the time the compensation decision is made. Therefore, the Guangdong Provincial People's Procuratorate should pay Zhu Hongwei RMB 142,318.75 as compensation for the infringement of personal freedom for 875 days in accordance with the 2011 national average daily wage standard. After Zhu Hongwei was acquitted, the Guangdong Provincial People's Procuratorate had already decided to apologize to Zhu Hongwei orally and provide convenience for him to resume production, thereby eliminating the influence and restoring his reputation within the scope of the infringing act; that decision should be upheld. Zhu Hongwei's further request that the Guangdong Provincial People's Procuratorate apologize by publishing a notice in a newspaper was not supported.

Zhu Hongwei had been detained for 875 days, and his normal family life and company operations were consequently affected, causing him extreme mental anguish; this should be found to constitute serious

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consequences of mental distress. With respect to the consolation payment for mental distress claimed by Zhu Hongwei, the amount was determined to be RMB 50,000 based on the fact that Shenzhen Yihe Industrial Co., Ltd. had been unable to operate normally since Zhu Hongwei's detention in 2005, that Zhu Hongwei's daughter's depression had not been cured, and the reference standard for compensation for mental distress in Guangdong Province as specified in the Minutes of the Symposium on Several Issues Concerning the Application of Consolation Payment for Mental Distress in State Compensation Work (Yue Gao Fa [2011] No. 382), combined with the compensation negotiation and coordination situation and the local average standard of living. Zhu Hongwei's other requests were not supported.

Relevant Legal Provisions

Article 35 of the State Compensation Law of the People's Republic of China.

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