# SPC Guiding Case No. 6: Huang Zefu, He Boqiong, and He Yi v. Jintang Administration for Industry and Commerce of Chengdu, Sichuan Province (administrative penalty)

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

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## Keywords

Administrative litigation / administrative penalty / confiscation of property of a relatively large amount / hearing procedure

## Holding

Where an administrative organ, in making an administrative penalty decision confiscating property involved in a case of a relatively large amount, fails to inform the party concerned of the right to request a hearing or fails to hold a hearing in accordance with the law, the people's court shall, in accordance with the law, determine that the administrative penalty violates statutory procedure.

## Basic Facts

The plaintiffs Huang Zefu, He Boqiong, and He Yi alleged that the administrative penalty imposed by the defendant, the Jintang Administration for Industry and Commerce of Chengdu, Sichuan Province ("the Jintang AIC"), was unlawful, and requested that the people's court revoke Administrative Penalty Decision Cheng Gong Shang Jin Tang Chu Zi (2005) No. 02026 in accordance with the law and return 33 computer mainframes.

The defendant, the Jintang AIC, argued that the plaintiffs' illegal business conduct should be subject to administrative penalty; that the facts of the penalty were clear, the evidence conclusive and sufficient, the procedure lawful, and the penalty appropriate; and that the number of computer mainframes detained was 32, not 33.

Upon trial, the court found that on December 20, 2003, the Jintang County Library of Sichuan Province and Huang Zefu, the husband of plaintiff He Boqiong, jointly operated a multimedia electronic reading room. By agreement between the parties, Huang Zefu contributed the funds and premises and paid the Jintang County Library a management fee of RMB 2,400 per year. On April 2, 2004, Huang Zefu, in the name of his son He Yi, opened ADSL line 84992722 (valid until June 30, 2005) and opened for business under a signboard at a storefront on Juyuan Road, Zhao Town, Jintang County. In mid-April, the Market Section of the Jintang County Culture, Sports, Radio and Television Bureau ordered the operation stopped on the ground of rectifying internet cafes. After negotiation between the Jintang County Library and Huang Zefu, in mid-May the Jintang County Library refunded Huang Zefu the management fee of RMB 2,400 and removed the signboard reading "Multimedia Electronic Reading Room of the Jintang County Library." On June 2, 2005, when the Jintang AIC, together with the Jintang County Culture, Sports, Radio and Television Bureau and the Jintang County Public Security Bureau, inspected the storefront on Juyuan Road, Zhao Town, it was found that students Ye XX, Yang XX, and Zheng XX of the first year of Jintang Experimental Middle School, and several adults, were playing online games. The plaintiffs were unable to produce the Internet Culture Business Permit and business license. Pursuant to Article 27 of the Regulations on the Administration of Internet Access Service Business Premises, which provides that anyone establishing an internet access service business premises without authorization, or engaging in internet access service business activities without authorization, shall be banned by the administration for industry and commerce, or by the



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administration for industry and commerce together with the public security organs, in accordance with the law, and that the premises used for illegal business activities shall be sealed up and the special tools and equipment used for illegal business activities shall be detained, the Jintang AIC decided, by Detention of Property Notice Cheng Gong Shang Jin Tang Kou Zi (2005) No. 02747, to detain the plaintiffs' 32 computer mainframes. Dissatisfied with the detention and the number of computer mainframes detained, He Boqiong sued, contending that 33 computer mainframes were actually detained, and requested revocation of the Detention of Property Notice. On October 8, 2005, the Jintang County People's Court rendered Administrative Judgment (2005) Jin Tang Xing Chu Zi No. 13, affirming Detention of Property Notice Cheng Gong Shang Jin Tang Kou Zi (2005) No. 02747, but at the same time confirming that the Jintang AIC had detained 33 computer mainframes of He Boqiong. On October 12 of the same year, the Jintang AIC, on the ground that the plaintiffs' conduct violated Articles 7 and 27 of the Regulations on the Administration of Internet Access Service Business Premises, issued Administrative Penalty Decision Cheng Gong Shang Jin Tang Chu Zi (2005) No. 02026, deciding to "confiscate the 32 computer mainframes detained at He Boqiong's commercial building used for illegal business activities."

## Judgment

On May 25, 2006, the Jintang County People's Court of Sichuan Province rendered Administrative Judgment (2006) Jin Tang Xing Chu Zi No. 3: (1) revoking Administrative Penalty Decision Cheng Gong Shang Jin Tang Chu Zi (2005) No. 02026; (2) ordering the Jintang AIC to re-make a specific administrative act within 30 days of the judgment taking effect; and (3) ordering the Jintang AIC to perform, within 15 days of the judgment taking effect, its statutory duties with respect to the 33 computer mainframes of the plaintiffs Huang Zefu, He Boqiong, and He Yi detained beyond the statutory period. After the judgment was pronounced, the Jintang AIC appealed to the Chengdu Intermediate People's Court of Sichuan Province. On September 28, 2006, the Chengdu Intermediate People's Court, on the same facts, rendered Administrative Judgment (2006) Cheng Xing Zhong Zi No. 228, revoking item 3 of the first-instance administrative judgment and affirming the other items.

## Reasoning

The effective judgment of the court held as follows. Article 42 of the Administrative Penalty Law of the People's Republic of China provides: "Before an administrative organ makes an administrative penalty decision such as ordering suspension of production or business, revoking a permit or license, or imposing a fine of a relatively large amount, it shall inform the party concerned of the right to request a hearing." Although that article does not expressly list "confiscation of property," the word "such as" in the article is a non-exhaustive enumeration, and should include other administrative penalties similar to the expressly listed "ordering suspension of production or business, revoking a permit or license, or imposing a fine of a relatively large amount" that have a relatively major impact on the rights and interests of the counterpart. To ensure that the administrative counterpart fully exercises the rights of statement and defense and to guarantee the legality and reasonableness of the administrative penalty decision, the hearing procedure should also apply, pursuant to Article 42 of the Administrative Penalty Law, to administrative penalties confiscating property of a relatively large amount. With respect to the standard for a "relatively large amount" of confiscated property, reference should be made to Article 3 of the Interim Provisions of Sichuan Province on the Hearing Procedure for Administrative Penalties, which provides that "a fine of a relatively large amount" as used in these Provisions means a fine of RMB 1,000 or more imposed for violations in non-business activities, or a fine of RMB 20,000 or more imposed for violations in business activities. Therefore, the Jintang AIC's administrative penalty decision confiscating 32 computer mainframes of Huang Zefu and the others should be deemed confiscation of property of a relatively large amount, an act having a major impact on the interests of Huang Zefu and the others. Before making the administrative penalty, the Jintang AIC should have informed the persons penalized of the right to request a hearing. In this case, before making the penalty decision, the Jintang AIC only informed Huang Zefu and the others of the rights of

statement and defense under the ordinary administrative penalty procedure, and did not inform them of the right to a hearing, which violated statutory procedure and should be revoked in accordance with the law.

### Relevant Legal Provisions

Article 42 of the Administrative Penalty Law of the People's Republic of China.

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