SPP Guiding Case No. 230: Administrative Public Interest Litigation by the People's Procuratorate of Shanxi Province Urging Protection of the Yungang Grottoes

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

Decided at the 48th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on February 21, 2025; issued on February 28, 2025.

Keywords

Administrative public interest litigation / cultural relic protection / serious risk of damage / consultation / subject of supervision

Holding

Where cultural relics and cultural heritage are at serious risk of damage, the procuratorial organ may carry out public interest litigation in accordance with law. In handling administrative public interest litigation cases, the function of consultation in urging rectification shall be given full play, so as to protect the public interest promptly and effectively. Where a public interest damage problem involves the duties of multiple administrative organs, and separate supervision cannot achieve effective protection, the local government may be urged in accordance with law to perform its duties in a coordinated manner.

Basic Facts

The Yungang Grottoes are located in Datong City, Shanxi Province. They were approved and announced by the State Council in 1961 as a major historical and cultural site protected at the national level in the first batch, and were included in the World Cultural Heritage List by UNESCO in 2001. The Yungang Grottoes protection area includes an above-ground protection area and an underground protection area, and a construction control zone is set outside the protection area. The mining scope of Coal Mine A, Coal Mine B and Coal Mine C overlapped to varying degrees with the above-ground and underground protection areas and the construction control zone of the Yungang Grottoes, and Coal Mine A and Coal Mine C were already suspected of having intruded into the underground protection area of the Yungang Grottoes for mining, threatening the safety of the Yungang Grottoes.

Procuratorate Performance of Duties

Preliminary investigation. In December 2023, according to a report from the Yungang Research Institute, which is specifically responsible for the protection, research and management of the Yungang Grottoes, the mining scope of Coal Mine A overlapped with the underground protection area of the Yungang Grottoes. Under the guidance of the Supreme People's Procuratorate, the People's Procuratorate of Shanxi Province coordinated the two levels of procuratorates of Datong City and Yungang District to carry out a preliminary investigation into the protection of the Yungang Grottoes, the laws, regulations and policies on mining right approval, and the underground mining conditions of the coal mines.

Upon investigation, it was found that when the mining rights of the three coal mines, Coal Mine A, Coal Mine B and Coal Mine C, were first established and later renewed or changed in registration, the natural resources department failed to consult the cultural relic administrative department in accordance with law and failed to deal with problems such as the overlap of the mining scope with the cultural relic protection area; Coal Mine A had entered the underground protection area of the Yungang Grottoes for mining, and the Planning and Natural Resources Bureau of Datong City failed to implement underground mining monitoring within the protection area as required. Although the relevant administrative organs had required the coal mines to take

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measures such as withdrawing from mining within the overlapping scope, establishing safety protection belts and reserving safety pillars, they failed to fundamentally eliminate the safety hazards. The above circumstances violated the provisions of laws and regulations such as the Law of the People's Republic of China on the Protection of Cultural Relics, the Mineral Resources Law of the People's Republic of China and the Regulations on the Protection of the Yungang Grottoes, and caused a serious risk of damage to the Yungang Grottoes.

Case filing and consultation. According to the relevant laws and regulations and the provisions of the "three determinations" plan, the Department of Natural Resources of Shanxi Province was responsible for supervising and administering the exploitation of mineral resources and for approving and issuing coal mining licenses. The People's Government of Datong City was responsible for the protection of cultural relics within its administrative region and for leading the protection of the Yungang Grottoes. The Planning and Natural Resources Bureau of Datong City was responsible for underground mining monitoring within the protection scope of the Yungang Grottoes. The Cultural Relics Bureau of Datong City was responsible for supervising and administering the protection of the Yungang Grottoes and their affiliated cultural relics. Considering that the case involved multiple units and that the rectification work required coordinated efforts led by the local government, the People's Procuratorate of Shanxi Province filed cases against the Department of Natural Resources of Shanxi Province and the People's Government of Datong City on January 22 and January 25, 2024 respectively.

On February 7, 2024, the Shanxi Provincial People's Procuratorate held consultation with the Shanxi Provincial Department of Natural Resources and issued a Consultation Opinion, confirming that the department should immediately verify the underground mining conditions of the coal mines and take measures to eliminate safety hazards. The department promptly issued a notice requiring the strengthening of mining right control around the Yungang Grottoes protection area. Combined with the vector coordinates of the Yungang Grottoes protection area provided by the Shanxi Provincial Cultural Relics Bureau, and upon comparison and confirmation by the natural resources departments at the provincial and municipal levels, the mining scopes of Coal Mine A, Coal Mine B and Coal Mine C overlapped with the above-ground and underground protection areas and the construction control zone of the Yungang Grottoes by 0.021 square kilometers, 1.396 square kilometers and 0.497 square kilometers respectively. Coal Mine A and Coal Mine C had entered the underground protection area for mining before 2018 and subsequently withdrew and built permanent seals over the mined-out areas, but the natural resources department had not yet made adjustments to the mining scope plan, leaving a serious risk of damage.

On April 26 of the same year, the Shanxi Provincial People's Procuratorate held consultation with the People's Government of Datong City and issued a Consultation Opinion, confirming that the Datong City People's Government should coordinate the relevant departments to jointly perform the Yungang Grottoes protection duties and take relevant measures, including completing underground mining monitoring within the Yungang Grottoes protection scope before the end of May, and organizing the assessment of the impact of historical mined-out areas on the Yungang Grottoes.

Rectification. The Shanxi Provincial Department of Natural Resources, in accordance with the consultation opinions reached with the Shanxi Provincial People's Procuratorate, took the largest scope involved in the deepest coal seam in the mining area as the withdrawal and avoidance scope for planning adjustment, deducted a total of 1.8014 square kilometers from the mining areas of the three coal mines, and reissued mining licenses. After rectification, except for a small number of historical built shafts and transport roadways that genuinely needed to be retained, the mining areas all withdrew from the above-ground and underground protection areas and the construction control zone of the Yungang Grottoes. The department also jointly issued documents with the Shanxi Provincial Cultural Relics Bureau to strengthen mining right control over the protection scopes of national key cultural relic protection units across the province, further improving the mechanism for mineral resource development and cultural relic protection.

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The Datong City People's Government organized the Datong City Planning and Natural Resources Bureau, the Datong City Cultural Relics Bureau and the Yungang Research Institute to issue an assessment report on the impact of the mined-out areas on the surface, verifying that no ground collapse, subsidence or ground fissures were found in the Yungang Grottoes protection area. The Datong City Planning and Natural Resources Bureau completed the first underground mining monitoring within the Yungang Grottoes protection scope, and found no coal mining activities remaining in the prohibited mining area of the Yungang Grottoes and no abnormal changes in the mined-out areas detected near the Yungang Grottoes, so that the safety hazards to the Yungang Grottoes were basically brought under control.

On June 17, 2024, the Shanxi Provincial People's Procuratorate invited deputies to the National People's Congress, members of the CPPCC National Committee and cultural relic protection experts to serve as hearing officers, and held a hearing on whether the purpose of case handling had been achieved. The hearing review held that the Shanxi Provincial Department of Natural Resources and the Datong City People's Government had comprehensively performed their duties in accordance with law and the public interest had been effectively protected. The Shanxi Provincial People's Procuratorate terminated the case with reference to the hearing opinions.

Guiding Significance

(1) Where cultural relics and cultural heritage are at serious risk of damage, the procuratorial organ may carry out public interest litigation in accordance with law. Cultural relics are precious, non-renewable and irreplaceable resources that are difficult to repair once damaged. In the field of cultural relic and cultural heritage protection, the procuratorial organ shall comprehensively consider the importance of the public interest involved, the possibility of risk transformation, the urgency of the occurrence of the damage result, and the severity of the damage consequences, comprehensively determine whether the public interest is at serious risk of damage, give effective play to the preventive function of public interest litigation, and resolve problems in their infancy.

(2) In handling administrative public interest litigation cases, the function of consultation in urging rectification shall be given full play, so as to protect the public interest promptly and effectively. Consultation is an important procedure in administrative public interest litigation. Where the administrative organ actively cooperates, the procuratorial organ may, through consultation, urge the administrative organ to rectify promptly and terminate the case promptly after achieving the purpose of public interest protection, so as to save judicial resources and improve the quality and efficiency of case handling.

(3) Where the circumstances involve the duties of multiple administrative organs, the subject of supervision shall be determined precisely from the perspective of resolving the public interest damage problem in the most direct and effective manner. Where a public interest damage problem involves multiple administrative organs, the procuratorial organ shall take the administrative organ most closely related to the unlawful act and most effective in rectifying the problem as the subject of supervision; where supervising a single administrative organ alone cannot achieve the purpose of public interest protection, it may simultaneously supervise other administrative organs bearing supervision duties; where separately supervising multiple administrative departments at the same level cannot form a joint force and achieve systematic protection, it may supervise the local government to perform its duties in a coordinated manner, so as to strengthen the supervision effect.

Relevant Legal Provisions

Articles 8 and 17 of the Law of the People's Republic of China on the Protection of Cultural Relics (2017 Amendment) (currently Articles 9 and 28 of the 2024 Revision).

Articles 11 and 20 of the Mineral Resources Law of the People's Republic of China (2009 Amendment).

Articles 4, 5, 8, 9, 10 and 22 of the Regulations on the Protection of the Yungang Grottoes (effective 2018).

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Article 19 of the Measures of Shanxi Province for Implementing the Law of the People's Republic of China on the Protection of Cultural Relics (effective 2006).

Articles 11, 44, 67 and 70 of the Rules for Handling Public Interest Litigation Cases by the People's Procuratorates (effective 2021).

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