SPP Guiding Case No. 232: Case of Zhang Moufang and Li Mouxiang for Intentional Damage to Cultural Relics

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SPP Guiding Case No. 232 (Procuratorial Example No. 232)

Keywords

Crime of intentionally damaging cultural relics; scribbling on stone carvings; criminal public prosecution; incidental civil public interest litigation.

Holding

Where a person scribbles and scrawls on cultural relics that are an important component of a nationally protected cultural relic site or a provincially protected cultural relic site, and although no single cultural relic is seriously damaged or destroyed, the act significantly alters the appearance of the cultural relics, impairs the overall historical appearance of the protected cultural relic site, and undermines its historical, artistic and scientific value, the act constitutes intentionally damaging cultural relics under the Criminal Law. While pursuing the criminal liability of the actor in accordance with the law, a procuratorial organ may institute incidental civil public interest litigation to require the actor to bear civil liability.

Basic Facts

Defendant Zhang Moufang, male, born in 1953, a farmer, who had previously been subject to administrative punishment by the public security organ for defrauding others of property through superstitious activities.

Defendant Li Mouxiang, female, born in 1968, a farmer, who had previously been subject to administrative punishment by the public security organ for defrauding others of property through superstitious activities.

Mount Tai is China's first World Cultural and Natural Heritage site and is regarded as the foremost of the "Five Great Mountains". It is a great symbol of the Chinese nation and an embodiment of national culture. The stone carvings of Mount Tai span the entire history of Chinese calligraphy, possess important historical and cultural value, and are renowned as a "museum of Chinese calligraphic art" and a "natural museum of stone-carving art".

Believing superstitiously that writing characters on famous mountains could change their fortune, Zhang Moufang and Li Mouxiang, from 4 a.m. to 7 a.m. on July 18, 2021, used red oil-based markers to scribble in large quantities the characters "kai kai tian pan gong, kai kai dian jiu long" and the like on stone carvings such as "Tianxia Qiguan" ("Wonder of the World") and "Kongzi Denglin Chu" ("Place Where Confucius Ascended") within the Mount Tai scenic area. The writing was vivid and could not be thoroughly removed within a certain period. Thirty-seven damage points were caused, of which six were located on stone carvings that are an important component of the main body of the nationally protected cultural relic site "Ancient Architectural Complex of Mount Tai", and thirty-one were located on stone carvings that are an important component of the main body of the provincially protected cultural relic site "Ancient Architectural Complex of the Mount Tai Winding Road". Zhang Moufang caused 33 damage points and Li Mouxiang caused 4 damage points. Upon appraisal, the scribbling caused a certain degree of damage to the main bodies of the "Ancient Architectural Complex of Mount Tai" and the "Ancient Architectural Complex of the Mount Tai Winding Road", and caused a certain degree of impairment to the historical, artistic and scientific value of those ancient architectural complexes.

Judgment

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Examination for prosecution. In early 2022, the Taishan District People's Procuratorate of Tai'an, Shandong Province lawfully intervened in the investigation and put forward opinions to the Mount Tai Scenic Area Branch of the Tai'an Public Security Bureau on the collection of evidence concerning criminal motive, circumstances and consequences. On November 2 of the same year, the Mount Tai Scenic Area Branch transferred the case for examination for prosecution against Zhang Moufang and Li Mouxiang for the suspected crime of intentionally damaging cultural relics.

After accepting the case, the Taishan District People's Procuratorate required the public security organ to supplement evidence of the two persons' prior records of violation and surveillance video of the crime; inspected the current condition of the scribbled stone carvings on site and compared them one by one with photographs of their original appearance, so as to fully grasp the damage to the stone carvings; and held discussions with forensic appraisers, experts and scholars to understand the degree of damage to the Mount Tai stone carvings caused by the scribbling and the difficulty of restoration. Based on the above work and the existing evidence, it concluded that, as a matter of fact, although the two persons' intentional scribbling did not damage any single cultural relic, it damaged the main bodies of the nationally protected cultural relic site "Ancient Architectural Complex of Mount Tai" and the provincially protected cultural relic site "Ancient Architectural Complex of the Mount Tai Winding Road", and impaired their value, which had serious social harm and criminal illegality, and the two should be pursued for criminal liability for the crime of intentionally damaging cultural relics.

Meanwhile, given that criminal punishment alone could not fully restore the impaired public interest, pursuant to the Civil Code of the People's Republic of China and the Law of the People's Republic of China on the Protection of Cultural Relics, as the Ancient Architectural Complex of Mount Tai is an important cultural heritage site, the procuratorial organ could institute civil public interest litigation to require the actors to bear liability for damage to the cultural relics. On November 11, 2022, the Taishan District People's Procuratorate filed a civil public interest litigation case and entrusted relevant appraisal institutions to conduct assessment, and, taking into account factors such as the number of characters scribbled, the type of building, the grade of damage and the level of protection, determined the amount of damages at more than RMB 70,000.

On April 6, 2023, the Taishan District People's Procuratorate prosecuted Zhang Moufang and Li Mouxiang for the suspected crime of intentionally damaging cultural relics, and simultaneously instituted incidental civil public interest litigation.

Accusation and proof of the crime. On April 21, 2023, the Taishan District People's Court of Tai'an held a public trial. During the trial, the public prosecutor pointed out that the two persons had previously received administrative punishment for promoting feudal superstition, and this time, having seen online that "writing on stone carvings of a famous mountain so that others can read it can change one's fortune", they specially carried tools such as colored markers to Mount Tai to scribble on the stone carvings, all of which were nationally or provincially protected cultural relics, and that the two had constituted the crime of intentionally damaging cultural relics. Zhang Moufang and Li Mouxiang expressed in court that they pleaded guilty and repented, and accepted the public interest litigation compensation claims.

On May 8, 2023, the Taishan District People's Court adopted the accusation and sentencing recommendations of the Taishan District People's Procuratorate, sentenced Zhang Moufang and Li Mouxiang to fixed-term imprisonment and fines for the crime of intentionally damaging cultural relics, and supported the public interest litigation claims brought by the procuratorial organ. After the pronouncement of judgment, the two did not appeal and the judgment became effective.

Comprehensive performance of duties. In view of the large number of tourists at Mount Tai and the widespread distribution of stone carvings, the Tai'an Municipal People's Procuratorate signed the Opinions on Establishing a Coordination Mechanism for Public Interest Protection in the Mount Tai Scenic Area with the Mount Tai Scenic Area Management Committee, to jointly protect and pass on the historical and cultural heritage of Mount Tai.

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Reasoning

(1) Scribbling and scrawling on cultural relics that are an important component of a nationally or provincially protected cultural relic site, thereby impairing the historical, artistic and scientific value of the protected site, may be determined to be intentional damage to cultural relics. Although such conduct does not cause serious damage or destruction to any single cultural relic, where it significantly alters the appearance of the cultural relics, impairs the overall historical appearance of the protected cultural relic site, and undermines its historical, artistic and scientific value, it may be determined to be the intentional "damage" of cultural relics under Article 324 of the Criminal Law, and the actor shall be pursued for criminal liability in accordance with the law.

(2) With respect to criminal acts of damaging cultural relics, procuratorial organs shall comprehensively perform such procuratorial functions as criminal prosecution and public interest litigation, so as to fully safeguard the public interest in accordance with the law. Stone carvings in scenic areas and other cultural relics, as cultural heritage sites, are an important part of China's historical and cultural heritage. Where criminal punishment alone cannot fully restore the impaired public interest, the procuratorial organ may institute civil public interest litigation to require the actor to bear liability for damages.

Relevant Legal Provisions

Articles 1229 and 1235 of the Civil Code of the People's Republic of China (effective 2021).

Articles 8, 15, 22 and the first paragraph of Article 65 of the Law of the People's Republic of China on the Protection of Cultural Relics (as amended in 2017; now Articles 9, 26, 33 and 96 of the 2024 revision).

Article 2 of the Environmental Protection Law of the People's Republic of China (as amended in 2014).

Article 25 of the Administrative Litigation Law of the People's Republic of China (as amended in 2017).

Article 58 of the Civil Procedure Law of the People's Republic of China (as amended in 2023).

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