

III. Incidental civil public interest litigation to the criminal action against eight defendants including Huang * Hui, Chen * et al. for illegal fishing of aquatic products

[Case Number] Guiding Case No. 213

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[Adjudicating Court and Collegial Bench Members]

First instance: The People's Court of Yueyang County of Hunan Province

Chen Yewen, Xiao Zhijun, Xu Dabing, Yao Shenghui, Huang Xiaobao, Liu Ling, Liu Gang

[Keywords]

Criminal / Incidental civil public interest litigation to criminal action / Illegal fishing of aquatic products / Ecological and environmental restoration / Lighter punishment / Stocking and releasing

[Essence of Judgment]

1. In a criminal case involving damage to the environment and resources, if the defendant in the incidental civil public interest litigation to the criminal action has circumstances such as pleading guilty and voluntarily restoring the damaged ecology and environment, the defendant may be given a lighter punishment.
2. When the people's court ruled that the infringer of ecology and environment shall restore aquatic biological resources and repair the aquatic ecology and environment by means of stocking and releasing, the laws of nature and regulations of stocking and releasing aquatic products shall be followed. Water areas, species, specifications, population structure, time, method, etc. shall be reasonably determined in accordance with professional opinions for restoration, and can be implemented with the assistance and under the supervision of fishery administrative authorities.

[Basic Facts]

In September 2020, the defendants Huang * Hui and Chen * conspired and determined to fish in the Experimental Area of the East Dongting Lake Finless Porpoise Nature Reserve and the East Dongting Lake National Aquatic Germplasm Resources Reserve for Carp, Crucian Carp, and Yellow Catfish in Yueyang City of Hunan Province, which are key water areas under the fishing ban in the Yangtze

River basin. The two successively invited defendants Li * Zhong, Tang * Chong, Ai * Yun, Ding * De, Wu * Feng (handled in a separate case), Xie * Bing, and Ding * Yong to fish in the Haoba water area of the eastern Dongting Lake in Yueyang County of Hunan Province, using fishing tools such as wire mesh and self-made electric grids. Among them, Huang * Hui was responsible for arranging personnel on the shore to transport and sell the caught fish, while Chen *, Li * Zhong, Tang * Chong, Ai * Yun, and Ding * De were responsible for sailing the boat to fish in the lake, and Wu * Feng, Xie * Bing, and Ding * Yong were responsible for transporting the caught fish by tricycle. From the end of October 2020 to 13 April 2021, the eight defendants successively participated in illegal fishing for 30 to 40 times, catching over 10,000 jin (equaling to 5 tons) of fish and making illegal profits of CNY 100,000.

On 20 August 2021, the People's Procuratorate of Yueyang County of Hunan Province entrusted an appraisal institution to assess the damage to fishery ecological resources and fishery resources caused by the illegal fishing of aquatic products by the eight defendants. On 21 October 2021, the appraisal institution delivered the Assessment Report on Ecological Losses Caused by Illegal Fishing during the Fishing Ban Period by Huang * Hui and Others, according to which, among the illegal fishing acts involved in the case, 2,000 kilograms were caught by electric fishing, and 3,000 kilograms were caught by net fishing. Electric fishing caused about 8,000 kilograms of fish losses and a total of 11,000 kilograms together with net fishing, which indirectly reduced the replenishment of 5,000,000 fry. It was recommended to carry out ecological restoration of the damaged fish resources through compensatory fish stocking. The Price Certification Center of Yueyang County determined that the value of the fishery resource losses in this case was CNY 211,000, and it was suggested that the fishery resources and water ecology and environment can be restored through stocking fry such as grass carps and carps in the eastern Dongting Lake water area.

The People's Procuratorate of Yueyang County of Hunan Province carried out the legal announcement procedure on 30 July 2021. During the announcement period, no authority or organization specified by the law provided feedback or filed legal action.. Consequently, the People's Procuratorate filed a public prosecution with the People's Court of Yueyang County, Hunan Province, against the eight defendants Huang * Hui, Chen *, Tang * Chong, Ai * Yun, Ding * De, Li * Zhong, Xie * Bing and Ding * Yong for the crime of illegally fishing aquatic products, and also lodged incidental civil public interest litigation to the criminal action with the People's Court of Yueyang County of Hunan Province for the damage to the fishery ecological resources in the Yangtze River basin, impact on the population reproduction of various aquatic animals in the nature reserves, and harm of public interests of the society. It requested that the abovementioned eight defendants shall make a public apology on a city-level medium, purchase adult fish and fry of corresponding value within the scope of their respective participation in illegal fishing catches, in accordance with the species, specifications, quantities of the release stipulated in the

ecological restoration suggestions in the ecological damage assessment report and the price appraisal opinions, which shall be released in the Dongting Lake area to restore fishery resources and the environment. If the defendants fail to perform the obligation of ecological restoration within the prescribed period, the defendants shall jointly and severally bear the corresponding fishery resources and ecological restoration costs of CNY 211,000 in accordance with the market price of the fish species and quantities released. The abovementioned defendants shall jointly and severally bear the ecological assessment cost of CNY 3,000 for this case.

The defendants Huang * Hui, Chen *, Tang * Chong, Ai * Yun, Ding * De, Li * Zhong, Xie * Bing and Ding * Yong raised no objections to the charges and criminal facts brought by the procuratorial authority and voluntarily pled guilty. At the same time, the defendants recognized the requests and facts put forward by the procuratorial authority in the incidental civil public interest litigation to the criminal action, and had no objections to the suggestions of restoring fishery resources and aquatic ecology and environment through releasing fish and fry of the prescribed species valuing CNY 211,000 into the eastern Dongting Lake, and expressed their willingness to assume the responsibility for ecological and environmental restoration.

[Judgment]

During the trial of the case, the People's Court of Yueyang County of Hunan Province organized mediation between the prosecutor of the incidental civil public interest litigation to the criminal action and the defendants Huang * Hui, Chen *, Tang * Chong, Ai * Yun, Ding * De, Li * Zhong, Xie * Bing and Ding * Yong. The two parties voluntarily reached the following agreements: 1. The eight defendants shall jointly purchase fish or fry that comply with the regulations on fish stocking within the scope of their respective participation in the illegal fishing according to the species, specifications and quantities of the release stipulated in the ecological restoration suggestions in the ecological damage assessment report and the price appraisal opinions (the specific fish species shall be subject to the standards required by the fishery authorities), which shall be released in the Dongting Lake area to restore fishery resources and the environment; 2. The eight defendants shall jointly bear the ecological assessment fee of CNY 3,000 in this case and make the payment directly to the People's Procuratorate of Yueyang County of Hunan Province; 3. The eight defendants shall make a public apology on a city-level news medium.

After the mediation was reached, contents of the mediation agreement were announced by the People's Court of Yueyang County of Hunan Province according to the law, and did not receive objections from the public. Upon the expiry of the 30-day announcement period, the court reviewed and held that the contents of the mediation agreement did not violate public interests, and rendered a paper of civil mediation incidental to the criminal action coded [2021, Hunan, 0621, Criminal First Trial, No. 244], which was served to the eight defendants and the People's Procuratorate of

Yueyang County of Hunan Province, and was made public to the society. On 21 December 2021, under the supervision of the Dongting Lake Fishery Supervision and Law Enforcement Bureau of Yueyang County, the eight defendants released 4.46 million fry of 3-5 cm in length at the Lujiao Wharf of eastern Dongting Lake, including 1.5 million silver carps, 1.5 million bighead carps, 1 million grass carps, and 460,000 black carps, based on the professional assessment opinions, which met the regulations on fish stocking and releasing.

After the enforcement of the paper of civil mediation incidental to the criminal action was completed, the People's Court of Yueyang County of Hunan Province rendered a judgment of the incidental civil litigation to the criminal action coded [2021, Hunan, 0621, Criminal First Trial, No. 244]. The defendant Huang * Hui was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to fixed-term imprisonment of one year and one month. The defendant Chen * was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to fixed-term imprisonment of one year and one month. The defendant Tang * Chong was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to fixed-term imprisonment of one year. The defendant Ai * Yun was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to fixed-term imprisonment of eleven months. The defendant Ding * De was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to fixed-term imprisonment of nine months. The defendant Li * Zhong was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to criminal detention of three months with a probation period of four months. The defendant Xie * Bing was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to criminal detention of three months with a probation period of four months. The defendant Ding * Yong was ruled guilty of the crime of illegal fishing for aquatic products and sentenced to criminal detention of three months with a probation period of four months. Additionally, the illegal profits of CNY 100,000 obtained by the eight defendants were ordered to be recovered and turned over to the state treasury, among other penalties.

[Grounds for Judgment]

The effective paper of civil mediation incidental to the criminal action held that the acts of the defendants Huang * Hui, Chen *, Tang * Chong, Ai * Yun, Ding * De, Li * Zhong, Xie * Bing and Ding * Yong of illegally fishing aquatic products damaged the ecology and environment and undermined the public interests, and thus shall bear the liability for compensation. The mediation agreement reached between the prosecutor of the incidental civil public interest litigation to the criminal action and the eight defendants did not violate the public interests, and was thus confirmed by the people's court with a paper of mediation.

The effective judgment of the incidental civil litigation to the criminal action held that the defendants Huang * Hui, Chen *, Tang * Chong, Ai * Yun, Ding * De, Li *

Zhong, Xie * Bing and Ding * Yong fished aquatic products during the banned fishing period by using prohibited tools and methods for the purpose of seeking illegal benefits, constituting serious circumstances. The defendants violated Article 340 of the Criminal Law of the People's Republic of China, with clear criminal facts and solid and sufficient evidence, and shall be respectively pursued for criminal liability for the crime of illegal fishing for aquatic products.

In the joint crime of illegal fishing for aquatic products, the defendants Huang * Hui, Chen *, Tang * Chong, Ai * Yun, Ding * De, and Li * Zhong played a primary role and were principal offenders, while Xie * Bing and Ding * Yong played a secondary role and were accessory offenders, thus shall be given a lighter punishment. The eight defendants truthfully confessed to the criminal facts, which constituted a confession, thus they might be given a lighter punishment. The eight defendants voluntarily pleaded guilty and accepted punishment, thus might be dealt with leniently in accordance with the law. The eight defendants actively purchased fish or fry and released them into the waters of Dongting Lake and voluntarily fulfilled the responsibility of restoring fishery resources and ecology according to the paper of mediation validated by the court, and therefore might be given lenient punishment at the court's discretion. The defendants Li * Zhong, Xie * Bing and Ding * Yong had relatively minor criminal circumstances and showed repentance. In light of the opinions in the assessment report of community correction investigation made by the judicial authority, there was no risk of reoffending for the defendants Li * Zhong, Xie * Bing and Ding * Yong, and no considerable adverse impact on the communities where they resided if a probation was given. Therefore, they may be sentenced to probation according to the law. The prosecutorial authority made appropriate sentencing recommendations for each of the defendants based on the number of times they were engaged in net fishing, electric fishing, and transportation, as well as the fishing quantity and degree of involvement, and shall be accepted by the court according to the law. Given that the illegal fishing activities by the eight defendants damaged ecology and environment and harmed public interests of the society, they shall bear corresponding civil liabilities. Requests of the prosecutor in the incidental civil public interest litigation to the criminal action conform to the law and shall be supported according to the law. The civil mediation incidental to the criminal action reached during the litigation process had already been confirmed according to the law.