

## **CASE LAW NO. 58/2023/AL**

### **On the Penalty-determining Circumstances under Point c, Clause 3, Article 244 of the Penal Code**

*Approved by the Judicial Council of the Supreme People's Court on February 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup>, 2023, and published under Decision No. 39/QĐ-CA on February 24<sup>th</sup>, 2023, of the Chief Justice of the Supreme People's Court.*

#### **Source of the Case Law:**

The First-instance Criminal Judgment No. 179/2018/HSST dated September 14<sup>th</sup>, 2018, of the People's Court of Hạ Long City, Quảng Ninh Province, regarding the case of "Violation of Regulations on Protection of Endangered, Precious, and Rare Animals" against the defendant Hoàng Đình Q.

#### **Location of the Case Law's Content:**

Paragraphs 13, 16 and 18 of the "Court's Opinion" section.

#### **Summary of the Case Law:**

##### ***- Case Background:***

The defendant engaged in the transportation of five tiger individuals and one essential part of the sixth tiger individual.

##### ***- Legal Resolution:***

In this case, the defendant must be held criminally responsible under Point c, Clause 3, Article 244 of the Penal Code 2015 (amended and supplemented in 2017).

#### **Relevant Legal Provisions:**

- Article 244 of the Penal Code 2015 (amended and supplemented in

2017);

- Article 4 of Resolution No. 05/2018/NQ-HDTP dated November 5<sup>th</sup>, 2018, by the Judicial Council of the Supreme People's Court guiding the application of Article 234 on the crime of violating regulations on wildlife protection and Article 244 on the crime of violating regulations on the protection of endangered, precious, and rare animals of the Penal Code.

**Keywords:**

"Crime of violating regulations on the protection of endangered, precious, and rare animals"; "Essential body parts"; "Point c, Clause 3, Article 244 of the Penal Code".

**CASE DETAILS**

According to the documents in the case file and the developments at the trial, the case details can be summarized as follows:

At approximately 3:15 a.m. on January 7<sup>th</sup>, 2018, on National Highway M at Km 114 + 710, in B Ward, L City, the Task Force of Plan 12, PC67 Division of the Quảng Ninh Province Police inspected a passenger car with license plate 14B-019.26, driven by Mr. Nguyễn Văn H. During this inspection, Hoàng Đình Q, a passenger in the car, was apprehended in possession of various illicit items, including:

- A cardboard box containing 3 live animals suspected to be macaques;
- A cardboard box containing 5 frozen animals suspected to be tiger cubs and 1 animal part suspected to be a tiger's genital organ, weighing 1 kg;
- A cardboard box containing 10 animal parts suspected to be gaur bile;
- A small black package containing 20 animal parts suspected to be tiger teeth;

- Three bags suspected to be containing pangolin scales, weighing 20kg, 10kg, and 20kg respectively;

- A white foam box containing many pieces of frozen meat suspected to be tiger meat, placed in 3 plastic bags, weighing a total of 41 kg of frozen meat cut into pieces.

Additionally, Q was found in possession of 2 mobile phones: a black Nokia model RM-1134 with IMEI 355127079886596 containing SIM number 091.556.1306; a red iPhone 7 with IMEI 353804089230427 containing SIM number 096.142.1102; and VND 2,000,000, all of which was seized.

According to Forensic Report No. 51/STTNSV dated January 15<sup>th</sup>, 2018, by the Institute of Ecology and Biological Resources, Vietnam Academy of Science and Technology:

- The 3 live animals in the cardboard box are pig-tailed macaques scientifically named *Macaca leonina*. *Macaca leonina* belongs to Group IIB - restricted exploitation and use of forest plants and animals for commercial purposes according to Decree No. 32/2006/ND-CP dated March 30<sup>th</sup>, 2006, by the Government.

- The 5 dead frozen animals, after morphological and DNA analysis, are tigers scientifically named *Panthera tigris*;

- The 1 kg animal part, after morphological and DNA analysis, is the male genital organ of a tiger scientifically named *Panthera tigris*, an essential part for the animal's survival;

- The 41 kg of frozen meat, after DNA analysis, is from tigers scientifically named *Panthera tigris*. If the total weight were from one individual, it would lead to the tiger's death. *Panthera tigris* is listed in Appendix I of the List of Endangered, Precious, and Rare Species Prioritized for Protection under Decree No. 160/2013/ND-CP dated November 12<sup>th</sup>, 2013,

by the Government;

- The 50 kg of scales, after analysis, are from the giant pangolin scientifically named *Manis gigantea*. If the scales were from multiple individuals, it would not affect their survival. *Manis gigantea* is listed in Appendix I of the List of Wildlife Species in the Appendices issued together with Circular No. 04/2017/TT-BNNPTNT dated February 24<sup>th</sup>, 2017, by the Ministry of Agriculture and Rural Development.

According to the supplementary Forensic Report No. 101/STTNSV dated February 29<sup>th</sup>, 2018, by the Institute of Ecology and Biological Resources – Vietnam Academy of Science and Technology:

- 20 canines are from carnivores. DNA analysis of one canine sample reveals it is from a domestic dog scientifically named *Canis lupus familiaris*.

- 05 small, black parts were bile sacs. DNA analysis of one sample revealed it was a bile sac from a domestic dog, scientifically known as *Canis lupus familiaris*.

- Five large, flat, slightly yellow parts were bile sacs. DNA analysis of one sample revealed it was a bile sac from a domestic cow, scientifically known as *Bos indicus*.

In the Indictment No. 169/CT-VKSHL, dated August 6<sup>th</sup>, 2018, the People's Procuracy of Hạ Long City, Quảng Ninh Province, charged the defendant Hoàng Đình Q with the crime of "Violation of Regulations on Protection of Endangered, Precious, and Rare Animals," as stipulated in Point c, Clause 2, Article 244 of the Penal Code.

During the trial, the representative of the People's Procuracy of Hạ Long City, Quảng Ninh Province, upheld the prosecution's case and advocated for the application of Point c, Clause 2, Article 244; Point s, Clause 1, Clause 2, Article 51; Points a, b, Clause 1, Article 47 of the Penal Code; and Points a, b,

Clause 2, Article 106 of the Penal Procedure Code in sentencing the defendant Q. The prosecution sought a prison term ranging from 8 to 9 years and requested the confiscation of VND 2,000,000, which was to be forfeited to the state treasury. Additionally, the prosecution recommended the confiscation and auctioning of the two mobile phones for state revenue.

The witnesses Mr. Nguyễn Văn H, Mr. Nguyễn Văn T, and Mr. Nguyễn Minh H1 provided consistent testimony. They were drivers and attendants on the passenger car with license plate 14B-019.26, operating on the route from V City to M City. At around 6:15 p.m, their car departed from V City to M City. When the car reached N Overpass in V City, they picked up a young man later identified as Hoàng Đình Q, who carried three black nylon bags and a black backpack. When the car reached D District, Nghệ An, the young man requested a stop and loaded three cardboard boxes. Upon reaching Q District, Nghệ An, the young man again requested a stop and loaded one foam box. At around 3:15 a.m, when the car arrived at B Ward, the police conducted an inspection, during which they required the young man to open all the packages, revealing:

- Three black nylon bags containing animal parts.
- One cardboard box containing five tiger cubs and one animal genital organ.
- One cardboard box containing three baby monkeys.
- One small cardboard box containing numerous animal bile sacs.
- One foam box containing animal meat pieces.
- One small package in the young man's bag containing numerous animal teeth.

#### **COURT'S OPINION:**

[1] Based on the case details and the documents presented during the trial,

the Trial Panel reached the following conclusions:

[2] At today's trial, the defendant Hoàng Đình Q stated:

Previously, the defendant worked as an assistant on the passenger car route from V City to M City, where many people often sent goods for the defendant to transport and had the defendant's phone number. About two days before his arrest, a man named S called the defendant to transport some goods, including tigers, monkeys, pangolin scales, cow bile, animal teeth, etc., from V City to M City for a transportation fee of VND 2,000,000. Mr. S instructed the defendant to pick up the goods at N Overpass in V City; D District, and Q District, Nghệ An. At around 4 p.m on January 6<sup>th</sup>, 2018, Mr. S called to arrange the transportation, and the defendant contacted Mr. Nguyễn Minh H1 to book a spot to M City, agreeing to be picked up at N Overpass. At around 6:30 p.m, the defendant met a man at N Overpass who handed over three black bags and VND 2,000,000, which were to be sent to Mr. S. The defendant received the goods and boarded the passenger car with license plate 14B - 019.26 to M City. When the car reached D District, Nghệ An, someone called and instructed the defendant to transfer goods for Mr. S. The defendant had the car stop to receive three cardboard boxes, one of which was open, revealing three baby monkeys. At around 8:20 p.m, when the car reached Q District, Nghệ An, another call came to transfer goods for Mr. S. The defendant had the car stop to receive one foam box and one small black package (which the defendant kept in his shoulder bag). At around 3:15 a.m on January 7<sup>th</sup>, 2018, when the car reached B Ward, L City, the police conducted an inspection. They required the defendant to open the packages he was transporting, revealing:

[3] - Three black nylon bags containing pangolin scales, weighing 50 kg.

[4] - One cardboard box containing five dead frozen tiger cubs and one male tiger genital organ.

[5] - One cardboard box containing three baby monkeys.

[6] - One small cardboard box containing numerous animal bile sacs.

[7] - One foam box containing tiger meat pieces.

[8] - One small package containing numerous animal teeth.

[9] The police seized the above-mentioned items, along with VND 2,000,000 and the defendant's two mobile phones. The defendant did not know the identity or address of Mr. S or the men who sent the goods to Mr. S, as all transactions were conducted over the phone, and he had never met Mr. S in person.

[10] The defendant Hoàng Đình Q's confession during the trial was consistent with his previous statements during the investigation, corroborated by witness testimonies from Nguyễn Văn H, Nguyễn Văn T, and Nguyễn Minh H1, as well as the minutes of his red-handed arrest by the Quảng Ninh Province Police. Furthermore, the forensic reports confirmed the nature of the seized items.

Therefore, there is sufficient basis to conclude that at around 3:15 a.m on January 7<sup>th</sup>, 2018, at Km 114+700 on National Highway 18A in B Ward, L City, Quảng Ninh Police caught Hoàng Đình Q in the act of illegally transporting five tiger cubs (*Panthera tigris*); one male tiger genital organ (*Panthera tigris*), an essential part for the animal's survival; 41 kg of tiger meat, (*Panthera tigris*); 50 kg of pangolin scales (*Manis gigantea*); 20 canine teeth of domestic dogs (*Canis lupus familiaris*); five bile sacs of domestic dogs (*Canis lupus familiaris*); and five bile sacs of domestic cows (*Bos indicus*).

[11] According to the list of endangered and rare species prioritized for protection, Group IB, issued together with Decree No. 160/2013/NĐ-CP of the Government, and Appendix I of the List of Wild Animals and Plants prescribed in the Appendices issued together with Circular No. 04/2017/TT-BNNPTNT dated February 24<sup>th</sup>, 2017, by the Ministry of Agriculture and Rural Development, which includes the tiger species, scientifically known as

Panthera tigris, and the pangolin species, scientifically known as Manis gigantea, also known as the giant pangolin. Therefore, the actions of the defendant Hoàng Đình Q constitute the crime of "Violation of Regulations on the Protection of Endangered, Precious, and Rare Animals," as stipulated in Article 244 of the Penal Code.

[12] Clause 1 of Article 244 of the Penal Code stipulates: “Anyone who violates regulations on the protection of animals on the list of endangered, precious, and rare species prioritized for protection, or the list of endangered, precious, and rare forest animals and plants in Group IB, or Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in any of the following cases, shall be fined from VND 500,000,000 to VND 2,000,000,000 or imprisoned from 01 year to 05 years:

a) Illegally hunting, killing, raising, confining, transporting, or trading animals on the list of endangered, precious, and rare species prioritized for protection;

b) Illegally storing, transporting, or trading individual animals, essential body parts, or products of the animals specified in point a of this clause;...”.

[13] The defendant was found transporting five frozen tiger cubs (Panthera tigris), one male tiger genital organ (Panthera tigris), and 41 kg of tiger meat (Panthera tigris). According to the Forensic Report, if the meat came from a single tiger, it would render the tiger unable to survive. Additionally, the defendant transported 50 kg of pangolin scales (Manis gigantea), which, according to the report, if sourced from multiple pangolins, do not affect their survival.

[14] The Forensic Report does not determine whether the 50 kg of pangolin scales are from one individual or multiple pangolins, so it cannot be concluded that these are essential parts for the survival of a pangolin.

[15] The Forensic Report does not determine whether the 41 kg of tiger



meat is from one tiger or multiple tigers, so it cannot be concluded that this is an essential part for the survival of a tiger.

[16] The Forensic Report did not establish whether the male tiger genital organ belonged to one of the five frozen tiger cubs. With the destruction of the seized evidence, further forensic testing became impossible. However, based on the Animal Product Status and Health Determination Report (Exhibit 89), the weights of the tiger cubs (ranging from 0.99 kg to 2.99 kg) and the male tiger genital organ (0.98 kg) indicate that the genital organ did not belong to one of the tiger cubs, as no tiger species has a genital organ comprising 1/2 to 1/4 of its body weight. According to the Forensic Report, this organ is essential for the tiger's survival, suggesting that a sixth tiger was killed to obtain it for transport by the defendant.

Thus, the defendant Q transported 05 tiger cubs and 01 essential body part of a sixth tiger.

[17] Clause 3 of Article 244 of the Penal Code stipulates: “3. Anyone committing the crime in any of the following circumstances shall be imprisoned from 10 years to 15 years:

a)...;

c) From 03 individual elephants, rhinos, or more, or essential body parts of 03 individual elephants, rhinos, or more; from 06 individual bears, tigers, or more, or essential body parts of 06 individual bears, tigers, or more;”.

[18] According to the provisions of this law, transporting essential body parts of 06 individual tigers or more constitutes a violation of Point c, Clause 3, Article 244 of the Penal Code. This provision addresses severe offenses that jeopardize the survival of multiple tigers. Given that the defendant transported five tiger cubs and one essential body part of a sixth tiger, he endangered the survival of six individual tigers, warranting punishment under Point c, Clause 3, Article 244 of the Penal Code.

[19] At today's trial, the prosecution proposed charging the defendant under Point c, Clause 2, Article 244 of the Penal Code. However, the Trial Panel finds that the defendant's actions fall under the provisions of Point c, Clause 3, Article 244 of the Penal Code, necessitating the application of Clause 2, Article 298 of the Penal Procedure Code.

[20] The defendant's conduct poses a significant danger to society, violating state regulations on environmental protection, ecological balance, and the conservation of biodiversity, specifically wild and rare animals. Despite being aware of the legal prohibitions, the defendant transported a substantial quantity of animals listed as endangered and rare, prioritized for protection. Therefore, a stringent punishment, isolating the defendant from society, is necessary to the defendant's rehabilitation and deterrence of similar offenses.

[21] The Trial Panel acknowledges the defendant's sincere confession and expressions of remorse, which merit a reduction in sentence under Point s, Clause 1, Article 51 of the Penal Code. Moreover, considering that this is the defendant's first offense and his father's military service history with numerous accolades, a further reduction in sentence is warranted under Clause 2, Article 51 of the Penal Code.

[22] Regarding additional penalties, given that the defendant acted solely as a hired transporter without significant assets or income, imposing a further monetary penalty is deemed unnecessary.

[23] With regards to the exhibits presented in this case, including five tiger cubs, one male tiger genital organ, 50 kg of pangolin scales, bear bile, cow bile, dog teeth, and one deceased monkey (which has been destroyed by the investigating agency), the two living monkeys have been handed over to the Quảng Ninh Provincial Forest Protection Department in accordance with regulations and will not be considered further. The sum of VND 2,000,000 obtained through the defendant's criminal activities shall be confiscated and deposited into the state treasury. Additionally, the two mobile phones and

accompanying SIM cards used by the defendant to commit the crime shall be confiscated and auctioned, with the proceeds also going to the state treasury.

[24] Regarding the transportation of three pig-tailed macaques, five bags of bile and 20 canine teeth (all from domestic dogs), and five bags of bile from domestic cows, insufficient evidence exists to pursue criminal charges. Therefore, the Quảng Ninh Provincial Forest Protection Department has imposed an administrative penalty on Hoàng Đình Q.

[25] As for the individual identified as S and the three men who dispatched wildlife to the defendant, their identities remain unverified. The investigating agency will continue to pursue this matter, clarify the circumstances, and take appropriate action accordingly.

[26] Throughout the investigation, prosecution, and trial of the defendant Hoàng Đình Q, the Investigators and Procurators have diligently adhered to the procedures and regulations outlined in the Penal Procedure Code, ensuring the rights and obligations of all participants in the legal proceedings, with no objections raised regarding procedural decisions or actions.

In light of the foregoing,

**IT IS DECIDED:**

Pursuant to Point c, Clause 3, Article 244; Point s, Clause 1, Clause 2, Article 51 of the Penal Code; and Clause 2, Article 298 of the Penal Procedure Code, Hoàng Đình Q is sentenced to 10 (ten) years of imprisonment for the crime of "Violation of Regulations on the Protection of Endangered, Precious, and Rare Animals". The prison term commences from the date of the defendant's arrest, January 7<sup>th</sup>, 2018.

Pursuant to Points a and b, Clause 1, Article 47 of the Penal Code; and Points a and b, Clause 2, Article 106 of the Penal Procedure Code, VND 2,000,000 obtained through criminal activities is confiscated and added to the

state treasury. Additionally, the court orders the auction of two mobile phones with accompanying SIM cards, as recorded in Exhibit No. 179/BB-THA dated August 8th, 2018, by the Hà Long City Civil Judgment Enforcement Department, with the proceeds also deposited into the state treasury.

Further, under Articles 331 and 333 of the Penal Procedure Code, and Resolution No. 326/2016/UBTVQH of the National Assembly Standing Committee governing court fees and charges, the defendant is liable to pay VND 200,000 in first-instance criminal court fees.

This judgment is announced in a public first-instance trial, with the defendant duly informed of the right to appeal within 15 days from the date of the first-instance judgment announcement.

#### **CONTENT OF THE CASE LAW:**

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