

Research on Legal Interests of Illegal Hunting, Purchasing, Transporting and Selling Land Wildlife Crimes and Identification of Crime Objects

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Abstract

In 2022, Supreme People's Court and Supreme People's Procuratorate jointly issued the "Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Destruction of Wildlife Resources", which supplements the judicial application of the crime of illegal hunting, acquisition, transportation, and sale of terrestrial wildlife, and has a positive effect on the recognition of the protection of legal interests and criminal objects in this crime. In the context of major public health emergencies, this crime naturally has the purpose of preventing public health and safety risks. From the perspective of the purpose of wildlife protection, another layer of legal benefit of this crime is wildlife resources. There is controversy in both theoretical and practical circles regarding the criminal targets of wildlife resource crimes. Artificial breeding of terrestrial wildlife should be defined in conjunction with the protection interests of this crime to determine whether it belongs to the criminal targets of this crime.

Keywords

Terrestrial wildlife; Protecting legal interests; Criminal targets; Artificial breeding of wild animals.

1. Legislative background of the crime of illegal hunting, acquisition, transportation, and sale of terrestrial wildlife

1.1. Improve the legal system for wildlife protection

The sudden public health incident at the end of 2019, which led to a ban on wild animals, has become a consensus among the public. From the overall perspective of our country's laws, the protection of wildlife has gone through a process from scratch. With the improvement of legislation, the criminal law protection of wildlife in our country has also begun to take shape, and the charges involved have gradually expanded, and the intensity of punishment has also continued to increase. However, based on the current legislative and judicial issues, it is necessary to further improve the legislative and judicial provisions for the protection of wildlife under criminal law. The Decision on the Comprehensive Prohibition of Illegal Wildlife Trading, Abolition of the Habit of Overeating Wildlife, and Effective Protection of the Life, Health, and Safety of the People, issued in 2020, stipulates the comprehensive prohibition of overeating wild animals and effectively enhances the protection of wild animals. In January 2020, academicians of the Chinese Academy of Sciences Xu Zhihong, Fang Jingyun, and 19 other scientists jointly proposed to manage illegal trade in wild animals from the source, comprehensively eliminate the illegal consumption of wild animals, elevate the risks brought by wild animal trade and consumption to a public safety issue, and effectively respond to major public safety crises. Article 41 of the 2021 Amendment to the Criminal Law (XI) added this

crime to the Criminal Law, namely the crime of illegal hunting, acquisition, transportation, and sale of terrestrial wildlife. At this point, the country has implemented criminal law regulations on the protection of wildlife other than precious and endangered wildlife, enhancing the protection of ordinary wildlife.

1.2. Optimizing the execution connection of wildlife protection

Regarding the relevant laws and regulations on wildlife protection, China's existing laws and regulations mainly include the Wildlife Protection Law of the People's Republic of China, the Implementation Regulations for the Protection of Aquatic Wildlife of the People's Republic of China, and the Implementation Regulations for the Protection of Terrestrial Wildlife of the People's Republic of China. In addition, laws such as the Environmental Protection Law and the Customs Law also contain a large number of provisions on the protection of wildlife. However, before the determination and implementation of this crime, there were no direct provisions that could be referred to in China regarding the prohibition of eating wild animals, and there were no clear provisions in the Wildlife Protection Law and the Implementation Regulations for the Protection of Terrestrial Wildlife, which protect wild animals, regarding the consumption of wild animals. In practice, due to loopholes in management and approval, the domestication and protection of wild animals have become mere formality, resulting in a large number of illegal trading and consumption of wild animals. Under the perspective of China's 2018 Wildlife Protection Law, relevant protective provisions need to be based on the category of animals and take different measures. Although some provisions prohibit purchasing for the purpose of consumption, there is no clear prohibition on pure consumption behavior (whether it is precious, endangered or ordinary wild animals). Therefore, based on the promulgation of the Decision and the addition of specific provisions in the Amendment (XI) to the Criminal Law, the country has made certain revisions and improvements to the 2018 Wildlife Protection Law, expanding the scope of prohibition on wild animals. Together with the Decision and the Amendment (XI) to the Criminal Law, it has adjusted the relationship between humans and animals in the context of major public health and safety. And due to the many problems in the judicial application of this crime, the Supreme People's Court and the Supreme People's Procuratorate jointly issued the "2022 Wildlife Interpretation", responding to the problems in judicial application. This article mainly analyzes the protection of legal interests and the criminal object of this crime.

2. Exploration of the Legal Benefits of the Crime of Illegal Hunting, Acquiring, Transporting, and Selling Terrestrial Wildlife

Under traditional criminal law theory, legal interests have two major functions: legislation and interpretation. Legislation theory refers to the precise and effective regulation of legislative activities by legal interests by "clearly indicating the punitive standards to legislators", while interpretation theory refers to the clear interpretation limits of the constituent elements of legal interests in terms of methodology.[1] Although the principle of purposeful interpretation based on the protected legal interests is not unique, it is indeed the main interpretation standard. For the evaluation of crimes, the identification and judgment of the elements of result, the act of execution, substantive illegality, and the number of crimes in the constituent elements are all connected by legal interests. Therefore, clarifying the legal interests protected by wildlife related legislation is crucial for understanding this crime.

2.1. Legal Benefits of Criminal Protection of Wildlife Resources

There are three main controversies regarding the legal interests of wildlife crime protection: the anthropocentric legal interest view, the ecological anthropocentric legal interest view, and the ecological anthropocentric legal interest view.

2.1.1. Anthropocentric view of legal interests

The idea of anthropocentrism can be traced back to ancient Greece's Protagoras, who stated that "humans are the measure of all things.". It emphasizes that the important core content of contemporary ecological consciousness is the interests of humanity, while animals are a clock like machine with no sense and rationality, advocating absolute domination and control of wild animals and nature by humans, with a strong "humanistic" color. The anthropocentric view of legal interests holds that the protection of legal interests in wildlife crimes is related to human life, health, and safety. In other words, criminal law only protects those that are related to human interests. For acts that only harm wildlife and do not directly or indirectly harm humanity, regardless of whether the harm caused to wildlife or the damage to public interests is serious, it is not worthy of punishment, Has a strong sense of subject object dichotomy. The theory of legal interests was first proposed by German scholars, and the early legal system in Germany was deeply influenced by this theory. The crime of animal abuse in the German Criminal Code of 1871 only protects the interests of humans related to the environment. German scholar Eisner believes that the crime of protecting animals is aimed at protecting humans, which is a manifestation of the anthropocentric legal interest view. The emergence of this legal interest view mainly served the development of early industrialization in Germany, indirectly achieving local environmental protection through the protection of individual legal interests.

2.1.2. Ecological centrist legal interest view

In contrast to the anthropocentric view of legal interests, the ecological centrist view of legal interests has a strong materialistic color. This viewpoint holds that the legal benefit of wildlife crime protection lies with the wildlife itself, not with human interests. And advocates that there is no distinction between high and low between humans and other life forms, using the rights and talents of animals themselves as the theoretical support, and opposes any form of research and utilization of animals. There are a few people in our country who uphold this viewpoint, but with the awakening of people's awareness of protecting the environment and resources, this viewpoint is gaining momentum. Among them, the most obvious one is that the Amendment to the Criminal Law (VIII) has lowered the threshold for environmental crimes and changed the previous criminal legislation that insisted on using damage to personal and property rights as a condition for the establishment of environmental crimes. Some experts believe that it is necessary to improve the concept of environmental protection as soon as possible, and successfully transform anthropocentrism into ecocentrism to cope with the current severe environmental situation.

2.1.3. Anthropocentric legal interests in ecology

The anthropocentric legal interest view of ecology mainly revolves around the two key words of "ecology" and "humanity", adhering to the priority of ecological legal interest protection and the ultimate goal of human legal interest protection, which simultaneously considers both ecological and human legal interests. Compared to the first two theories, this viewpoint demonstrates certain advantages and provides certain support for wildlife interests to become independent legal interests. The specific path of this viewpoint is that harmful behavior produces harmful results, endangers wildlife interests, and ultimately endangers human interests. [2] At present, the mainstream view on the legal interests of wildlife crime protection is the ecological anthropocentric legal interests view.

2.2. Legal interests in the protection of illegal hunting, acquisition, transportation, and sale of terrestrial wildlife

2.2.1. Dispute analysis on the protection of legal interests in this crime

There are three main views on the protection of legal interests in this crime. The ethical right to survival of wildlife, that is, wildlife resources, is the first viewpoint. This viewpoint holds that the act of "using food as the purpose" in this crime has a significant impact on the survival and reproduction of wild animals. Among various behaviors, consumption behavior greatly infringes on the ethical right to survival of wildlife. The second viewpoint holds that the legal interest protected by this crime is public health safety. Scholars who advocate this theory believe that this crime is added for the purpose of consumption, with the aim of preventing the occurrence of public health risks, and the protected objects of this crime are terrestrial wildlife, without limiting the protected objects of this crime to precious and endangered wildlife. And from the perspective of the general public, ordinary wild animals do not have the necessity of punishment. Therefore, the addition of this crime is clearly aimed at cutting off the link between humans and viruses, in order to meet the needs of public health security. The third viewpoint is that the protection legal interest of this crime is a dual layer legal interest, that is, the blocking layer legal interest is the order of wildlife management, and the back layer legal interest is the ecological order.[3]

2.2.2. The dual legal interests protected by this crime

The current Criminal Law has adjusted the crimes related to wildlife from "disrupting the socialist market economy order" to "disrupting social management order", and placed them together with crimes related to environmental pollution and destruction of various resources in the section of "disrupting environmental and resource protection crimes". This blurs the legal benefits of protecting wildlife related crimes, resulting in a mismatch in the execution of legal protection for wildlife. Scholars have divided the crime of damaging environmental resources protection into crimes of damaging the environment and crimes of damaging resources. If classified according to this type, wildlife related crimes will be classified as resource destruction crimes, so there is still no clear and accurate definition of the legal interests behind wildlife protection. However, the ecological centrism legal interest view overly emphasizes the protection of wildlife, only using the protection of wildlife interests as the sole standard, which is a reversal of legislative means and purposes, and goes against the purpose of criminal law. The protection of legal interests presented by environmental criminal law in the perspective of ecological anthropocentrism has dual characteristics of ecological security and emphasis on human subjectivity. In summary, this article agrees with the anthropocentric legal interest view of ecology.

The criminal object protected by this crime is terrestrial wild animals other than precious and endangered wild animals. Compared with precious and endangered wild animals, ordinary terrestrial wild animals have a certain degree of self-healing ability due to their large population. Hunting for food purposes will not absolutely lead to the extinction of such wild animals. And for the illegal hunting and killing of wild animals, the crime of illegal hunting stipulated in China can effectively regulate them. Although this crime also protects wildlife to a certain extent, because it limits the scope of protection to terrestrial wildlife and excludes aquatic wildlife, the legal benefit of this crime is not wildlife resources. The protection of wildlife resources is only a subsidiary effect of this crime, that is, protecting wildlife resources is not the direct legislative purpose of this crime. According to the theory of dual layer legal interest construction, there is only one underlying legal interest, but this does not mean that there is only one legal interest for a charge. In other words, a charge often corresponds to more than one legal interest. [4] Therefore, wild animal resources can be used as a barrier layer of legal interest for this crime. Considering the social context in which this crime emerged, the

main purpose of its establishment is to prevent illness from entering through the mouth. Related studies have shown that over 75% of new human infectious diseases are related to wild animals, and among the currently known human pathogens, 62% are zoonotic diseases. [5] Article 6 of the revised 2022 Wildlife Protection Law explicitly states that the public should resist illegal consumption. Therefore, the underlying legal interest of this crime is public health safety. Some scholars believe that the underlying legal interest of this crime is ecological order, and advocate determining whether there is substantial illegality by determining whether the behavior harms ecological order. The ecological order advocates harmonious coexistence between humans and nature, that is, the harmonious symbiotic relationship between humans and wildlife. From this, it can be seen that the ecological order includes non-human interests in the scope of moral evaluation, but criminal law ultimately protects human interests. Therefore, this viewpoint has a strong "ecological centrism legal interest view" color. In summary, the protection of legal interests in this crime should be a dual layer of legal interests in wildlife resources and public health safety. Among them, wildlife resources serve as a barrier layer of legal benefits, while public health and safety serve as a back layer of legal benefits. However, some argue that legal interests should be linked to personal interests, and public health safety as a legal interest in this crime violates the traditional view of criminal law. Undoubtedly, the abstract nature of collective legal interests may lead to the risk of generalization, but ensuring public health safety is also protecting the development interests of humanity itself. Therefore, using public health safety as a protection of legal interests has more advantages than disadvantages.

3. Determination of criminal targets for the crime of illegal hunting, acquisition, transportation, and sale of terrestrial wildlife

Throughout the legal provisions on wildlife protection in our country, before the enactment of this crime, the protected objects were only limited to precious and endangered terrestrial and aquatic wildlife, as well as the "three haves" of terrestrial wildlife. Compared to countries around the world, the scope of protected wildlife is too narrow. For example, the protection of wildlife under Japanese law is not limited to rare wildlife. Although it is different from the US law that expands the scope of wildlife protection to any animal, its protection scope is relatively broad compared to China. The formulation of this crime expands the scope of wildlife protection to include terrestrial wildlife that grow and reproduce naturally in the wild environment, which has certain progressiveness and is also a response to society's efforts to protect wildlife. Therefore, it is necessary to combine the protection of legal interests of this crime and make a detailed determination of the specific scope of the criminal object of this crime.

3.1. Identification of terrestrial wildlife

Article 341, Paragraph 3 of the Criminal Law stipulates that the criminal object of this crime is "terrestrial wild animals that grow and breed naturally in the wild environment, other than those specified in the first paragraph." In combination with the criminal object of the first paragraph, the criminal object of this crime is terrestrial wild animals that grow and breed naturally in the wild environment, except for precious and endangered wild animals. However, the law does not clarify the meaning of "terrestrial wild animals." To determine a crime, the first step is to determine the legal interest, whether it has substantial social harm, and whether the legal interest has been infringed upon as a prerequisite. The legal interest protected by criminal law often manifests as the object of the crime. The 2022 Wildlife Interpretation divides the criminal targets into "three animals" and locally protected wildlife, as well as other terrestrial wildlife, based on their resource nature. This division does not start from the protection of legal interests in this crime and does not reflect the essence of the criminal object

of this crime. Therefore, starting from the protection of legal interests in this crime, a substantive interpretation of the criminal object of this crime should be provided.

The concept of terrestrial wildlife was first defined by German zoologists, who believed that wild animals living on land and almost all breathing air were terrestrial wildlife. [6] As research deepens, terrestrial wildlife is divided into two categories: broad and narrow. The broad definition of terrestrial wildlife refers to all animals that inhabit land, including lower protozoa to higher mammals; Narrowly defined terrestrial wildlife includes all current terrestrial vertebrates. Some scholars also define terrestrial wildlife as wild animals that naturally inhabit the terrestrial environment, covering mammals, birds, amphibians, reptiles, as well as important wild animals that have important value for human reproduction, have not produced obvious domestication marks, and have independent survival capabilities in the wild. [7] It can be seen from this that the scope of terrestrial wildlife is very extensive, followed by the complex identification problem of terrestrial wildlife. Undoubtedly, terrestrial vertebrates are the subject of this crime, but are invertebrates, such as insects, terrestrial wildlife, and the subject of this crime? The List of National Key Protected Wildlife also includes some invertebrates. Whether invertebrates are the subject of this crime should be analyzed in conjunction with the protection interests of this crime. The underlying legal interests protected by this crime are public health and safety, while insect pathogens are generally transmitted within species and are not contagious to vertebrates in general. In rare cases, they can be transmitted to other invertebrates[8]. Insects and other invertebrates generally do not pose a threat to public health and safety. Therefore, a criminal offense should be imposed on invertebrates.

Regarding "other wild animals", the Supreme Court believes that "consideration should be given to the need to prevent public health and safety risks, mainly referring to terrestrial vertebrate wild animals that pose a risk of animal disease transmission to humans, such as rodents, bats, etc.". [9] Some scholars believe that this viewpoint overlooks the "three animals" and local key protected terrestrial wildlife. Although substantive legal interpretation has been provided, it is limited to "other terrestrial wildlife" and does not reflect comprehensiveness. Therefore, the criminal object of this crime should be classified and determined based on the transmission path of animal infectious diseases. The criminal objects of this crime include wild animals carrying and potentially spreading viruses to humans, as well as non living organisms (dead bodies, finished products, etc.).

From the substantive interpretation of legal interests, the judgment of terrestrial wildlife can be divided into two steps. The first step is to determine the attributes of such animals. Through the National Key Protected Wildlife List, precious and endangered wild animals are excluded. The second step is to determine the possibility and safety of consumption of such animals. The criminal subject of this crime must have the possibility of consumption, and food safety refers to the danger to public health safety.

3.2. Can artificially bred wild animals become the subject of this crime

With the development of technology and economy, the application of artificial breeding and breeding techniques for wild animals has led to the formation of stable and large-scale populations of some precious and endangered wild animals. So the question that comes with it is whether the crime of destroying artificially bred wild animals should be the object of this crime? Is it necessary for the criminal law to regulate the artificial breeding and domestication of wild animals? This not only involves the determination of the extension of terrestrial wildlife, but also involves the issue of punishment boundaries in criminal law.

3.2.1. Review of the Legal System for Artificial Breeding of Wild Animals

The relevant laws and regulations on artificial breeding of wild animals in our country can be traced back to the "Interpretation on Several Issues Concerning the Specific Application of Laws in the Trial of Criminal Cases of Destruction of Wildlife Resources" (hereinafter referred to as

the "2000 Wildlife Interpretation") issued in 2000, which includes domesticated and farmed animals as precious and endangered wild animals. [10] In the context of the outbreak of SARS in 2003, the "List of Mature Terrestrial Wild Animals for Commercial Management and Utilization of Domestication and Reproduction Technology" was released, which included 54 species of artificially domesticated and propagated terrestrial wild animals, including sika deer. For the first time, certain restrictions were imposed on the breeding, domestication, and utilization of artificially bred terrestrial wild animals. After the end of SARS, relevant laws in China restricted artificially bred wild animals to terrestrial wild animals that were mature in breeding and did not rely on wild populations, and stipulated that they could be domesticated and bred for commercial use. Subsequently, in order to facilitate the smooth development of the animal husbandry industry, the Animal Epidemic Prevention Law was introduced in 2007. In 2016, the Animal Protection Law strengthened the management of administrative licenses for the operation and breeding of wild animals, and changed the wording of the original text from "domestication and breeding" to the current commonly used "artificial breeding". Other legal rules still retain the term "domestication and breeding". Until Article 30 of the revised draft of the Wildlife Protection Law in 2021 inherited the provisions of Article 29 (1) of the revised Wildlife Protection Law in 2018, there has been no corresponding distinction between the protected objects and purposes. The Decision issued in 2020 includes terrestrial wild animals that are artificially bred and raised. Until Article 13 of the 2022 Wildlife Interpretation provides clear regulations on the utilization of artificially bred wild animals.

3.2.2. The relationship between artificial breeding of wild animals and wild animals

The 2000 Wildlife Interpretation includes domesticated and farmed animals as precious and endangered wildlife, expanding the scope of application of the Criminal Law. The most controversial issue in the Parrot Case is whether artificially domesticated wild animals are completely equivalent to pure wild animals. The second instance judgment stated that "the social harm of buying and selling artificially domesticated animals is less than that of pure wild animals, therefore a light sentence will be given", which clearly contradicts the judicial interpretation that "buying and selling artificially domesticated animals is equally convicted and punished with pure wild animals". Regarding the issue of criminal law protection for artificially bred wild animals, some people advocate distinguishing between artificially bred wild animals and wild animals, that is, artificially bred wild animals do not belong to the objects protected by criminal law. The Decision includes terrestrial wild animals that are artificially raised and bred. Article 341 (3) of the Criminal Law imposes certain limitations on the criminal object of this crime. From the perspective of textual interpretation, "artificial breeding" cannot be equated with "wild animals", and whether from the perspective of zoology or biology, "artificial breeding" cannot be treated equally with "wild animals". And it can also be clearly seen from the Decision that it divides wild animals into two categories: "artificially bred wild animals" and "wild animals that grow and reproduce naturally in the wild". Therefore, "wild animals" can be regarded as a superior concept of "artificially bred populations" and "wild natural growth and reproduction populations", which are parallel.

Other scholars believe that the identification of wild animals cannot be solely based on whether they grow in the wild environment, because law is different from other disciplines and the definitions of zoology and biology should not be directly used in law. During the second trial of the Parrot case, the prosecutor's office advocated for judging wild animals based on their genetic or morphological characteristics. However, Article 13 of the 2022 Wildlife Interpretation provides corresponding provisions for artificially bred wild animals. It can be seen that in Chinese legal provisions, "artificially bred wild animals" and "wild animals that grow and reproduce in the wild" are synonymous.[11] However, the state does not treat "artificially bred wild animals" and "wild animals" equally, and the protection level of artificially bred wild animals is significantly lower than that of wild animals. The National Forestry and

Grassland Administration stated in the previously released "Value Evaluation Measures for Wild Animals and Their Products" that the value of artificially bred wild animals is 50% of the same type of wild animals. Artificial breeding of wild animals differs from wild animals in terms of computational value and regulatory measures. Therefore, artificial breeding of wild animals cannot be simply equated with or not with wild animals. From the field of zoology, there is a parallel relationship between artificially bred animals and wild animals, and artificially bred animals do not belong to wild animals.

From the perspective of legislation on wildlife, the main purpose of animal protection regulations in China is to protect biodiversity and maintain ecological balance. For artificially bred wild animals, commercial utilization is also allowed within the corresponding scope. The current mainstream view on the protection of artificially bred wild animals is that illegal hunting and killing of artificially bred wild animals will not endanger the ecological environment, do not have social harm, and should not be included in the scope of criminal law protection. However, for the newly issued 2022 Wildlife Interpretation, it is difficult to define whether "artificial breeding technology is mature and stable", and "maturity and scale" are difficult to define due to the lack of specific implementation rules. Once again, the 2022 Wildlife Interpretation applies "pets" to the law for the first time, but there is no corresponding explanation, resulting in difficulties in implementing it in judicial practice. Therefore, the current primary approach is to develop detailed rules for the protection of artificially bred wild animals, in order to create a good and compliant trading environment for artificially bred wild animals.

3.3. Special issues regarding the identification of artificially bred wild animals

The limiting element of the target of this crime is "natural growth and reproduction in the wild environment", which raises some questions, such as whether wild animals captured and artificially bred for a long time in the wild still meet the criteria of "growth and reproduction in the wild environment", and whether the offspring produced after reproduction belong to "wild animals"? Are wild animals that have been artificially bred for a long time considered "wild animals" after being released into the wild? Some experts believe that starting from the protection of legal interests in this crime, it is necessary to determine whether it has the risk of spreading microbial pathogens that endanger public safety. According to relevant research, artificially bred wild animals undergo uninterrupted reproduction, and in the process of interacting with humans, the microbiota continuously fuses, greatly weakening the transmission ability between species. The 2020 National Catalogue of Genetic Resources for Livestock and Poultry (referred to as the Catalogue by some scholars) includes 16 types of special livestock and poultry, including spotted deer, alpacas, ostriches, as well as 17 types of traditional livestock and poultry. This is due to the long-term breeding of the animals listed above and the rich and mature infectious disease prevention and control system in China, which greatly guarantees public health safety. Therefore, for wild animals that have been artificially bred for a long time and no longer pose a public health and safety risk to humans, they are not the subject of this crime. However, wild animals captured and kept in captivity by humans from the wild, even after a long period of domestication, if they have not yet been fully controlled for reproduction, then they are still the subject of this crime. For example, the unique animal giant panda in China has formed a certain population through artificial breeding. However, it is obviously unreasonable to exclude giant pandas from the scope of criminal law protection.

4. Conclusion

This article analyzes the controversy between wildlife crimes and the protection interests of this crime, and determines that the protection interests of this crime are dual layer legal interests, and cannot simply use a single wildlife resource or public health safety as the

protection interests of this crime. And through the definition of legal interests, the object of this crime was determined, and a detailed analysis was conducted on whether artificially bred wild animals were the object of this crime. In judicial practice, the protection of legal interests for this crime should be combined with corresponding considerations for conviction and sentencing. The determination of the target of this crime requires substantive interpretation and cannot rely solely on the formal understanding of legal provisions, in order to fully leverage the illegality evaluation role of criminal law and screen out illegal behaviors that are truly socially harmful and worthy of punishment.

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