

**JUSTICE COUNCIL OF
PEOPLE'S SUPREME
COURT**

No. 05/2018/NQ-HDTP

**SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness**

Hanoi, November 05, 2018

RESOLUTION

**GUIDING THE APPLICATION OF ARTICLE 234 ON VIOLATIONS AGAINST THE
REGULATIONS ON WILD ANIMAL WELFARE AND ARTICLE 244 ON
VIOLATIONS AGAINST THE REGULATIONS ON ENDANGERED OR RARE
ANIMALS OF THE CRIMINAL CODE**

**JUSTICE COUNCIL OF
PEOPLE'S SUPREME COURT**

Pursuant to the Law on Organization of the People's Courts dated November 24, 2014;

In order to properly apply and mutually agree about the Article 234 on violations against the regulations on wild animal welfare, Article 244 on violations against the regulations on endangered or rare animals of the Criminal Code and Article 106 of the Criminal Procedure Code on handling of material evidence during the judging process;

After receiving the comments from the Director of People's Supreme Procuracy and the Minister of Justice.

HEREBY DECIDES:

Article 1. Scope

This resolution guides the application of Article 234 on violations against the regulations on wild animal welfare, Article 244 on violations against the regulations on endangered and rare animals of the Criminal Code and Article 106 of the Criminal Procedure Code on handling of material evidence during the judging process.

Article 2. Guidance on application of certain factors in determining sentences

1. *Wild animals* specified in Article 234 of the Criminal Code are the animals mentioned in the list of endangered and rare wild plants and animals in Group IBB according to the regulations of the Government or Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

2. *Other wild animals* specified in Article 234 of the Criminal Code are common wild animals according to the law regulations and Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

3. *Endangered and rare animals* specified in Article 244 of the Criminal Code are those mentioned in the list of endangered and rare animals have the priority to be protected or the list of endangered and rare wild plants and animals in group IIB. Such lists are specified in the Government's regulations or Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

4. *Animal* means an alive or dead animal. It can also be a dead animal without one or multiple body parts (i.e.: a dead gecko without some internal organs, or a dead tiger without legs).

5. *Vital body parts* mean animal body parts that have specialized functions. These parts right after being separated from the animal body will lead to the dead of such animal (i.e.: head, heart, skin, skeleton, liver, ect.)

6. *Products from wild, endangered and rare animals* means products that originate from animals (i.e.: meat, egg, milk, sperm, embryo, blood, internal organs, skin, fur, bones, horn, ivory, leg, nail, etc.); whole bodies of aquatic animals which have been preliminary treated and processed; products of which the ingredients are processed from body parts of wild, endangered and rare animals (i.e.: bone glue made from wild animals; handbags, purses and belts made from skins of wild animals).

7. *Animal of other classes* specified in Article 244 of the Criminal Code means endangered and rare animals other than mammals, birds and reptiles but are specified in the list of wild, endangered and rare animals having the priority to be protected or the list of wild, endangered or rare animals in group IIB. Such lists are mentioned in the Government's law regulations or Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

8. “*Before absolution of previous violations mentioned in Point c, Clause 1 of Article 234 of Criminal Code*” means a situation where any of the violations specified in Article 234 of Criminal Code is committed before a previously committed violation in Article 234 of Criminal Code is absolved.

9. “*Before absolution of previous violations mentioned in Point e, Clause 1, Article 244 of Criminal Code*” means a situation where any of the violations specified in Points c, d and did, clause 1, Article 244 of Criminal Code is committed before a previously committed violation in Points c, d and did, Clause 1, Article 244 of Criminal Code is absolved.

Article 3. Guidance on application of certain factors of the penalty frame

1. *Hunting in prohibited area* means a hunt for wild, endangered or rare animals within the preserved areas, national park, nature reserves, species - habitat reserves and landscape protected areas, or a hunt within other inhibited areas as specified in the regulations of the competent state agency.

2. *Hunting during inhibited period* means a hunt for wild, endangered or rare animals during their reproductive or migration period. The reproductive or migration period shall be determined according to the regulations of the competent agency.

3. *Use of banned equipment* means the use of any weapons, poisoned arrows, explosives, poisons, digging of tunnels and holes, use of spikes, spike traps, electric traps, large logs and other dangerous equipment banned from hunting by competent authorities.

4. *Abuse of position and power* specified in Clause 2b, Article 234 of the Criminal Code means any cases in which the office holder abuses their position and power to commit one of the violations specified in clause 1, Article 234 of the Criminal Code.

5. *Abuse of position and power* specified in Clause 2e, Article 244 of the Criminal Code means any cases in which the office holder abuses their position and power to commit one of the violations specified in clause 1, Article 244 of the Criminal Code.

6. *Cross-border transport and trade* means any cases in which the criminal has transported or is currently transporting wild, endangered or rare animals, their body parts or products made from them out of the national border of the Socialist Republic of Vietnam by land, water, air or underground. If the transport and trade thereof have completed customs procedures, they shall be considered as cross-border transport and trade.

Article 4. Possession of wild, endangered or rare animals, vital body parts or products thereof

1. From 0:00 am on January 01, 2018, if the possession of wild, endangered or rare animals, vital body parts and products thereof constitutes a crime, the offender shall bear criminal responsibility for such specific case as mentioned in Article 234 or Article 244 of the Criminal Code.

2. A person who illegally possesses wild, endangered or rare animals, vital body parts and products thereof before January 01, 2018 shall bear criminal responsibility for such violation, except for the cases in which a person possesses wild, endangered or rare animals, vital body parts and products thereof for the purpose of illegal trade and profits.

Article 5. Illegal appropriation of wild, endangered or rare animals, vital body parts and products thereof

1. If a person illegally appropriates wild, endangered or rare animals, vital body parts and products thereof of another person, and such action constitutes a crime, he/she must bear

the criminal responsibility for the specific case mentioned in the Chapter called "Property Ownership Infringement" of the Criminal Code.

2. If a person illegally appropriates wild, endangered or rare animals, vital body parts or products thereof and then commits one of the violations specified in Article 234 or Article 244 of the Criminal Code which constitutes a crime, he/she must bear the criminal responsibility for the specific case mentioned in the regulations on wild animal welfare or the regulations on protection of wild, endangered or rare animals.

Example 1: Nguyen Van A steals 10 kg of elephant's tusk which costs 130 millions VND, he then sells it for Nguyen Van B and gets caught. In this case, A shall bear the criminal responsibility for his act of stealing and his violation against the regulations on protection of wild, endangered or rare animals.

Example 2: Nguyen Van C steals 10 kg of elephant's tusk which costs 130 millions VND. While C is transporting the tusk to a place where he can hide it, he gets caught. In this case, C shall bear the criminal responsibility for his act of stealing.

Article 6. Cases in which multiple wild, endangered or rare animals of different classes are seized

For the same case, if multiple animals including mammals, birds and reptiles are sized, as well as other classes of animals specified in the list of endangered or rare wild plants and animals in group IB or Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and the quantity of each class does not reach the number specified in Article 244 of the Criminal Code, the offender who violates the regulations on protection of wild, endangered or rare animals shall not bear the criminal responsibility in this case.

Article 7. Handling of material evidence

1. Handling of wild, endangered or rare animals and their products as material evidence shall be required in the following cases:

a. If the material evidence is living wild, endangered or rare animals, then right after the inspection result is received, they shall be handed over to the specialized management agency in order for this agency to release them back into the wild or hand them over to the rescue center, nature reserves, national park or other agencies and organizations as regulated by laws.

b. If the material evidence is dead animals or the products made from wild, endangered or rare animals are easily damaged, then right after the inspection result is received, they shall be disposed or handed over to the specialized management agency for handling as regulated by laws.

c. Other material evidence unspecified in clause 1a and 1b of this Article shall be confiscated or disposed as regulated by laws.

2. During the judging process, the Court of Justice shall handle the material evidence specified in Clause 1a and 1b of this Article based on the retention forms, electronic photos or data, inspection reports, receipt documents, decisions on handling of material evidence and other related documents or material evidence specified in the case files.

3. Authority and procedures for handling material evidence of wild, endangered or rare animals and their products shall be carried out in accordance with the regulations of the Criminal Procedure Code and documented guidelines for implementation.

Article 8. Entry into force

This Resolution has been adopted by the Justice Council of People's Supreme Court on September 27, 2018 and shall come into force from December 01, 2018.

**PP. JUSTICE COUNCIL
CHIEF JUSTICE**

Nguyen Hoa Binh

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