

J. Y. Interpretation No.465 (September 25, 1998) *

ISSUE: Is the public notice issued by the Council of Agriculture, Executive Yuan, in respect of the management of protected wildlife and the punishment of illegal sales of such wildlife in violation of the principle of unambiguous authorization?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution (憲法第十五條、第二十三條); Article 3, 4-II, 23 and 33 of the Wildlife Conservation Act as enacted and promulgated on June 23, 1989 (七十八年六月二十三日制定公布之野生動物保育法第三條、第四條第二項、第二十三條、第三十三條); Articles 24, 35 and 40 of the Wildlife Conservation Act as amended and promulgated on October 29, 1994 (八十三年十月二十九日修正公布之野生動物保育法第二十四條、第三十五條、第四十條) .

KEYWORDS:

freedom right (自由權), property right (財產權), principle of proportionality (比例原則), public notice of the list of protected wildlife (保育類野生動物名錄公告), principle of unambiguous authorization (授權明確性原則).**

HOLDING: The public notice of the list of protected wildlife issued by the

解釋文：行政院農業委員會中華民國七十八年八月四日公告之保育類

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** Contents within frame, not part of the original text, are added for reference purpose only.

Council of Agriculture, Executive Yuan, on August 4, 1989, specifying to the effect that the elephant family (*Elephantidae*) falls into the category of endangered and protected wildlife and is thus included in the list of wildlife so protected, was authorized by virtue of Article 4-II of the Wildlife Conservation Act as enacted and promulgated on June 23, 1989. The content and scope of the authorization at issue have been expressly specified in Article 3 (v) and Article 4-I of the aforesaid Act, which does not conflict with the Constitution. In addition, the penalties imposed by Article 33 of the said Act (amended as Article 40 thereof on October 29, 1994) on any person engaging in illegal sales of the aforesaid protected animals and their products as published are essential to the conservation of endangered and scarce wildlife so as to achieve the objective of preserving the environment and ecology. The said provisions are not designed to prescribe additional penalties to infringe retroactively upon the freedom and property right of the people, nor do they go beyond the scope necessary to promote public interests. Therefore, they are not in

野生動物名錄，指定象科為瀕臨絕種保育類野生動物並予公告，列其為管制之項目，係依據同年六月二十三日制定公布之野生動物保育法第四條第二項之授權，其授權之內容及範圍，同法第三條第五款及第四條第一項已有具體明確之規定，於憲法尚無違背。又同法第三十三條（八十三年十月二十九日修正為第四十條）對於非法買賣前開公告之管制動物及製品者予以處罰，乃為保育瀕臨絕種及珍貴稀有野生動物之必要，以達維護環境及生態之目標，亦非增訂處罰規定而溯及的侵害人民身體之自由權及財產權，且未逾增進公共利益所必要之範圍，與憲法並無牴觸。至公告列為瀕臨絕種保育類野生動物前，經已合法進口之野生動物或其屍體、角、骨、牙、皮、毛、卵、器官及其製品，於公告後因而不得買賣、交換、或意圖販賣而陳列，致人民財產權之行使受有限制，有關機關自應分別視實際受限制程度等具體情狀，檢討修訂相關規定為合理之補救，以符憲法保障人民財產權之意旨。

conflict with the Constitution. In respect of those wildlife or the carcasses, horns, bones, hides, furs, eggs, organs of such wildlife and their products that were legally imported prior to the public notice declaring them as endangered and protected wildlife, as the property right of the people is restricted due to the prohibition against the sale, trade or display thereof with the intent to sell the same subsequent to the public notice at issue, the authorities concerned shall review and revise the relevant provisions to reasonably remedy the various situations after considering such specific circumstances as the actual limitations on various products so that the constitutional intent to protect the property right of the people will be complied with.

REASONING: The public notice of the list of protected wildlife issued by the Council of Agriculture, Executive Yuan, on August 4, 1989, specifying to the effect that the elephant family (*Elephantidae*) falls into the category of endangered and protected wildlife and is thus included in the list of wildlife so pro-

解釋理由書：行政院農業委員會中華民國七十八年八月四日公告之保育類野生動物名錄，指定象科為瀕臨絕種保育類野生動物並予公告，列其為管制之項目，係依據同年六月二十三日制定公布之野生動物保育法第四條第二項之授權，其授權之內容及範圍，同法第三條第五款及第四條第一項已有具體明

tected, was authorized by virtue of Article 4-II of the Wildlife Conservation Act as enacted and promulgated on June 23, 1989. The content and scope of the authorization at issue have been expressly specified in Article 3 (v) and Article 4-I of the aforesaid Act, which should be in line with the principle of unambiguous authorization and thus does not conflict with the Constitution. Furthermore, under Article 23 of the said Act (amended as Article 24, 35⁷ thereof on October 29, 1994), no endangered wildlife or the carcasses, horns, bones, hides, furs, eggs, organs of such wildlife and their products may be imported, exported, purchased or sold without obtaining approval from the authorities concerned. Therefore, any purchase or sale without approval is certainly an illegal sale of the aforesaid protected animals and their products as published. The penalties imposed by Article 33 of the said Act (amended as Article 40 thereof on October 29, 1994) on any person engaging in illegal sales of the aforesaid protected animals and their products as published are essential to the conservation of endangered and scarce wildlife so

確之規定，難謂與授權明確原則不符，於憲法尚無違背。又依同法第二十三條（八十三年十月二十九日修正為第二十四條、第三十五條）規定，瀕臨絕種野生動物之屍體、骨、角、牙、毛、皮、器官及製品等，應經主管機關之許可始得進出口或買賣。未經許可之買賣，自屬非法買賣前開公告之管制動物及製品，同法第三十三條（八十三年十月二十九日修正為第四十條）規定予以處罰，乃為保育瀕臨絕種及珍貴稀有野生動物之必要，且係就公告後之行為始予處罰，自無增訂處罰規定而溯及的侵害人民身體之自由權及財產權可言，凡此措施均在彌補我國過去對於環境生態保護之不足，為貫徹維護環境及生態目標之不得已手段，尚與比例原則無違，亦為增進公共利益所必要，與憲法並無牴觸。至公告列為瀕臨絕種保育類野生動物前，經已合法進口之野生動物或其屍體、角、骨、牙、皮、毛、卵、器官及其製品，於公告後因而不得買賣、交換、或意圖販賣而陳列，致人民財產權之行使受有限制，有關機關自應分別視實際受限制程度等具體情狀，檢討修訂相關規定為合理之補救，以符憲法保障人民財產權之意旨。

as to achieve the objective of preserving the environment and ecology. In addition, the said provisions are intended to punish those actions occurring after the publication at issue, but not designed to prescribe additional penalties to infringe retroactively upon the freedom and property right of the people. All of the relevant measures are meant to remedy the past inadequacies of our nation in respect of environmental and ecological protection, and no other alternative means are available to implement the objectives of conserving the environment and ecology. Accordingly, since they do not contradict the principle of proportionality, nor do they go beyond the scope necessary to promote public interests, they are not in conflict with the Constitution. In respect of those wildlife or the carcasses, horns, bones, hides, furs, eggs, organs of such wildlife and their products that were legally imported prior to the public notice declaring them as endangered and protected wildlife, as the property right of the people is restricted due to the prohibition against the sale, trade or display thereof with the intent to sell the same subsequent to the public no-

tice at issue, the authorities concerned shall review and revise the relevant provisions to reasonably remedy the various situations after considering such specific circumstances as the actual limitations on various products so that the constitutional intent to protect the property right of the people will be complied with.