

II. Incidental civil public interest litigation to the criminal action against Liu * Gui for illegal mining

[Case Number] Guiding Case No. 212

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[Adjudicating Court and Collegial Bench Members]

First instance: The People's Court of Ruichang City of Jiangxi Province

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[Keywords]

Criminal / Incidental civil public interest litigation to criminal action / Illegal mining / Illegal sand mining / Centralized jurisdiction across administrative divisions / Compensation for ecological and environmental damage

[Essence of Judgment]

1. A criminal case of illegal sand mining that spans across administrative regions may fall under the jurisdiction of a people's court located in any place related to the criminal conduct, including the site of the illegal mining, the place of origin, transit or destination of the mining products.
2. In a joint crime of illegal sand mining involving both mining and sale of sand, the competent court for hearing the case shall be selected based on whether the court has any advantage in ascertainment of criminal facts and in promoting ecological and environmental restoration. Where a portion of the criminal conduct or the acts of an individual co-offender fall under the jurisdiction of a particular court, the entire case involving both mining and sale may be heard by that court.
3. Where a procuratorate files an incidental civil public interest litigation alongside a criminal prosecution due to ecological and environmental damage in a riverbasin caused by illegal sand mining, and requests the defendant to bear the liability for ecological and environmental restoration, compensation for losses and relevant expenses, the request shall be supported by the people's court according to the law.

[Basic Facts]

On 5 September 2021, defendant Liu * Gui (residing in Wuxue City of Hubei

Province) leased his vessel “Hubei Galaxy No.518” to a defendant in a separate case Liu * (already sentenced, residing in Xunyang District of Jiujiang City, Jiangxi Province). The two then agreed to jointly engage in illegal sand mining in the Yangtze River. Liu * and a defendant in a separate case He * Dong in a separate case (already sentenced, residing in Chaisang District of Jiujiang City, Jiangxi Province) conspired before the sand mining that He * Dong would purchase the illegal mined river sand from Liu * at a low price.

From 10 to 26 September 2021, the defendant Liu * Gui conspired with defendants in separate cases Liu *, Xiong * and Yang * (all already sentenced) three times to illegally mine approximately 4,500 tons of river sand in the Henghekou Water Area of the Huangmei Section of the Yangtze River in Hubei Province, which were transported to a wharf in Chaisang District of Jiujiang City, Jiangxi Province, and sold to He * Dong. He * Dong then mixed the river sand with manufactured sand for sale. During the sand mining, Xiong *, who was fully aware of the situation, provided assistance for Liu *, such as driving vehicles, and participated in the illegal sand mining activities and obtained illegal profits of approximately CNY 15,000. Yang * was employed by Liu * to supervise sand unloading from the vessel “Hubei Galaxy No.518” and gained over CNY 3,000 in illegal profits.

At around midnight on 30 September 2021, after receiving a public complaint, the Yangtze River Shipping Public Security Bureau seized the vessel “Hubei Galaxy No.518” engaged in illegal sand mining operations in the Henghekou Water Area of the Huangmei Section of the Yangtze River. Through weighing, the vessel “Hubei Galaxy No.518” was found to carry 1,443.09 tons of illegally mined river sand. According to the “Notice of the People’s Government of Hubei Province on Strengthening River Sand Mining Management”, the ban on sand mining in the main stream of the middle reaches of the Yangtze River in Hubei Province is set from June 1 to September 30, and when the water level of the corresponding river section exceeds the warning level. The crime of illegal mining of this case was committed in the Henghekou Water Area of Huangmei Section of Yangtze River, which is located in the Xinzhou Water Area of Hubei Province in the main stream of the middle reaches of the Yangtze River.

As determined by the Development and Reform Commission of Jiujiang City of Jiangxi Province, the market transaction price of the illegally mined river sand was CNY 80 per ton. The defendant Liu * Gui, together with Liu *, Xiong *, He * Dong and Yang * illegally mined 5,943.09 tons of river sand, valuing CNY 475,447.2. The appraisal confirmed that the illegal sand mining activities conducted by Liu * Gui, Liu * and others in the Yangtze River caused ecological and environmental impact in the illegal mining area, including damage to water environmental quality, riverbed structure, water conservation and aquatic biological resources. Among them, the loss of Yangtze River ecological service functions amounted to CNY 35,823.41, and the restoration costs for Yangtze River ecological environment damage were CNY

26,767.48, totaling CNY 62,590.89.

It was also found out that Liu *, Xiong *, He * Dong and Yang * had been previously sentenced by the People's Court of Ruichang City of Jiangxi Province for the crime of illegal mining. The defendant Liu * Gui was arrested on 8 June 2022.

The Intermediate People's Court of Jiujiang City of Jiangxi Province designated the People's Court of Ruichang City of Jiangxi Province to hear the case. The People's Procuratorate of Ruichang City of Jiangxi Province announced the case according to the law, and no authority or organization specified by the law filed civil public interest litigation upon the expiration of the public announcement period. Subsequently, the People's Procuratorate of Ruichang City of Jiangxi Province initiated incidental civil public interest litigation to the criminal action with the People's Court of Ruichang City of Jiangxi Province in accordance with the law.

[Judgment]

The People's Court of Ruichang City of Jiangxi Province rendered a judgment of the incidental civil public interest litigation to the criminal action coded [2022, Jiangxi, 0481, Criminal First Trial No. 304] on 22 December 2022. The defendant Liu * Gui was convicted of the crime of illegal mining and sentenced to three-year imprisonment with a fine of CNY 110,000. The defendant Liu * Gui was ordered to jointly compensate for the damage to national mineral resources of CNY 135,000 (after deducting the compensation from other defendants) with Liu *, Xiong *, He * Dong and others, within ten days upon effectiveness of the judgment. CNY 50,000 of compensation for the damage to national mineral resources already paid by the defendant Liu * Gui shall be turned over to the state treasury. The defendant in the incidental civil public interest litigation to the criminal action Liu * Gui shall jointly and severally compensate for the ecological service function losses of the Yangtze River of CNY 35,823.41 and ecological environment damage restoration costs of CNY 26,767.48 (CNY 62,590.89 in total) caused by illegal sand mining with Liu *, Xiong *, Yang *, and He * Dong, within ten days upon effectiveness of the judgment. The defendant in the incidental civil public interest litigation to the criminal action Liu * Gui shall publish a public announcement on a city-level news medium in Jiujiang City to apologize to the public within ten days upon effectiveness of the judgment. There were no appeals or protests after the judgment was pronounced, and the judgment has come into legal effect.

[Grounds for Judgment]

The valid judgment of the court held that the defendants Liu * Gui, Liu * and others violated provisions of the Mineral Resources Law, conspired and conducted illegal sand mining valuing CNY 475,447.2 in the Yangtze River during the prohibited mining period without obtaining a mining permit. Given the particularly serious

circumstances, the defendants shall be held criminally liable for the crime of illegal mining and constituted a joint crime. The charge alleged by the public prosecution authority was well-established.

Regarding the jurisdiction of the case, it was found Jiujiang City of Jiangxi Province was neither the place where the defendant Liu * Gui conducted the illegal acts nor the place where he resided. However, the acts of other defendants in the joint crime occurred within the jurisdiction of Jiujiang City, and other defendants in the joint crime had already been sentenced by the People's Court of Ruichang City of Jiangxi Province. If a criminal act of one person or a part of the crime in a joint crime falls under the jurisdiction of a court, the entire case of the joint crime that involves both mining and sale can be heard by that court. Given the all-round devastating effect of illegal mining acts in practice and based on the principle of facilitating the identification of criminal facts and benefiting ecological and environmental restoration, the Intermediate People's Court of Jiujiang City of Jiangxi Province designated the People's Court of Ruichang City of Jiangxi Province as the responsible court for the case, which is in compliance with the law.

The defendant Liu * Gui directly arranged and conducted the sand mining activities and played a primary role in the joint crime. Liu * Gui faithfully confessed to his criminal facts during the trial, demonstrating a plea of guilty, and may be given a lighter punishment according to law. However, as he had previously been criminally punished for illegal mining and committed the crime of illegal mining again, a heavier punishment shall be given as appropriate. Liu * Gui partially compensated for the damage to national mineral resources, so a lighter punishment shall be given as appropriate. Liu * Gui and others conducted criminal acts of illegal sand mining in the Yangtze River, which caused losses to national mineral resources, and shall jointly bear the liability of compensations. In addition to compensations already paid by other defendants in the joint crime and Liu * Gui himself, Liu * Gui shall also be required to compensate for damage to mineral resources of CNY 135,000.

Meanwhile, as the illegal mining acts jeopardized the ecology and environment in the Yangtze River basin and undermined public interests, the defendants shall also bear corresponding civil liability. Lucid waters and lush mountains are invaluable assets. The economic and social development of the Yangtze River basin should adhere to the principle of giving priority to ecological protection, green development, and extensive protection instead of massive development. The defendant Liu * Gui in the incidental civil public interest litigation to the criminal action shall jointly and severally assume the compensation for the damage to ecology functions and costs for ecological restoration with defendants in separate cases Liu *, Xiong *, He * Dong and Yang *. The prosecutor's requests in the incidental civil public interest litigation to the criminal action that the defendant shall compensate for the damage to ecology functions and costs for ecological restoration in the Yangtze River comply with the law and shall be supported. The prosecutor's request that the defendant shall make a

public apology on a city-level medium in Jiujiang City complies with the law and shall be supported.