

#### **IV. Incidental civil public interest litigation to the criminal action against Zhang \* Shan et al. for illegal mining**

[Case Number] Guiding Case No. 261

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[Adjudicating Court and Collegial Bench Members]

First instance: The People's Court of Dongtai City of Jiangsu Province

Ding Hui, Zhang Junhong, Bian Rongwei, Xu Hongzhu, Da Honghua, Ding Jingbo, Yu Hongjun

[Keywords]

Criminal / Incidental civil public interest litigation to criminal action / Crime of illegal mining / Across administrative divisions / Designated jurisdiction / Restoration of damaged area

[Essence of Judgment]

1. For criminal cases of damage to the environment and resources across administrative regions, where circumstances specified in Paragraph 2 of Article 20 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China are met, the people's courts at a higher level may designate a subordinate people's court with environmental resource adjudication functions to exercise jurisdiction.
2. Where it is more appropriate to carry out ecological and environmental restoration in the area where the damage occurred, the people's court may, after enforcement, transfer the available restoration funds across administrative divisions to the relevant departments in the affected area for use in ecological and environmental restoration.

[Basic Facts]

From March to July 2021, defendants Zhang \* Shan, Zhang \* Chen, Li \*, Ding \* and others, who provided money, and defendants Hong \* Wu, Wang \* Hong and others, who provided a sand mining ship without business license, mining license or safety permit, worked with the defendants Zhang \* Wei, Ling \* Hua, Bao \* Wen and others, who were owners of a sand-purchasing ship and got into contact with the former defendants beforehand, to illegally mined and transported 46,765.04 tons of Yangtze River sand with a value of CNY 2,893,129 by means of integrated mining and

transportation in the upper and lower sections of the river within the National Nature Reserve for Freshwater Dolphins in Tongling Section, Anhui Province along the Yangtze River, without obtaining a river sand mining license. The defendant Ma \* Yu, who was fully aware that the Yangtze River sand was illegally mined, still purchased 1,700 tons and sold them out. Through assessment, the illegal sand mining activities of Zhang \* Shan and others caused ecological and environmental damage to the Yangtze River, and a causal relationship was found between the acts and local ecological and environmental damage. It was assessed that the ecological and environmental damage to the Yangtze River amounted to CNY 5,157,476.86, including CNY 4,910,329.2 of riverbed structure damage, CNY 96,146.02 of fish resource damage, CNY 14,884.62 of benthic organism damage, CNY 101,557.02 of biodiversity service value damage, and CNY 34,560 of follow-up monitoring.

It was also found that from 1 June to 30 September was the prohibited period for sand mining in the main stream lower than Yibin in the Yangtze River. Both the upper and lower sections of the river within the National Nature Reserve for Freshwater Dolphins in Tongling Section, Anhui Province of the Yangtze River are prohibited sand mining areas. Anhui section of the Yangtze River did not issue any sand mining license from January 2020 to the occurrence of the case.

The People's Procuratorate of Jianhu County of Jiangsu Province charged the defendants Zhang \* Shan and others with the crime of illegal mining, and the defendant Ma \* Yu with the crime of concealing and disguising criminal gains, and filed a public prosecution with the people's court. Meanwhile, it lodged an incidental civil public interest litigation to the criminal action given the damage to the public interests of the society, requesting an order that Zhang \* Shan and others shall assume joint and several liability for the ecological and environmental damage, and shall make a public apology on a state-level medium. Due to the long duration of the crime in this case and the fact that the crime was committed across provincial administrative regions such as Anhui and Jiangsu provinces, the Supreme People's Court designated the People's Court of Dongtai City of Jiangsu Province to hear the case. The court is one of the primary courts with cross-regional jurisdiction over environmental resource trials identified by the High People's Court of Jiangsu Province based on the needs of ecological and environmental protection in river basins in Jiangsu Province.

[Judgment]

The People's Court of Dongtai City of Jiangsu Province made the criminal and incidental civil judgment coded [2022, Jiangsu, 0981, Criminal First Trial, No.46] on 1 March 2022. It held that the defendants Zhang \* Shan and others were convicted of the crime of illegal mining, and were respectively sentenced to fixed-term imprisonment ranging from four years and six months to one year. Some of the defendants were granted probation. Fines were imposed on the defendants, ranging from CNY 200,000 to CNY 15,000 for each of them, and their illegal gains were

confiscated. The defendant Ma \* Yu was convicted of the crime of concealing and disguising criminal gains, and was sentenced to one year and six months of imprisonment with a two-year probation, and was fined CNY 20,000 and had his illegal gains confiscated. The defendants in the incidental civil public interest litigation, including Zhang \* Shan, were ordered to jointly and severally compensate CNY 5,157,476.86 for ecological and environmental damage within the scope of their respective amount in sand mining, and to make a public apology on a state-level medium. There was no appeal or protest after the judgment was pronounced, and the judgment has come into legal effect.

After the judgment took effect, the People's Court of Dongtai City of Jiangsu Province transferred the funds for ecological and environmental restoration obtained after enforcement to the Intermediate People's Court of Tongling City of Anhui Province, who jointly implemented the Tongling Yangtze River ecological and environmental restoration and finless porpoise protection projects with the local government.

#### [Grounds for Judgment]

The Yangtze River is the mother river of the Chinese nation and provides important support for China's development. The sand and gravel in the Yangtze River are national mineral resources. Illegal mining of Yangtze River sand will damage the ecological environment of the Yangtze River and affect its stability of the river course, flood control and navigation safety. The defendants Zhang \* Shan and others violated provisions of the Mineral Resources Law, who arbitrarily engaged in illegal sand mining during the prohibited period and in the prohibited area of the Yangtze River without obtaining a river sand mining license, constituting serious circumstances. The acts constitute the crime of illegal mining. The defendant Ma \* Yu purchased the river sand with full awareness that the river sand was obtained illegally by others, and the act constituted the crime of concealing and disguising criminal gains. The sand mining site in the case is located between the upper and lower sections of the National Nature Reserve for Freshwater Dolphins in Tongling Section of Anhui Province, which is the habitat of precious and endangered aquatic wild species such as Chinese sturgeon and finless porpoise. The illegal sand mining activities of Zhang \* Shan and others directly caused damage to the ecosystem of the Yangtze River and destroyed the breeding and survival environment of aquatic animal resources. It was assessed that the ecological and environmental damage to the Yangtze River amounted to CNY 5,157,476.86. According to Article 93 of the Yangtze River Protection Law of the People's Republic of China and Articles 1168 and 1235 of the Civil Code of the People's Republic of China, Zhang \* Shan and others shall bear joint and several civil liability for compensating for the ecological and environmental damage to the Yangtze River within their respective amount of illegal sand mining they were involved in. There are two key issues in this case: one is about the jurisdiction of the case, and the other is about the use of the funds for ecological and environmental

restoration.

Regarding jurisdiction of the case, Paragraph 2 of Article 20 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (Judicial Interpretation [2021] No. 1) stipulates, "where it is more appropriate for a people's court in a place other than where the crime was committed and where the defendant resided to hear the case, a people's court at a higher level may designate a subordinate people's court to exercise the jurisdiction." In this case, the number of defendants with the acts of illegal sand mining was high, the duration of the crime was long, and the locations of sand mining and sale covered many administrative divisions including Anhui and Jiangsu Provinces. Moreover, the illegal sand mining in the case involves huge profits, gang-based crime and internal-external collusion, with clues that local public officials were suspected of getting involved in the crime. Hence, it shall be more appropriate to designate a people's court outside Anhui Province to exercise jurisdiction. Considering factors such as the equivalence, convenience, and professionalism of investigation, prosecution and trial, the Supreme People's Court designated the People's Court of Dongtai City of Jiangsu Province, which has environmental resource adjudication functions, to hear the case.

Regarding the use of funds for ecological and environmental restoration, ecological and environmental protection of the Yangtze River basin shall adhere to the principle of systematic governance and priority to restoration in original site. Ecological and environmental restoration funds serve as the basic guarantee to carry out restoration. Since the acts of ecological and environmental damage usually occurred within the jurisdiction of the responsible court for a case, the restoration funds can be matched with the restoration activities in such circumstance. However, in cross-regional cases, especially those spanning provincial administrative divisions, it is difficult to use ecological restoration funds for the ecological and environmental restoration in the damaged area. Although the case was heard by the People's Court of Dongtai City of Jiangsu Province as designated by the Supreme People's Court of China, the damaged area is located in the Tongling Section of the Yangtze River in Anhui Province. The illegal sand mining by Zhang \* Shan and others caused serious ecological and environmental damage to the Yangtze River in the local area, which shall be promptly and effectively restored, otherwise, the damaged consequences would inevitably sustain or even worsen. After the judgment in this case took effect, the people's court promptly transferred the available funds for ecological and environmental restoration to the relevant departments of Tongling City of Anhui Province for ecological and environmental restoration in the damaged area, i.e., Tongling Section of the Yangtze River in Anhui Province.