VII. Civil environmental public interest litigation by the People's Procuratorate of Jinan City of Shandong Province against Jinan * Oncology Hospital Co., Ltd. et al. over Environmental Pollution

[Case Number] Guiding Case No.258

[Publishing Date] 26 May 2025

[Adjudicating Court and Collegial Bench Members]

First Instance: The Railway Transportation Intermediate Court of Jinan

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[Keywords]

Civil / Civil public interest litigation over environmental pollution / Nonfeasance / Joint and several liability / Injunction / Preliminary enforcement

[Essence of Judgment]

1. The environmental protection authority shall transfer relevant clues to the people's procuratorate to file an environmental civil public interest lawsuit when it discovers significant risks to public interests due to environmental pollution and ecological destruction in the performance of its duties. If it meets Article 58 of the Civil Procedure Law of the People's Republic of China, the people's court shall accept the case according to the law.

2. If a significant risk of damage to the public interests of the society is caused by two or more civil subjects that are legally obligated to eliminate environmental pollution risks but have failed to fulfill their respective obligations, the authorities designated by the State or organizations specified by law may, according to Article 1171 of the Civil Code of the People's Republic of China, request that each civil subject shall bear joint liability for the costs incurred in eliminating the danger, and the people's court shall support this request according to the law.

3. To prevent the occurrence or escalation of ecological and environmental damage, the people's court may, based on the circumstances of the case, adopt measures, such as injunctions and preliminary enforcement, to promptly eliminate environmental pollution risks.

[Basic Case Facts]

In May 2005, the Jinan * People's Hospital of Shandong Province (hereinafter referred to as the "* People's Hospital") collaborated with the * Investment Group Co., Ltd. to establish the Jinan * Oncology Hospital Co., Ltd. (hereinafter referred to as the "* Oncology Hospital"). The * Oncology Hospital introduced a set of gamma knife medical equipment from overseas in December 2008 and obtained a radiation safety license on 19 July 2010. In 2013, the * People's Hospital and the Jinan Jiu * Hospital of Shandong Province (hereinafter referred to as the "Jiu* Hospital") executed a Medical Equipment Lease Agreement, which agreed to lease the medical equipment concerned in the case to the Jiu * Hospital for a period of five years (from 1 May 2013 to 30 April 2018). The Jiu * Hospital would account for the gross incomes from the leased equipment, without bearing the costs, and the rest of the gross incomes would be attributable to the * People's Hospital. The * People's Hospital would assume the expenses and operating costs of the leased equipment and take the responsibility for obtaining the necessary permits for the usage, EIA and protection of the equipment. On 27 July 2016, the Jiu * Hospital and the * People's Hospital executed the Agreement on the Termination of the Medical Equipment Lease, and the parties agreed to terminate the execution of the medical equipment lease agreement ahead of schedule from 31 July 2016, and the * People's Hospital would remove the medical equipment in two months upon termination of the agreement. During the cooperation period, the * People's Hospital failed to obtain relevant licenses for the usage, EIA and protection of the medical equipment concerned, and the Jiu * Hospital failed to apply for relevant licenses either. The Jiu * Hospital paid CNY 1,982,533.10 to the * People's Hospital as a share of the profits. Upon termination of the cooperation, neither of the parties disposed of the medical equipment according to the law, which remained idle at the Jiu * Hospital. The * Oncology Hospital has been closed for many years and was unable to bear the disposal costs, and was in a dispute with actual users, i.e. the * People's Hospital and the Jiu * Hospital, over the responsibility for disposal. As a result, the medical equipment concerned was not disposed of according to the law, posing a risk of environmental pollution.

In December 2021, the Bureau of Ecology and Environment of Jinan City of Shandong Province transferred the above-mentioned clues of the case to the People's Procuratorate of Jinan City of Shandong Province. The People's Procuratorate of Jinan City, after review, found that the medical equipment involved in the case was not disposed of in a timely and lawful manner, which would create environmental safety hazards and jeopardize public interests. It filed a civil public interest lawsuit with the Intermediate People's Court of Jinan City over environmental pollution on 30 May 2022, requesting the * Oncology Hospital, the * People's Hospital and the Jiu * Hospital to bear the disposal costs of the medical equipment involved in the case amounting to CNY 2.9 million, and the * Oncology Hospital to fulfill its obligation to handle the disposal procedure. As local environmental and resources cases were subject to cross-regional jurisdiction, the Intermediate People's Court of Jinan City transferred the case to the Railway Transportation Intermediate Court of Jinan. After

accepting the case, the Railway Transportation Intermediate Court of Jinan issued an environmental protection injunction in accordance with the law to forbid the * Oncology Hospital, the * People's Hospital and the Jiu * Hospital from arbitrarily disposing of the medical equipment involved in the case without the permission of the court or the competent ecological and environmental authority, so as to prevent pollution caused by improper disposal of the medical equipment.

[Judgment]

The Railway Transportation Intermediate Court of Jinan rendered a civil judgment coded [2022, Shandong, 71, Civil First Trial, No.64] on 30 December 2022. First, Jinan * Oncology Hospital Co., Ltd., Jinan * People's Hospital of Shandong Province, and Jinan Jiu * Hospital of Shandong Province shall jointly pay CNY 2.9 million for the disposal of the medical equipment involved in the case, and shall pay the amount to the designated account of the court within ten days upon validation of the judgment. Second, Jinan * Oncology Hospital Co., Ltd. shall fulfill the obligation to handle the disposal procedure within ten days upon validation of the judgment. After the judgment was pronounced, Jinan * Oncology Hospital Co., Ltd. and Jinan Jiu * Hospital of Shandong Province did not accept the judgment and filed an appeal. In the second instance, the High People's Court of Shandong Province ruled advance enforcement of fees for disposal of the medical equipment involved in the case, and the amount of CNY 2.9 million was enforced in advance to the Jinan * People's Hospital, which was entirely used for the disposal of the equipment involved in the case. Disposal of the equipment was completed before the conclusion of the case, eliminating the risk of the environmental pollution. The High People's Court of Shandong Province rendered a civil judgment coded [2023, Shandong, Civil Final Trial, No.143] on 30 June 2023, which upheld the second point of the first instance judgment that Jinan * Oncology Hospital Co., Ltd. shall fulfill the obligation to handle the disposal procedure within ten days upon validation of the judgment, while changing the first point of the first instance judgment to make it more clear that Jinan * Oncology Hospital Co., Ltd., Jinan * People's Hospital of Shandong Province, and Jinan Jiu * Hospital of Shandong Province shall jointly and severally bear the disposal costs of the medical equipment involved in the case, totaling CNY 2.9 million.

[Grounds for Judgment]

The key issue involved in the case was mostly around how to allocate the responsibility for eliminating the environmental pollution risk caused by the medical equipment involved in the case.

Article 1171 of the Civil Code of the People's Republic of China stipulates: "Where the tortious acts committed by two or more persons respectively cause the same damage, and each act is sufficient to cause the entire damage independently, the offenders shall assume joint and several liability." The term "damage" in this article

not only refers to the damage that already occurred, but also includes actual risks of danger that may cause damage. Article 179 of the Civil Code of the People's Republic of China provides for methods of bearing civil liabilities to eliminate danger. Article 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases ([Judicial Interpretation, 2015, No.1], 2020 Amendment) stipulates: "For acts that pollute the environment, damage the ecology, already harmed the public interests of society or pose a significant risk of harming the public interests of society, the plaintiff may request the defendant to bear civil liabilities such as ceasing the infringement, removing the obstruction, eliminating the danger, restoring the ecology and environment, compensating for the losses and making an apology." In this case, the * Oncology Hospital, the * People's Hospital and the Jiu * Hospital failed to fulfill their respective obligations for risk control, and each of their acts of infringement is sufficient to cause the occurrence of environmental pollution hazards. Therefore, they shall bear joint and several liability in accordance with the above-mentioned provisions of the Civil Code.

First, from the perspective of infringement, the medical equipment involved in the case remained idle for a long period of time. It shall not be left unattended, but be returned to the original exporter or handed over to an organ responsible for storage and disposal of such solid waste according to relevant laws. As the user of the medical equipment approved by the administrative authority, the * Oncology Hospital was legally obligated to provide safety protection and dispose of the medical equipment when it was idle. As the * People's Hospital and the Jiu * Hospital arbitrarily used the medical equipment involved in the case without applying for alternation of the license according to the law, they, as the actual users, shall also assume the obligation to eliminate the environmental pollution risks that may be caused by the idleness of the medical equipment. Acts of the abovementioned entities in not disposing of the medical equipment involved in the case were independent from each other and were all at fault, which constitute separate acts of infringement that fail to fulfill legal obligations.

Second, from the perspective of consequences of the damage, failure of the * Oncology Hospital, the * People's Hospital and the Jiu * Hospital to dispose of the medical equipment involved in the case according to the law led to a significant risk of environmental pollution, causing the same actual danger. In particular, the possible environmental pollution and ecological damage in the case might break out suddenly, instantly and irreversibly, with consequences of harm that are lagging, long-lasting and difficult to restore, etc. Hence, effective remedies shall be given when the infringement was ongoing or the actual consequences have not yet ultimately occurred. In this case, as the special medical equipment involved was not disposed of in a timely and legal manner, it can be considered as producing significant risks of damage to public interests of the society as prescribed in Article 18 of the Interpretation of the Supreme People's Court on Several Issues Concerning the

Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases.

Third, from the perspective of causality, if any of the infringers, i.e., the * Oncology Hospital, the * People's Hospital and the Jiu * Hospital, could actively fulfill its obligation to dispose of the medical equipment involved in the case, it would have been sufficient to prevent the occurrence of environmental pollution risks. Conversely, the infringement acts that each of the above-mentioned entities failed to dispose of the medical equipment in accordance with the law are sufficient to result in the risk of polluting the environment.

In conclusion, the expenses of CNY 2.9 million on eliminating the potential danger of the medical equipment involved in the case shall be jointly and severally borne by the * Oncology Hospital, the * People's Hospital and the Jiu * Hospital according to Article 1171 of the Civil Code of the People's Republic of China.

In addition, given the harmfulness of the risks posed by the medical equipment involved in the case, the people's court promptly issued an injunction based on the actual situation of the case to prevent the occurrence or escalation of the ecological and environmental damage and ruled advance enforcement of the disposal fees in the second instance to timely eliminate risks of environmental pollution, adhering to the principle of "prioritizing protection and focusing on prevention" specified in the Environmental Protection Law of the People's Republic of China.