# SPC Guiding Case No. 97: Case of Wang Lijun for Illegal Business Operation — Acquitted on Retrial

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 19, 2018.

## Keywords

Criminal / crime of illegal business operation / seriously disrupting market order / social harmfulness / criminal illegality / necessity of criminal punishment

## Holding

1. In applying the provision on "other illegal business operations that seriously disrupt market order" in Item (4) of Article 225 of the Criminal Law, a determination shall be made on the basis of whether the relevant act has social harmfulness, criminal illegality, and the necessity of criminal punishment comparable to those of the illegal business operations set out in Items (1) through (3) of Article 225 of the Criminal Law.

2. In determining whether a business operation that violates relevant provisions of administrative management constitutes the crime of illegal business operation, consideration shall be given to whether the business operation seriously disrupts market order. A business operation that violates relevant provisions of administrative management but has not yet seriously disrupted market order shall not be determined to constitute the crime of illegal business operation.

## Basic Facts

In the case in which the People's Procuratorate of Linhe District, Bayannur City, Inner Mongolia Autonomous Region, accused the defendant Wang Lijun of the crime of illegal business operation, the People's Court of Linhe District, Bayannur City, Inner Mongolia Autonomous Region found upon trial that, from November 2014 to January 2015, the defendant Wang Lijun, without obtaining a grain purchase license and without approval for registration by the administrative authority for industry and commerce and the issuance of a business license, purchased corn without a license in villages near Baonaobao Town, Linhe District, and sold the purchased corn to the Manhui Sub-depot in Hanggin Rear Banner of the Bayannur Grain and Oil Company, with an illegal business amount of 218,288.6 yuan and illegal gains of 6,000 yuan. After the case came to light, the defendant Wang Lijun voluntarily surrendered his illegal gains of 6,000 yuan. On March 27, 2015, the defendant Wang Lijun voluntarily surrendered to the Economic Crime Investigation Brigade of the Linhe District Public Security Bureau of Bayannur City. The original trial court held that the defendant Wang Lijun, in violation of state laws and administrative regulations, without the permission of the grain administrative authority and without approval for registration and issuance of a business license by the administrative authority for industry and commerce, illegally purchased corn, with an illegal business amount of 218,288.6 yuan, which was relatively large, and his act constituted the crime of illegal business operation. In view of the fact that the defendant Wang Lijun voluntarily surrendered to the public security organ after the case came to light and voluntarily surrendered all of his illegal gains, showing repentance, and that the application of a suspended sentence to him would truly not cause further harm to society, the court decided to give the defendant Wang Lijun a lighter punishment and apply a suspended sentence in accordance with the law. After the judgment was pronounced, Wang Lijun did not appeal and the procuratorial organ did not protest, and the judgment took legal effect.

On December 16, 2016, the Supreme People's Court rendered Retrial Decision (2016) Zui Gao Fa Xing Jian No. 6, directing the Intermediate People's Court of Bayannur City, Inner Mongolia Autonomous Region, to



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conduct a retrial of the case.

During the retrial, the original trial defendant Wang Lijun and both the prosecution and defense raised no objection to the facts found in the original judgment, and the facts found in the retrial were consistent with those found in the original judgment. The People's Procuratorate of Bayannur City, Inner Mongolia Autonomous Region, submitted the opinion that although the original trial defendant Wang Lijun's acts were administratively unlawful, they did not have social harmfulness or the necessity of criminal punishment comparable to the illegal business operations prescribed in Article 225 of the Criminal Law, and did not constitute the crime of illegal business operation, and recommended that the judgment be amended in the retrial in accordance with the law. At trial, the original trial defendant Wang Lijun raised no objection to the facts and evidence found in the original trial, but argued that his acts did not constitute the crime of illegal business operation. The defense counsel submitted that the original trial defendant Wang Lijun's act of purchasing corn without a license was not socially harmful, criminally illegal, or punishable, did not satisfy the constituent elements of the crime of illegal business operation under the Criminal Law, and did not conform to the principle of restraint in the Criminal Law, so the original trial defendant Wang Lijun should be declared not guilty.

## Judgment

On April 15, 2016, the People's Court of Linhe District, Bayannur City, Inner Mongolia Autonomous Region, rendered Criminal Judgment (2016) Nei 0802 Xing Chu No. 54, finding that the defendant Wang Lijun committed the crime of illegal business operation and sentencing him to fixed-term imprisonment of one year with a two-year suspension of execution, and a fine of RMB 20,000; the illegal gains of RMB 6,000 surrendered by the defendant Wang Lijun were to be turned over to the State Treasury by the investigation organ. On December 16, 2016, the Supreme People's Court rendered Retrial Decision (2016) Zui Gao Fa Xing Jian No. 6, directing the Intermediate People's Court of Bayannur City, Inner Mongolia Autonomous Region, to conduct a retrial of the case. On February 14, 2017, the Intermediate People's Court of Bayannur City, Inner Mongolia Autonomous Region, rendered Criminal Judgment (2017) Nei 08 Xing Zai No. 1: (1) the Criminal Judgment (2016) Nei 0802 Xing Chu No. 54 of the People's Court of Linhe District, Bayannur City, Inner Mongolia Autonomous Region, was revoked; and (2) the original trial defendant Wang Lijun was acquitted.

## Reasoning

In the retrial, the Intermediate People's Court of Bayannur City, Inner Mongolia Autonomous Region, held that the original judgment's finding that the original trial defendant Wang Lijun purchased and sold corn from November 2014 to January 2015 without a grain purchase license or a business license was clear, and that his acts violated the then-prevailing state regulations on the administration of grain circulation, but had not reached the degree of harm of seriously disrupting market order, and did not have social harmfulness, criminal illegality, or the necessity of criminal punishment comparable to the crime of illegal business operation prescribed in Article 225 of the Criminal Law, so they did not constitute the crime of illegal business operation. The original judgment erred in the application of law in finding that Wang Lijun constituted the crime of illegal business operation. The opinion submitted by the procuratorial organ that Wang Lijun's act of purchasing and selling corn without a license did not constitute the crime of illegal business operation was well-founded, and the opinion submitted by the original trial defendant Wang Lijun and his defense counsel that Wang Lijun's acts did not constitute a crime was also well-founded.

## Relevant Legal Provisions

Article 225 of the Criminal Law of the People's Republic of China.



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