SPC Guiding Case No. 186: Case of Gong Pinwen et al. for Organizing, Leading, and Participating in a Mafia-style Organization

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Keywords

Criminal / crime of organizing, leading, and participating in a mafia-style organization / behavioral characteristics / soft violence

Holding

Where a criminal organization, relying on its power, influence, and the realistic possibility of employing violence, has over a long period and in an organized manner adopted a variety of "soft violence" means to commit a large number of illegal and criminal acts while supplementing them with "hard violence," and where the "soft violence" carries a realistic possibility of escalating into "hard violence," so as to be sufficient to induce fear and panic among the public and thereby create psychological coercion, and where it has already caused serious harmful consequences and seriously disrupted the economic and social order, the criminal organization shall be found to possess the behavioral characteristics of a mafia-style organization.

Basic Facts

Since 2013, the defendants Gong Pinwen and Liu Haitao had been operating casinos and engaging in high-interest lending in Changshu City, Jiangsu Province, and had proactively cultivated ties with idle members of society, gradually accumulating economic strength. Beginning in July 2014, Gong Pinwen and Liu Haitao organized the defendants Ma Haibo, Zhao Jie, Wang Haidong, Wang Deyun, Chen Chunlei, and others, forming a relatively stable criminal organization headed by Gong Pinwen and Liu Haitao, and carried out their first organized criminal act in April 2015. In the second half of 2016 and in August 2017, Liang Lizhi and Cui Haihua successively joined the organization.

The organization was large in number, with clearly identified organizers and leaders and fixed core members. Gong Pinwen was the organizer and leader of the organization, Liu Haitao was a leader, Ma Haibo, Zhao Jie, Wang Haidong, Wang Deyun, Chen Chunlei, and others were active participants, and Cui Haihua, Liang Lizhi, and others were ordinary members. The internal division of labor within the organization was clear: Gong Pinwen and Liu Haitao were responsible for decision-making and directing the operation of the whole organization; Ma Haibo, Zhao Jie, Wang Haidong, Wang Deyun, and Chen Chunlei were assigned by Gong Pinwen and Liu Haitao to operate casinos for profit, collected "banker's fees" and "water fees" in the casinos, and kept accounts, and, as assigned by Gong Pinwen and Liu Haitao, carried out illegal and criminal acts such as unlawful detention, picking quarrels and provoking trouble, extortion, and forced transactions in order to collect debts; Cui Haihua and Liang Lizhi participated in the illegal and criminal acts of picking quarrels and provoking trouble. In order to evade investigation, strengthen management, and safeguard its own interests, the organization gradually formed such unwritten rules as "red money is distributed proportionally" and "the principal and interest of loans must be truthfully reported, and no tricks may be played," thereby restraining the conduct of its members. When lending, it used the names of accomplices; when lending funds, it left traces; and when collecting debts, it evaded the law. It established a system of rewards and punishments, rewarding those who actively collected debts and reprimanding those who did not. The organization amassed assets through the organized commission of illegal acts such as

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operating casinos and high-interest lending, and possessed relatively strong economic strength. Among these, the amount of illicit profit obtained by the organization through operating casinos alone, as verified, reached more than RMB 3 million. In addition, the loan IOUs seized from the above defendants amounted to more than RMB 40 million, and the fund flows exceeded RMB 100 million. The organization used the property illegally amassed to support its illegal and criminal activities or to "settle the aftermath" of such activities, such as purchasing equipment including GPS devices, compensating for items smashed during debt collection, and paying the fees of lawyers retained after members were subjected to criminal detention. In order to safeguard its illegal interests, the organization, by means of violence, threats, and other means, carried out in an organized manner such illegal and criminal activities as operating casinos, picking quarrels and provoking trouble, unlawful detention, forced transactions, and extortion, and over a long period employed a variety of "soft violence" acts, committing evils, bullying and harming the public, seriously disrupting public security and hindering the order of social administration, and creating a vile social impact in Changshu City, Jiangsu Province and the surrounding areas. In the course of its formation and development, the mafia-style organization committed a large number of illegal and criminal acts in order to establish a stable criminal organization and to seek high illicit profits. The principal criminal facts are as follows:

(1) The crime of operating a casino

From April 2015 to February 2018, Gong Pinwen, Liu Haitao, Ma Haibo, Wang Haidong, Zhao Jie, Wang Deyun, and Chen Chunlei repeatedly joined with others in operating casinos in Haiyu Town, Xinzhuang Town, and other places in Changshu City, Jiangsu Province, and the illicit profit as verified alone reached more than RMB 3 million.

(2) The crime of picking quarrels and provoking trouble

From 2014 to 2018, Gong Pinwen and Liu Haitao, jointly with the other defendants, issued high-interest loans at annual interest rates of 84% to 360% in the former Yushan Town, Meili Town, Xinzhuang Town, and other places in Changshu City, Jiangsu Province, and, in order to demand the so-called "interest," carried out in an organized manner against the victims and their relatives such acts of provocation as interception, verbal abuse, verbal threats, smashing windows, spray-painting at the victims' residences, and hanging banners, in a total of 56 incidents involving more than 120 occasions.

(3) The crime of unlawful detention

From 2015 to 2016, Gong Pinwen, Liu Haitao, Ma Haibo, Wang Haidong, Zhao Jie, Wang Deyun, and Chen Chunlei, in Changshu City, Jiangsu Province and other places, unlawfully detained others in 10 incidents for the purpose of collecting high-interest loans, in some of which they committed such acts as verbal abuse, throwing water, and smashing items against some of the victims.

(4) The crime of forced transactions

1. In March 2013, Gong Pinwen issued a high-interest loan to Hu [X], with Zhang [X] as guarantor. In order to collect the principal and interest of the high-interest loan, after unlawfully detaining the victim, Gong Pinwen forced the victim Zhang [X] to provide domestic services at the home of Wang [X] for more than a year, from which Gong Pinwen unlawfully profited RMB 25,500.

2. In November 2014, Liu Haitao and Wang Haidong issued a high-interest loan to Chen [X], with Tao [X] as guarantor. After repeatedly causing trouble, Wang Haidong and Liu Haitao forced the victim Tao [X] to provide domestic services with an agreed value of more than RMB 6,000 at the defendants' residence from April 2017 to January 2018, on more than 80 occasions in total.

(5) The crime of extortion

From August 31, 2017 to January 21, 2018, Liu Haitao, Wang Haidong, Wang Deyun, and Chen Chunlei committed extortion on 3 occasions, by signing "vehicle mortgage contracts" and installing GPS devices, signing IOUs with the victims for amounts higher than the actual funds lent and fabricating corresponding

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fund-flow records, and coercing the victims by such means as towing away vehicles, thereby unlawfully profiting a total of RMB 58,300.

Judgment

The People's Court of Changshu City, Jiangsu Province rendered Criminal Judgment (2018) Su 0581 Xing Chu No. 1121 on October 19, 2018, finding that the defendant Gong Pinwen had committed the crime of organizing and leading a mafia-style organization, and, in combination with the crimes of operating a casino, picking quarrels and provoking trouble, and unlawful detention, decided that he be sentenced to a fixed term of imprisonment of 20 years, deprived of political rights for 2 years, and concurrently sentenced to confiscation of all personal property and a fine of RMB 120,000; it found that the defendant Liu Haitao had committed the crime of leading a mafia-style organization, and, in combination with the crimes of operating a casino, picking quarrels and provoking trouble, and unlawful detention, decided that he be sentenced to a fixed term of imprisonment of 18 years, deprived of political rights for 2 years, and concurrently sentenced to confiscation of all personal property and a fine of RMB 110,000; it also imposed corresponding penalties on the other members who participated in the mafia-style organization. After the first-instance judgment was pronounced, Gong Pinwen, Liu Haitao, and others appealed. The Intermediate People's Court of Suzhou City, Jiangsu Province rendered Criminal Ruling (2018) Su 05 Xing Zhong No. 1055 on January 7, 2019: dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held:

(1) Regarding the organizational characteristics. First, the growth trajectory of the criminal organization was clear. Around 2007, Gong Pinwen and Liu Haitao successively came to Changshu City, Jiangsu Province to work; later, starting from a small amount of capital, Gong Pinwen cooperated with Liu Haitao and others in operating casinos and issuing high-interest loans, gradually accumulating economic strength, and subsequently other members of the organization joined one after another and took shares in the lending. In the process of high-interest lending, because the members shared shares and profits, their interests became intertwined, their relations grew increasingly close, the structure continuously matured, and there ultimately formed a relatively stable illegal and criminal organization with Gong Pinwen as organizer and leader, Liu Haitao as leader, Wang Haidong, Wang Deyun, Chen Chunlei, Ma Haibo, and Zhao Jie as active participants, and Cui Haihua and Liang Lizhi as ordinary participants. Second, the organization's mode of conduct and organizational intent were clear. The organization amassed illicit wealth through operating casinos and high-interest lending, and, in the process of debt collection, used such "soft violence" means as nuisance and harassment, smashing and intimidation, making a show of force, verbal threats, and siege and interception as its customary means of conduct to carry out a series of illegal and criminal activities, the purpose being to realize unlawful claims and to seize economic benefits to the greatest possible extent. Since the members mutually contributed capital and shared profits, no matter which members of the organization carried out illegal and criminal activities, the realization of the relevant illicit benefits redounded to all the capital-contributing members, consistent with the interests and intent of the organization, providing the foundation for and creating the conditions for the organization's further development through the continuous expansion of the scale of illegal lending and the enhancement of its criminal capability. Third, the hierarchical structure of the criminal organization was clear. The organization was based on Gong Pinwen and Liu Haitao; Gong Pinwen absorbed and developed Ma Haibo and Zhao Jie, and Liu Haitao absorbed and developed Wang Haidong, Wang Deyun, and Chen Chunlei, forming a dual-hierarchy relationship, and each defendant had a clear understanding of "whom to help and whom to consult." In specific illegal and criminal activities, marked by jointly operating casinos and illegal lending, the two forces moved from cooperation to convergence, mutually contributing capital and shares for lending and jointly committing illegal and criminal acts of debt collection, and later absorbed Cui Haihua and Liang Lizhi, forming a triple-hierarchy structure. Within the organizational structure, the organizers and leaders were very evident,

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the active participants and core members were basically fixed, and the size of the personnel gradually increased; moreover, the other crimes of the mafia-style organization involved later in this case were all committed by these members. Fourth, the behavioral rules of the criminal organization were clear. The members all accepted and identified with such rules of conduct as recording public accounts and distributing profits proportionally after contributing capital, and standing up for the organization in debt collection. These rules were not only attested to by the members' statements but also consistent with the actual mode of operation and the actual illegal and criminal activities of the organization; the relevant rules of conduct played an important role in rallying the members, forming common interests, and maintaining the normal operation of the organization. In sum, the organization was of a certain scale, its personnel were basically stable, it had clear organizers and leaders and fixed core members, and its internal hierarchy was clearly delineated, satisfying the organizational characteristics of a mafia-style organization.

(2) Regarding the economic characteristics. First, the criminal organization rapidly amassed economic benefits through illegal and criminal activities. Taking the operation of casinos and illegal high-interest lending as its foundation and source of funds, it safeguarded the realization of unlawful claims through the large-scale commission of illegal and criminal acts such as picking quarrels and provoking trouble and unlawful detention, thereby seizing substantial illegal economic benefits. Among these, with respect to the portion involving operating casinos and illegal high-interest lending, the amount of illicit profit for which there is evidence reached more than RMB 3 million, most of which was further used for illegal lending. Some of the lending documents seized in the case showed that the organization's lending scale had reached more than RMB 40 million, and the verified bank fund flows had exceeded RMB 100 million, indicating relatively strong economic strength. Second, the criminal organization supported its own activities with its economic strength. Part of the economic benefits obtained by the organization was used to support the illegal and criminal activities carried out for the organization's interests, and the process of obtaining the organization's economic benefits was also the process of strengthening its organizational structure. In sum, the organization amassed a large amount of money and continued to use it to maintain and strengthen its own survival and development, satisfying the economic characteristics of a mafia-style organization.

(3) Regarding the behavioral characteristics. In order to strive for and safeguard the economic interests of the organization and its members, the organization used its power and the conveniences formed thereby to carry out, in an organized manner and on multiple occasions, different types of illegal and criminal activities such as operating casinos, picking quarrels and provoking trouble, unlawful detention, and forced transactions, with "soft violence" as the principal means of committing offenses and crimes and with evident organized characteristics — multiple persons making a show of force and cooperating in a division of labor — and, relying on "hard violence," carried out illegal and criminal activities such as collecting debts through a variety of "soft violence" acts, with soft and hard violence interwoven, and the "soft violence" capable of escalating into "hard violence" at any time. These acts were committed by the relevant members of the organization in order to establish a dominant position, realize unlawful claims, and seize illicit benefits, in accordance with the organization's customary mode and means of conduct; the relevant illegal and criminal acts were consistent with the interests of the organization and manifested its will, and the behavioral characteristics of the mafia-style organization were evident.

(4) Regarding the characteristics of harmfulness. Through the commission of a series of illegal and criminal activities, the criminal organization committed evils and bullied and harmed the public. At the level of social order, the criminal organization over a long period carried out such illegal and criminal activities as operating casinos, illegal lending, and "soft violence" debt collection, whose reach extended to multiple subdistricts of Changshu City, Jiangsu Province, seriously affecting the normal lives of the victims and their families, seriously disrupting the normal production and operation of some victim enterprises, and seriously impacting the normal work and teaching order of the organs and schools where some victims were located. The relevant illegal and criminal activities corrupted social mores, assaulted the public security order, and seriously reduced the public's sense of security and well-being, with an extremely vile impact. At the level of

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administrative order, the criminal organization deliberately evaded the administration, rectification, and crackdown of the public security organs, undermining the normal order of social administration. At the level of social impact, these illegal and criminal activities infringed the lawful rights and interests of a number of members of the public within a certain area; judging from the actual feelings of the public as confirmed by the evidence in the case, the public generally felt psychological panic and a diminished sense of security, and generally demanded rectification to restore the economic and social order.

In conclusion, the criminal organization in this case satisfied the standards for identifying a mafia-style organization. The organization had already formed an operational model of "nurturing the underworld with the underworld," a model that clearly distinguished the organization from ordinary joint crimes and from criminal groups of evil forces. Although no "protective umbrella" was found with respect to the Gong Pinwen criminal organization, through the commission of illegal and criminal acts, it induced psychological fear and a sense of insecurity among the local public and seriously undermined the local public security order and market economic order. The identification of a mafia-style organization cannot be based on only one or several isolated facts but must be reflected through a series of illegal and criminal facts. This is because an act committed by means of "soft violence" generally cannot satisfy the elements of a crime under the Criminal Law by being committed only once; a single such act, because of its minor or markedly minor circumstances and its unserious consequences, is often not treated as a crime or cannot be found to constitute a crime. In such cases, the long-term and diverse nature of the "soft violence" acts must be comprehensively considered in judging their social impact and whether they constitute mafia-related or evil-force crimes. The "causing a major impact" required by the harmfulness characteristic of a mafia-style organization crime is formed through a series of illegal and criminal activities and possesses a certain depth and breadth, rather than being isolated or momentary. In particular, in a criminal organization whose principal means is "soft violence," the determination must combine such factors as the number of illegal and criminal activities, their time span, nature, and consequences, the number of infringed objects, whether there is a realistic possibility of escalation into "hard violence," the resulting social impact, and whether the public's sense of security has declined; it must not be confined to requiring that each specific illegal and criminal activity cause serious consequences or a vile social impact, nor may it simply treat the harmfulness as unserious on the grounds that the local public was unaware or that the illegal control was not evident. Judging from the specific impact on the victims, their families, and their units caused by the defendants' "soft violence" debt collection after illegal lending in this case, and from the actual feelings of the surrounding public, the social harmfulness was extremely serious, constituting the crime of organizing, leading, and participating in a mafia-style organization.

Relevant Legal Provisions

Article 294 of the Criminal Law of the People's Republic of China.

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