SPC Guiding Case No. 194: Case of Xiong Changheng et al. for Infringement of Citizens' Personal Information

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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 26, 2022.

Keywords

Criminal / infringement of citizens' personal information / WeChat account / social media account / illegal acquisition / reasonable processing

Holding

1. Where a person, in violation of relevant state provisions, purchases registered but unused social media accounts such as WeChat accounts, and through marketing software with functions such as intelligent bulk messaging, adding friends, and establishing discussion groups, illegally produces social media accounts such as WeChat accounts carrying citizens' personal information and usable for social activities, and sells or provides them to others, if the circumstances are serious, this constitutes the conduct of "selling or providing citizens' personal information to others in violation of relevant state provisions" prescribed in paragraph 1 of Article 253-1 of the Criminal Law, and constitutes the crime of infringing citizens' personal information.

2. Where a person, without the consent of the citizen concerned or without the grounds prescribed by the Personal Information Protection Law such as legal authorization, obtains citizens' personal information that has been disclosed within a certain scope by means of purchase, acceptance, exchange, or otherwise and illegally uses it, changing the scope, purpose, and use of the citizen's disclosed personal information, this does not constitute reasonable processing prescribed by law, but constitutes the conduct of "illegally obtaining citizens' personal information by other means" prescribed in paragraph 3 of Article 253-1 of the Criminal Law; if the circumstances are serious, it constitutes the crime of infringing citizens' personal information.

Basic Facts

In June 2020, the defendant Xiong Changheng invited the defendants Xiong Changlin, Xiong Gonglang, and Xiong Changqiang to jointly engage in the business of selling finished WeChat accounts carrying citizens' personal information and usable for social activities; due to lack of experience, they gained little profit during this period. To obtain more profit, in late September 2020, the defendants Xiong Changheng, Xiong Changlin, Xiong Gonglang, and Xiong Changqiang jointly contributed funds to purchase online a software called "Micro Cavalry" (a marketing software based on the computer version of WeChat with functions such as multi-opening, multi-account intelligent bulk messaging, adding people, creating groups, exiting groups, and clearing inactive friends), for use in illegally adding WeChat friends and producing finished WeChat accounts for sale. In October 2020, the defendant Xiong Changheng's friend Qin Yingbin (at large) invested RMB 50,000 (40% of shares), Xiong Changheng invested RMB 20,000 (20% of shares), the defendants Xiong Changlin, Xiong Gonglang, and Xiong Changqiang each invested a certain number of computers and mobile phones (10% of shares each), the defendant Fan Jiacong made no investment (5% of shares), and the remaining 5% of share profits was used for the company's daily expenses. They later jointly purchased office desks, computers, second-hand mobile phones, and other items, rented the Linglong Pavilion at Wuhua Road, Hezhou Sub-district, Fengcheng City, Jiangxi Province, and set up a signboard to establish the "Fengcheng Changwen Trading Company." Qin Yingbin was responsible for external procurement of blank WeChat accounts and sales of finished WeChat accounts. The defendant Xiong Changheng was

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responsible for the company's internal management and for hiring company employees. The defendants Xiong Changlin, Xiong Gonglang, Xiong Changqiang, Fan Jiacong, and the hired company employees all directly participated in illegally producing finished WeChat accounts with the "Micro Cavalry" software. The produced finished WeChat accounts were sold at high prices through Qin Yingbin, thereby illegally obtaining profits.

In January 2021, the defendants Xiong Changheng, Xiong Changlin, Xiong Gonglang, Xiong Changqiang, Fan Jiacong, and Qin Yingbin formed a group and, while selling finished WeChat accounts, illegally obtained others' job-seeking information (including names, genders, telephone numbers, and other basic citizens' identity information) through online purchases, and then distributed the job-seekers' information to company staff. Using a reward method in which employees earned commissions of about RMB 10 for each job-seeker whose WeChat account they added, they had employees falsely claim to be staff of "Public Technology Media" and, using pre-prepared "scripts" with part-time order-brushing as the pretext, have the job-seekers add the "mentor's" WeChat, recruiting victims into groups, causing some victims to be deceived.

During the business period, the defendants Xiong Changheng, Xiong Changlin, Xiong Gonglang, Xiong Changqiang, Fan Jiacong, and Qin Yingbin, after paying wages and related expenses, obtained dividends totaling more than RMB 200,000, which were distributed according to their respective share proportions. The specific amounts of profit were as follows: defendant Xiong Changheng over RMB 58,000; defendant Xiong Changlin over RMB 29,000; defendant Xiong Gonglang over RMB 29,000; defendant Xiong Changqiang over RMB 29,000; and defendant Fan Jiacong over RMB 14,500.

Judgment

On September 23, 2021, the Fengcheng People's Court of Jiangxi Province, by Criminal Judgment (2021) Gan 0981 Xing Chu No. 376, determined that the defendant Xiong Changheng committed the crime of infringing citizens' personal information and sentenced him to fixed-term imprisonment of three years and two months and a fine of RMB 100,000; the defendant Xiong Changlin committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of one year and ten months and a fine of RMB 60,000; the defendant Xiong Gonglang committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of one year and ten months and a fine of RMB 60,000; the defendant Xiong Changqiang committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of one year and ten months and a fine of RMB 60,000; the defendant Fan Jiacong committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of ten months and a fine of RMB 30,000 (already paid). The defendant Fan Jiacong's returned illegal gains of RMB 14,500 were confiscated and turned over to the state treasury in accordance with the law; the defendant Xiong Changheng's illegal gains of RMB 58,000, the defendant Xiong Changlin's illegal gains of RMB 29,000, the defendant Xiong Gonglang's illegal gains of RMB 29,000, and the defendant Xiong Changqiang's illegal gains of RMB 29,000 were ordered to be further recovered and confiscated and turned over to the state treasury in accordance with the law; the seized mobile phones were confiscated and handled by the seizing organ in accordance with the law.

Reasoning

The court in its effective judgment held that the defendants Xiong Changheng and others, in violation of relevant state provisions, jointly contributed funds to purchase blank WeChat accounts and a marketing software with intelligent bulk messaging, adding friends, and creating groups functions, and by purchasing others' job-seeking information online and other means, illegally added WeChat friends, produced finished WeChat accounts for sale, or provided illegally obtained citizens' personal information to others, and gained profits thereby; the circumstances were especially serious, and their conduct had constituted the crime of infringing citizens' personal information. The citizens' personal information in this crime refers to information closely related to individual citizens that they do not wish to be known by persons other than a specific group; if the illegally obtained citizens' personal information belongs to citizens' privacy information or information

whose disclosure may produce extremely adverse consequences, it not only seriously infringes citizens' personal information security and legitimate rights and interests, but also provides assistance for illegal and criminal activities such as online gambling and telecom network fraud, seriously disrupting social public order and causing great social harm. WeChat not only serves as a communication tool, but also has social, payment, and other functions. A WeChat account is bound to a mobile phone number with real-name registration and to a bank card, and corresponds one-to-one with a natural person; therefore, a WeChat account can be regarded as citizens' personal information.

The defendants illegally processed disclosed personal information and gained profits thereby, contrary to the purpose of the disclosure of such information or obviously changing its use; after further use, such information endangered individuals' personal or property safety; the circumstances were especially serious, and their conduct constituted the crime of infringing citizens' personal information.

In summary, the defendants, without obtaining the consent and authorization of the right holders, illegally obtained others' WeChat accounts and resold them for profit, or illegally processed disclosed citizens' personal information, causing others' personal information to be exposed and at risk of loss of control, and thereby obtained huge illegal gains. Their conduct violated state provisions, infringed citizens' personal information rights, and constituted the crime of infringing citizens' personal information.

Relevant Legal Provisions

Paragraph 1 of Article 253 of the Criminal Law of the People's Republic of China.

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