SPC Guiding Case No. 195: Case of Luo Wenjun and Qu Xiaozhen for Infringement of Citizens' Personal Information (Criminal Case with Incidental Civil Public Interest Litigation)

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

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Keywords

Criminal / infringement of citizens' personal information / verification code / sale

Holding

Verification codes that a service provider specially sends to specific mobile phone numbers, composed of digits, letters, or a combination thereof, are unique and confidential, and can identify a specific natural person's identity or reflect a specific natural person's activities either alone or in combination with other information; they belong to citizens' personal information prescribed by the Criminal Law. Where an actor sells to others the verification codes and corresponding mobile phone numbers obtained in the course of providing services, if the circumstances are serious, the actor shall be convicted and punished for the crime of infringing citizens' personal information.

Basic Facts

In December 2019, the defendant Luo Wenjun learned that one could make money by obtaining others' mobile phone numbers and random verification codes to register new accounts on apps such as Taobao and JD.com (referred to as "attracting new users"), and he contacted persons specializing in "attracting new users" under WeChat nicknames such as "Youyou 141319" (identity unknown), "A I'm an Adult, Sleep with Whoever I Want" (identity unknown), "Jiejingtao" (identity unknown), "Pang'e" (identity unknown), and "Hebei Hei Zhiwei, Witness of the Post-80s" (identity unknown). When "Youyou 141319" and others learned that Luo Wenjun had many trainees who were telecom employees and that the trainees could directly obtain customers' mobile phone numbers, random verification codes, and other resources, they took advantage of Luo Wenjun's convenience as a training teacher at a telecom company and agreed that Luo Wenjun would establish, manage, and maintain WeChat groups, and publish in the groups the rules, requirements, and specific prices for "attracting new users"; the trainees, per the requirements, would send the illegally obtained customers' mobile phone numbers and random verification codes to the groups; and "Youyou 141319" and others would register new Taobao and JD.com app accounts based on the sent mobile phone numbers and verification codes. Luo Wenjun could obtain remuneration of RMB 0.2–2 per mobile phone number information successfully "attracting a new user"; the trainees obtained remuneration at prices ranging from RMB 1 to 13 per item, which remuneration was distributed by Luo Wenjun or directly sent by "Youyou 141319" and others to the trainees at the prices published in the groups.

From December 2019 to July 2021, the defendant Luo Wenjun took advantage of the positions of Qu Xiaozhen, a salesperson at the Lukou mobile phone store of Zhuzhou Liansheng Communication Co., Ltd. and a China Mobile business hall, and Xie Qing, Huang Ying, and He Changqing (all three already administratively punished), to illegally obtain and sell the personal information (mobile phone numbers and random verification codes) of victims such as Peng X and Tan X to "Youyou 141319" and others. Among them, the defendant Luo Wenjun gained RMB 13,000 and the defendant Qu Xiaozhen gained RMB 9,266.5.

After the case was discovered, the defendant Qu Xiaozhen had returned RMB 9,926.5 of illegal gains, and Luo Wenjun had returned RMB 13,000 of illegal gains. Both defendants Luo Wenjun and Qu Xiaozhen truthfully confessed their criminal facts and voluntarily pleaded guilty and accepted punishment.

It was further ascertained that the Lukou District People's Procuratorate of Zhuzhou City announced the case on July 22, 2021, and no organ prescribed by law or relevant organization filed a civil public interest lawsuit within the announcement period. Therefore, the Lukou District People's Procuratorate of Zhuzhou City was the qualified subject to file the incidental civil public interest lawsuit.

Judgment

On November 30, 2021, the Lukou District People's Court of Zhuzhou City, Hunan Province, by Criminal Judgment (2021) Xiang 0212 Xing Chu No. 149, determined that the defendant Luo Wenjun committed the crime of infringing citizens' personal information and sentenced him to fixed-term imprisonment of eight months and a fine of RMB 20,000. The defendant Qu Xiaozhen committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of six months and a fine of RMB 15,000. One OPPO RENO mobile phone and one Huawei P30 Pro mobile phone used as instruments of the crime were confiscated and handled in accordance with the law. The defendant Luo Wenjun's illegal gains of RMB 13,000 and Qu Xiaozhen's illegal gains of RMB 9,266.5 were confiscated and turned over to the state treasury.

Reasoning

The court in its effective judgment held: The defendant Luo Wenjun, in violation of relevant state provisions, established communication groups for selling and providing citizens' personal information, and the circumstances were serious; his conduct simultaneously constituted the crime of illegally using information networks and the crime of infringing citizens' personal information, and should be convicted of the crime of infringing citizens' personal information in accordance with the law. The defendant Qu Xiaozhen, in violation of relevant state provisions, sold to others citizens' personal information obtained in the course of providing services, and the circumstances were serious; her conduct had constituted the crime of infringing citizens' personal information. The criminal facts and charges alleged by the public prosecution organ were established and supported.

In the joint crime, the roles played by defendants Luo Wenjun and Qu Xiaozhen were comparable, and both should be treated as principal offenders. The defendant Qu Xiaozhen sold to others citizens' personal information obtained in the course of providing services and should be given a heavier punishment; after Luo Wenjun and Qu Xiaozhen were brought to the case, they truthfully confessed all their criminal facts, both constituted frank confession, actively returned all the illicit money, and pleaded guilty and accepted punishment, so they could be given lenient treatment. The public prosecution organ's sentencing recommendation was appropriate and adopted. Luo Wenjun's defender argued that mobile phone numbers and verification codes did not belong to personal information and that "attracting new users" had not caused specific losses. Upon investigation, personal information is various information recorded in electronic or other form that can identify a specific natural person alone or in combination with other information, including telephone numbers and the like; a verification code is a unique digital combination specially sent to a specific mobile phone number and, per regulations, cannot be sent to others, which proves that a verification code is communication content with the function of identifying and verifying personal identity. Thus both are personal information capable of identifying a natural person's identity; the crime of infringing citizens' personal information does not require the occurrence of specific losses as a constituent element. Therefore, this defense opinion was not adopted. Luo Wenjun's defender argued that Luo Wenjun did not provide mobile phone numbers and verification codes himself. Upon investigation, Luo Wenjun not only assembled Qu Xiaozhen and others to "attract new users," but also specially established communication groups for the illegal and criminal activity of providing and selling citizens' personal information, and gained profits thereby, and should be given a heavier punishment in accordance with the law. Therefore, this opinion was not

adopted. Luo Wenjun's defender argued for the application of probation to Luo Wenjun. Upon investigation, comprehensively considering the criminal circumstances of this case, the degree of harm to society, and the defendant's remorse, probation should not be applied to defendant Luo Wenjun. Therefore, this opinion was not adopted. However, his other defense opinion that Luo Wenjun could be given a lighter punishment was consistent with the facts and was adopted. Qu Xiaozhen's defender argued that Qu Xiaozhen had rendered meritorious service. Upon investigation, Qu Xiaozhen provided Luo Wenjun's address, contact information, and other basic information, which were facts she was required to confess and related to her own criminal facts, and did not constitute meritorious service. Therefore, this opinion was not adopted. Her defense opinion that a lighter punishment could be given was consistent with the facts and was adopted. The defendants Luo Wenjun and Qu Xiaozhen infringed citizens' personal information and, while bearing criminal liability, should also bear corresponding civil liability. Given that both defendants had no objection to the infringing acts and both expressed willingness to publicly apologize and permanently delete the personal information involved, the claims of the incidental civil public interest litigation plaintiff were supported.

Relevant Legal Provisions

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

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