SPP Guiding Case No. 203: Case of Li Moumou for Aiding Cybercrime Activities

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

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Keywords

Minors' online protection / bank cards / subjective knowledge / conditional non-prosecution / procuratorial recommendations

Holding

When handling cases of minors suspected of using their own bank cards to aid cybercrime activities, the physical and mental characteristics of the minor involved shall be considered, with the focus on reviewing whether he or she knew that others were using information networks to commit upstream crimes and provided assistance. For minors with little subjective malice and relatively small social harm who voluntarily plead guilty and accept punishment, the principle of education and rescue shall be adhered to; where they meet the conditions for conditional non-prosecution, conditional non-prosecution shall be lawfully applied. Where there are loopholes in the management of minors' bank accounts with abnormal transaction risks, the procuratorial organ shall issue procuratorial recommendations to financial regulatory organs and commercial banks to strengthen source management of accounts and promote governance at the source of litigation.

Basic Facts

The person subject to conditional non-prosecution, Li Moumou, male, born on September 5, 2003, was a student at school.

In 2019, while studying at a vocational secondary school, Li Moumou, for the convenience of withdrawing living expenses, opened an account at a local commercial bank and obtained a debit card with a maximum daily transfer limit of RMB 500,000. In May 2021, Li Moumou's classmates Lu Moumou and Peng Moumou (both over 18 years of age, handled in a separate case) told him that they "needed to use a bound bank card to transfer the recharge funds collected on an online gambling platform, and that if he was willing to provide his own bank card for transfer, he could share the money," and showed him screenshots of the gambling platform application. To "earn money easily," Li Moumou agreed. From May 7 to 18, at Peng Moumou's instigation, Li Moumou used his own debit card to transfer funds on behalf of others, and changed the transfer locations to evade investigation. During the above period, the one-way transaction flow of the debit card totaled more than RMB 4.2 million. After receiving RMB 3,000, Li Moumou, "feeling that it would easily get into trouble," stopped participating.

After the case arose, Li Moumou surrendered voluntarily. In August 2022, a certain county People's Procuratorate of Sichuan Province decided to impose conditional non-prosecution on Li Moumou for the crime of aiding cybercrime activities and conducted supervision and inspection. In February 2023, after the probation period expired, it decided not to prosecute Li Moumou.

Procuratorate Performance of Duties

(1) Comprehensive review of evidence. A certain county public security bureau transferred Li Moumou for prosecution on suspicion of the crime of aiding cybercrime activities. After review, the county procuratorate held that Li Moumou was a minor criminal suspect, and although he made a guilty confession after being brought to justice, the case lacked evidence proving his cognitive capacity. At the same time, the

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investigating organ had not ascertained whether the funds involved were “criminal proceeds and the gains derived therefrom” and whether Li Moumou knew of this, so the procuratorial organ returned the case for supplementary investigation. After supplementary investigation and re-transfer, the procuratorial organ held upon review that the investigating organ had only ascertained part, rather than the whole chain, of the criminal facts of opening casinos online, so the funds transferred by Li Moumou on behalf of others could not yet be determined as “criminal proceeds and the gains derived therefrom.” Through social investigation, it was found that Li Moumou’s intellectual development was normal, his educational experience was continuous, and he had already begun off-campus internship before graduation at the time of the crime, indicating that he had the ability to adapt to work and social life. The transfer behavior in this case exhibited abnormal characteristics of short time, high frequency, and large amounts, which could not possibly be confused with daily living expense scenarios. Therefore, it could be determined that Li Moumou possessed considerable cognitive capacity and subjectively knew that others were using information networks to commit crimes.

(2) Lawful application of conditional non-prosecution. Li Moumou subjectively knew that others were using information networks to commit crimes, and objectively committed the act of using his own bank card to transfer more than RMB 4.2 million on behalf of others to aid payment and settlement. However, compared with the act of “renting out others’ bank cards in bulk,” Li Moumou’s act of providing his own bank card was relatively minor in circumstances and relatively small in social harm; he was induced to participate in the crime, participated for a relatively short time, surrendered after the crime, voluntarily pleaded guilty and accepted punishment, showed repentance, and had little subjective malice; he was a first-time and occasional offender, and the social investigation showed that he had significant room for education and correction. To implement the policy of “education, persuasion, and rescue,” after hearing the opinions of the public security organ, the procuratorial organ lawfully applied conditional non-prosecution to Li Moumou.

(3) Help, education, and inspection. The social investigation found that Li Moumou pursued pleasure, had weak legal awareness, and his parents’ education methods were improper with insufficient family education support, so there was a risk of repeating illegal and criminal acts. For this reason, the procuratorial organ, together with social forces such as the Women’s Federation and judicial social work organizations, formulated an individualized plan and strengthened comprehensive education and assistance. Regarding his consumption concept problems, through customized legal education volunteer service public welfare projects, it helped him recognize the long-term harm of seeking pleasure; regarding his weak legal awareness, through online and offline education on preventing cybercrime, it prompted him to proactively learn legal knowledge; and regarding the lack of family education, it issued a supervision and guardianship order and strengthened family education guidance. Through the assistance and education, Li Moumou’s rational consumption concept was gradually established, his legal awareness gradually improved, and his thinking and behavioral habits returned to the right track. At present, Li Moumou has been admitted to university.

(4) Issuance of procuratorial recommendations. In handling the case, the procuratorial organ discovered loopholes in the management of Li Moumou’s bank account. After consultation and study with a sub-branch of the People’s Bank of China, and through visiting bank outlets and holding discussions, it prompted commercial banks to identify problems such as failure to implement the standards for minors’ independent account opening, excessively high authorized daily transfer limits, and insufficient abnormal transaction risk warnings. After the procuratorial organ issued a procuratorial recommendation to a county sub-branch of the People’s Bank of China in a targeted manner, the county People’s Bank of China cleaned up the accounts of more than 120 minors at 46 outlets of 7 commercial banks and immediately rectified the problems found. At present, no case of using minors’ bank cards to commit cybercrimes has occurred again in the county. Provincial and municipal procuratorial organs consulted with the People’s Bank of China and other institutions to promote the improvement and implementation throughout the province of requirements such as hierarchical and classified management of minors’ bank accounts, consolidating the effectiveness of

crackdown and governance.

Guiding Significance

(1) When handling cases of minors aiding others in committing crimes online, procuratorial organs shall adhere to the principle of consistency between subjectivity and objectivity, focusing on reviewing whether the actor subjectively knew of the upstream crime and provided objective assistance. Based on the comprehensive evidence of the whole case and the social investigation, where the minor criminal suspect knew or should have known that the upstream activity was criminal and that his or her act had a helping effect and might jointly cause harmful results, his or her subjective knowledge shall be determined. Where a minor objectively committed the act of "providing cards" and other acts aiding payment and settlement, satisfying the objective elements of the crime of aiding cybercrime activities, the crime of aiding cybercrime activities shall be determined in accordance with the principle of consistency between subjectivity and objectivity. However, if, upon review of the whole case evidence, it is determined that the minor criminal suspect lacked clear awareness of whether the upstream activity was criminal and of the degree of harm of the crime, even if he or she objectively assisted the cybercrime activities and profited thereby, it cannot be determined that the crime was constituted.

(2) For minors' acts of using their own bank cards to aid others in committing crimes online, the criminal policy of combining leniency with severity shall be implemented, education and rescue shall be strengthened, and non-prosecution and conditional non-prosecution shall be lawfully and accurately applied. For those who proactively participate in crimes with serious criminal circumstances, public prosecution shall be initiated in accordance with the law. For minors involved who are induced to participate in crimes, participate for a short time, with small illegal gains and small amounts involved, and whose circumstances are clearly minor with little harm, procuratorial organs may, under Article 13 of the Criminal Law, determine that the acts do not constitute a crime. For those whose criminal circumstances are minor and who, under the Criminal Law, do not need to be punished or may be exempted from punishment, procuratorial organs shall make a decision not to prosecute. For those whose criminal circumstances are relatively minor and who meet the conditions for conditional non-prosecution, procuratorial organs may lawfully apply conditional non-prosecution while carrying out targeted inspection and correction.

(3) Procuratorial organs shall pay attention to using procuratorial recommendations to promote governance at the source of litigation. When handling cases of minors aiding cybercrime activities, where loopholes are found in the supervision, management, and use of bank accounts, investigation and verification shall be carried out in accordance with the law, and procuratorial recommendations shall be used to urge financial regulatory institutions and commercial banks to improve institutional mechanisms, promote the formation of a protection model for minors' bank card management that combines card issuance review with risk assessment and classified management with abnormal warnings, and strive to achieve governance at the source of litigation of minors' participation in cybercrimes.

Relevant Legal Provisions

Article 13 and Article 287-2 of the Criminal Law of the People's Republic of China.

Articles 277, 279, 282, 283, and 284 of the Criminal Procedure Law of the People's Republic of China.

Articles 113 and 115 of the Law of the People's Republic of China on the Protection of Minors.

Articles 50 and 51 of the Law of the People's Republic of China on the Prevention of Juvenile Delinquency.

Article 12 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Illegally Using Information Networks and Aiding Cybercrime Activities.

Article 11 of the Provisions on Procuratorial Recommendation Work of People's Procuratorates.

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