SPP Guiding Case No. 201: Case of Yao Moumou et al. for Online Fraud

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Keywords

Network protection of minors / online fraud / categorized handling / tiered intervention / multi-department collaboration / digital prevention

Holding

When handling online fraud cases involving a large number of minors, attention shall be paid to tiered intervention for minors who have committed illegal or criminal acts, so as to achieve categorized handling and precise assistance and education. Relying on the investigation supervision and collaboration and cooperation mechanism, the procuratorial organ shall suggest that the public security organ, on the basis of comprehensively collecting evidence and ascertaining the facts, fully consider the circumstances of the minors' involvement in the case, comprehensively determine their subjective awareness of illegality, and handle them in a categorized manner in accordance with law. During examination for prosecution, the procuratorial organ shall, in light of social investigation, psychological assessment and risk assessment, carry out categorized handling of the minors involved in crimes and provide precise assistance and education. In response to the difficulty of preventing and controlling minors' involvement in internet-related illegal and criminal acts, the procuratorial organ shall promote the establishment of a digital platform by multiple departments to achieve precise prevention of minors' involvement in internet-related illegal and criminal acts.

Basic Facts

The defendant, Yao Moumou, male, born on October 5, 1984, with a junior high school education, unemployed.

Sixteen minor defendants including Zhao Moumou, Zhang Moumou and Zou Mou.

Twelve persons subject to conditional non-prosecution including Wang Mou, Cheng Mou and Li Moumou.

Forty-one non-prosecuted minors including Xu Moumou, Wang Moumou and Ren Moumou.

From March 2018 to August 2019, Yao Moumou, in collusion with others, formed a fraud gang with four levels, namely group leader, mentor, assistant and external promoter. By fabricating information such as online part-time jobs and salary benefits on online platforms and defrauding part-time job seekers into paying membership fees, the gang committed fraud involving 750 persons, with a criminal amount exceeding RMB 13 million. In the course of the fraud, Yao Moumou recruited, attracted and absorbed a large number of minors to participate in the illegal and criminal activities, with 560 minors involved, more than 450 of whom were current students. In the fraud gang, four minors including Zhao Moumou served as mentors, undertaking group management duties, with criminal amounts ranging from RMB 300,000 to over RMB 3.5 million; 30 persons including Wang Mou served as assistants, assisting mentors in training and guidance, with criminal amounts ranging from RMB 10,000 to over RMB 950,000; and 35 persons including Xu Moumou and Ren Moumou served as external promoters, responsible for defrauding new members into paying membership fees, with criminal amounts ranging from RMB 3,000 to over RMB 10,000.

Upon examination, the procuratorial organ determined that Yao Moumou was the principal offender and should be punished for all crimes committed by the fraud gang, and that the criminal amount was especially huge. After the procuratorial organ filed a public prosecution in accordance with law, Yao Moumou was sentenced by the people's court to fixed-term imprisonment of thirteen years and nine months plus a fine.

Procuratorate Performance of Duties

Categorized handling. In July 2019, a district branch of the Public Security Bureau of a city in Zhejiang Province opened a case to investigate Yao Moumou and others on suspicion of fraud. In accordance with the investigation supervision and collaboration and cooperation mechanism, the People's Procuratorate of a district of a city in Zhejiang Province intervened in the case, and held that the part-time job fraud model involved in the case was confusing and misleading to minors, and that the key to handling the case lay in, on the basis of comprehensively ascertaining the facts, distinguishing responsibilities and handling the persons involved differently with emphasis on subjective aspects such as purpose and motive and objective aspects such as the number of participations, duration and amount involved. It suggested that the public security organ, after ascertaining the facts involved and comprehensively determining subjective awareness of illegality, handle the case in accordance with three situations: first, those whose amounts involved did not meet the standard of a relatively large amount of the crime of fraud shall not be determined as having committed a crime; second, those whose amounts involved met or slightly exceeded the standard of a relatively large amount of the crime of fraud, who had circumstances such as the need to seek part-time work, only completing the tasks prescribed by the gang, short participation time, voluntarily withdrawing from the criminal gang, and returning the illegal gains and making restitution, shall be determined as having minor circumstances and minor harm and not be deemed to have committed a crime, and corresponding administrative penalties shall be imposed in accordance with law; third, those whose amounts involved exceeded the standard of a relatively large amount of the crime of fraud and who had circumstances such as active participation, long participation time and a large number of frauds shall be pursued for criminal liability in accordance with law. Ultimately, the public security organ did not treat the conduct of 491 minors involved including He Moumou as crimes, and transferred 69 minors involved in crimes including Zhao Moumou for examination and prosecution.

Combining leniency with strictness. From November 2019 to January 2022, the public security organ successively transferred 69 minors involved in crimes for examination and prosecution on suspicion of fraud. After accepting the cases, the procuratorial organ, relying on the social support system, promptly carried out supplementary social investigation of the minors involved in crimes, conducted a comprehensive assessment from the aspects of individual, family, growth experience, conditions for assistance and education, and social interaction, and, in light of the facts of the cases, carried out categorized handling in accordance with law: for those who played a major role in the joint crime and had great social harm, public prosecution was filed in accordance with law; for those who played a secondary role in the joint crime, had a good attitude of admitting guilt and repenting, had cognitive and behavioral deviations requiring correction, and satisfied the conditions for conditional non-prosecution, assessment conditions were set and a decision of conditional non-prosecution was made; and for those who satisfied the conditions for non-prosecution, a decision of non-prosecution was made. The district procuratorate successively filed public prosecution against 16 persons including Zhao Moumou, made conditional non-prosecution decisions with respect to 12 persons including Wang Mou, and made non-prosecution decisions with respect to 41 persons including Xu Moumou. All 16 persons including Zhao Moumou were sentenced to fixed-term imprisonment.

Precise assistance and education. Relying on the district's integrated social care mechanism for juvenile justice, the procuratorial organ joined with public security, court, judicial administration and other departments to provide full-process precise assistance and education for minors involved in crimes. While guiding them to recognize their wrongdoings, it entrusted judicial social workers, psychological counselors and family education instructors to carry out psychological crisis intervention, family education guidance,

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assistance and relief for minors involved in the case with serious behavioral deviations or psychological problems. Through multifaceted assistance and education, the minors involved in crimes were helped to return to the right track, and 41 of the 53 minors subject to conditional non-prosecution and non-prosecution successfully entered colleges or higher education institutions.

Prevention and governance. In response to the problems exposed by the case, such as the high and frequent occurrence and wide scope of minors' involvement in internet-related illegal and criminal acts and the inability to achieve precise and timely prevention by traditional means, the district procuratorate joined with public security, civil affairs and other departments to establish a digital platform to prevent online illegal and criminal acts. Relying on the Zhejiang Province Integrated Digital Resource System (IRS), it consulted with functional departments such as public security, civil affairs, health and education to form a database covering venues such as bars, internet cafes and hotels, and through algorithms and data models embedded in the platform, discovered abnormal persons and behaviors and promptly pushed early warnings to the competent departments, achieving early discovery, early intervention and early blocking of minors' involvement in internet-related illegal and criminal acts.

Guiding Significance

(1) When handling online crime cases involving a large number of minors, the cases shall be handled in a categorized manner in accordance with law on the basis of comprehensively ascertaining the facts. When handling such cases, the procuratorial organ shall unify the law enforcement and judicial concepts with the public security organ, promote the public security organ to fully consider the particularity of online crime methods and the physical and mental characteristics and cognitive level of minors, comprehensively examine the minors' motive, purpose, number of participations, duration, amount involved and other circumstances, and comprehensively determine the minors' subjective awareness of illegality. For those whose acts are illegal but do not constitute a crime, the public security organ shall be advised to impose corresponding administrative penalties in accordance with law.

(2) When examining online crime cases involving a large number of minors, precise assistance and education and individualized treatment shall be implemented. Based on the standpoint of protecting minors and preventing recidivism, the procuratorial organ shall, during examination for prosecution, comprehensively examine the criminal facts, status and role, repentance, conditions for guardianship and assistance and education of the minors involved in crimes, and, in light of social investigation, psychological assessment and risk assessment, file public prosecution or make conditional non-prosecution or non-prosecution decisions in accordance with law, and implement tiered intervention. At the same time, in accordance with the minors' growth experience, behavioral habits, cognition and needs, risk level and other factors, professionals such as judicial social workers, psychological counselors and family education instructors shall be selected to implement individualized assistance, education and correction for the minors involved in crimes.

(3) Break down data barriers and use digital means to promote source governance of minors' involvement in internet-related illegal and criminal acts. In response to governance problems discovered in the performance of duties, such as the large number of minors involved in internet-related illegal acts, the great difficulty of crime prevention and control, and the concealed nature of criminal methods, the procuratorial organ shall give full play to the supporting and promoting role of digital technology in procuratorial work. With respect to frequent situations involving minors in practice, such as campus online loans and online gambling, it shall carry out risk assessment and dynamic early warning, and on the basis of ensuring information security and protecting personal privacy, promptly push protection and relief early-warning information to the functional departments, thereby forming a new pattern of digital protection of minors featuring departmental collaboration, data integration, intelligent analysis, precise early warning and efficient handling.

Relevant Legal Provisions

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Article 266 of the Criminal Law of the People's Republic of China.

Articles 177, 277, 279 and 282 of the Criminal Procedure Law of the People's Republic of China.

Article 100 of the Law of the People's Republic of China on the Protection of Minors.

Articles 2, 28 and 38 of the Law of the People's Republic of China on the Prevention of Juvenile Delinquency.

Articles 3, 22, 27 and 30 of the Regulations on the Network Protection of Minors.

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