SPP Guiding Case No. 215: Supervision Case on Investigative Activities Concerning the Criminal Syndicate of Liu Jia and Liu Yi

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Supreme People's Procuratorate Guiding Case No. 215 (Batch 53, 2024)

Keywords

Investigation activity supervision; residential surveillance at a designated residence; exclusion of illegally obtained evidence; supplementary investigation.

Holding

People's procuratorates shall strengthen supervision in accordance with law over investigative activities during residential surveillance at a designated residence, and shall investigate and verify in accordance with law where clues of illegal evidence collection are discovered. Evidence obtained illegally shall be excluded in accordance with law where, upon comprehensive review of the manner, frequency and consequences of the evidence collection, it is determined that the criminal suspect has been subjected to unbearable suffering. Where the facts of the case need to be further ascertained after the exclusion of illegal evidence, the chain of evidence shall be supplemented and improved through means such as remanding for supplementary investigation or conducting supplementary investigation on the procuratorate's own initiative.

Basic Facts

Defendant Liu Jia, male, born in October 1975, legal representative of an investment and loan consulting company in Jiangsu.

Defendant Liu Yi, male, born in November 1980, an individual industrial and commercial household operator.

Defendant Lu Moumou, male, born in January 1980, unemployed.

The basic circumstances of the other defendants are omitted.

From 2013 to 2018, Liu Jia and Liu Yi respectively gathered Lu Moumou and others, and in the course of carrying out "routine loans" and high-interest lending, formed two mafia-style criminal organizations, carrying out organized and repeated illegal and criminal activities such as extortion, unlawful detention, fraud and provoking quarrels to obtain illegal economic benefits, committing evil deeds and oppressing the masses in the Jingjiang area of Taizhou City, Jiangsu Province, disrupting social and economic order and causing a vile social impact.

On April 12, 2019, the public security organ opened an investigation into the case; from May to June, it successively imposed the compulsory measure of residential surveillance at a designated residence on Liu Jia, Liu Yi, Lu Moumou and others; from August to October, it successively submitted requests to the People's Procuratorate of the Taizhou Medical High-tech Industrial Development Zone of Jiangsu Province (hereinafter the "High-tech Zone") for approval of arrest of Liu Jia, Liu Yi and others.

Procuratorate Performance of Duties

(1) Discovery of clues. In October 2019, during the review for approval of arrest, the handling prosecutor found that Lu Moumou's statements were contradictory before and after, and requested him to explain the reasons, but Lu Moumou remained silent for a long time. After the prosecutor provided legal explanation and patient communication, Lu Moumou reported that he had been beaten and subjected to hunger and fatigue interrogation during his residential surveillance at a designated residence.

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(2) Investigation and verification. In response to the clues of investigative violations discovered, the High-tech Zone People's Procuratorate carried out the following investigation and verification work. First, based on the time and place of the beating reported by Lu Moumou, it retrieved and reviewed the audio and video recordings of the corresponding period during the residential surveillance at the designated residence, and found that recordings of some key periods were missing. Second, it retrieved and reviewed the audio and video recordings of the entire period of residential surveillance at the designated residence, and, upon comparison with the notice of summons and interrogation records, found that investigators had conducted continuous fatigue interrogation of criminal suspects over a long period, violating the legal provision that interrogation shall ensure necessary rest time for criminal suspects, and had unlawfully used restraint devices. Third, it interrogated one by one the co-defendants under residential surveillance at a designated residence to understand in detail their diet and rest, and Liu Jia, Liu Yi and others all reported unlawful circumstances such as prolonged failure to ensure necessary diet and rest; it was found that the physical health of some criminal suspects had been seriously affected due to prolonged lack of rest and diet.

(3) Correction of investigative violations. After investigation and verification, the High-tech Zone People's Procuratorate held that the investigative activities of the public security organ involved serious violations and were suspected of extorting confessions by torture, and should be supervised and corrected in accordance with law. First, it issued a Notice of Correction of Violations regarding problems such as fatigue interrogation, hunger interrogation, unlawful use of restraint devices, and de facto detention through consecutive summons, reported the discovered problems to the public security organ in person, and urged the public security organ to make rectification. Second, in accordance with Article 341 of the Rules of Criminal Procedure for People's Procuratorates, it required the public security organ to promptly replace the investigators and re-conduct the relevant investigation and evidence collection work. Third, it transferred the clue materials of investigators suspected of extorting confessions by torture to the Taizhou Municipal People's Procuratorate, along with preliminary research, judgment and analysis opinions.

(4) Exclusion of illegal evidence. In accordance with the relevant legal provisions on the exclusion of illegal evidence, the High-tech Zone People's Procuratorate held that the investigators had, during residential surveillance at a designated residence, used violent methods such as the unlawful use of restraint devices, as well as disguised corporal punishment such as hunger and fatigue interrogation, causing unbearable suffering to the criminal suspects and seriously violating the law in their investigative activities. It excluded in accordance with law the guilty confessions made by criminal suspects such as Liu Jia, Liu Yi and Lu Moumou during their residential surveillance at a designated residence, and informed the criminal suspects and their defenders.

(5) Supplementary investigation by the procuratorate on its own initiative and remand for supplementary investigation. After the exclusion of illegal evidence, the remaining evidence on file could prove that Liu Jia, Liu Yi and others were suspected of crimes, but some facts were unclear and the evidence insufficient, requiring further investigation and evidence collection. To this end, the procuratorate carried out supplementary investigation on its own initiative in accordance with law at the review for prosecution stage, focusing on the case facts covered by the illegal evidence, re-interrogating the criminal suspects and inquiring of the victims, and verifying the criminal acts committed by each criminal suspect and their positions and roles in the criminal organization, so as to ensure objective and accurate determination of case facts through first-hand review. At the same time, regarding issues such as proving the harmful characteristics of the mafia-style criminal organization, the case was remanded to the public security organ for supplementary investigation, and the public security organ subsequently supplemented, collected and preserved more than 50 pieces of evidence.

(6) Supervision results. The High-tech Zone People's Procuratorate initiated public prosecutions against Liu Jia, Liu Yi, Lu Moumou and others on suspicion of the crimes of extortion, unlawful detention, fraud and provoking quarrels, and all defendants in the case voluntarily pleaded guilty and accepted punishment. On

October 30, 2020, the High-tech Zone People's Court sentenced Liu Jia, Liu Yi, Lu Moumou and others at first instance to fixed-term imprisonment ranging from twelve years to ten months, and none of the defendants appealed. Regarding the clues of extorting confessions by torture discovered in this case, two investigators were pursued for criminal liability in accordance with law after investigation and prosecution by the procuratorate.

(7) Establishment of rules and systems. Regarding the unlawful and non-standard application of residential surveillance at a designated residence discovered in the case, after the High-tech Zone People's Procuratorate reported the matter upward, the Jiangsu Provincial People's Procuratorate, together with the Provincial Public Security Department, carried out in-depth investigation and summarization, and in July 2021 jointly formulated the Implementation Opinions on the Application of Residential Surveillance at a Designated Residence, explicitly providing that the public security organ shall forward copies of relevant documents and materials to the procuratorate within 24 hours of announcing the decision of residential surveillance at a designated residence; that the procuratorate shall promptly review the legality of the decision and strengthen procuratorial supervision of residential surveillance at a designated residence; and that during residential surveillance at a designated residence, the diet and necessary rest of the person under surveillance shall be ensured, and the relevant measures shall be applied in a regulated manner.

Guiding Significance

(1) Review and supervision over the legality of investigative activities during criminal suspects' residential surveillance at a designated residence shall be strengthened. In reviewing cases, procuratorial organs shall carefully listen to criminal suspects' complaints and reports of investigative violations, pay attention to reviewing the time and frequency of investigators' interrogation and changes in criminal suspects' statements, comprehensively understand the use of restraint devices, personal safety checks and the protection of diet and rest, and retrieve and review synchronized audio and video recordings where necessary. Where investigation and review reveal that investigators are suspected of extorting confessions by torture, the relevant clue materials shall be transferred to the procuratorial investigation department in accordance with procedures, and preliminary investigation and investigation shall be carried out in accordance with law to comprehensively verify the relevant circumstances.

(2) Comprehensively review, judge and exclude illegal evidence in accordance with law. Where investigators use violent methods such as beating or unlawful use of restraint devices, or use disguised corporal punishment such as failing to ensure necessary diet and necessary rest time, causing serious harm to the criminal suspect's physical health such as injury or illness, it shall be determined that the criminal suspect has been subjected to unbearable suffering; where no serious consequences are caused, but upon comprehensive review of the manner and frequency of the illegal evidence collection acts, such acts have been carried out over a long period or frequently, it may be determined that the criminal suspect has been subjected to unbearable suffering. Guilty confessions obtained under the above circumstances shall be excluded in accordance with law.

(3) Supplement and improve evidence in accordance with law around the determination of case facts. After the exclusion of illegal evidence, where evidence proves that a criminal suspect is suspected of a crime but the evidence is not reliable or sufficient and the chain of evidence is incomplete, the procuratorate may remand the case to the public security organ for supplementary investigation, clearly put forward the direction and specific opinions of supplementary investigation, and require in accordance with law that the public security organ separately assign investigators to re-conduct investigation and evidence collection; where necessary, it may also investigate and collect evidence on its own to supplement and improve the evidence system through first-hand review, ensuring objective and accurate determination of case facts.

Relevant Legal Provisions

Articles 52, 56, 57, 119 and 175 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment); Articles 2, 13, 66, 67, 68, 72, 73, 74, 75, 341, 342 and 567 of the Rules of Criminal Procedure for People's Procuratorates (2019 Revision); Articles 2, 4, 5 and 17 of the Provisions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice on Several Issues Concerning the Strict Exclusion of Illegal Evidence in Handling Criminal Cases (Fa Fa [2017] No. 15); Article 8 of the Opinions of the Supreme People's Court on Establishing and Improving Working Mechanisms for Preventing Wrongful Convictions in Criminal Cases (Fa Fa [2013] No. 11); Articles 8, 67, 195 and 196 of the Procedures for Handling Criminal Cases by Public Security Organs (Order No. 127 of the Ministry of Public Security, 2013).

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