

ON THE DEFINITION OF CRIMES COMMITTED BY CHINESE MAFIA-STYLE CRIMINAL GANGS

Abstract. *Crime committed by mafia-style criminal gangs is a new category of crime that introduced by the revised Criminal Law in 1997 in China. Three types of “crimes committed by mafia-style criminal gangs” were mentioned in it, namely, crimes of organizing, leading and participating in the mafia-style criminal gangs, crimes of recruiting members of mafia-style criminal gangs by entering the border of China, and crimes of harboring and conniving the mafia-style criminal gangs. However, the definition of the crime committed by mafia-style criminal gangs has long been a controversy either in practice or in theory research since the operation of revised Criminal Law in 1997, notwithstanding the legislature and the judiciary have published a series of interpretations and criminal amendments about it shortly after 1997. Due to the particularity of this crime, its concept has never been satisfactorily defined. To avoid confusion, it is important to research intensively about the definition of crimes committed by mafia-style criminal gangs, either for applying laws accurately in judicial practice, or for improving and perfecting relevant legislations in the field of mafia-style criminal gangs. This article makes a theoretical research and practical analysis on the definition of crimes committed by mafia-style criminal gangs, four aspects of features are discussed: organizational feature; economic feature; behavioral feature and feature of illegal control. Borrowing this way of feature division, further analysis will make on Amendment (VIII) to the Criminal Law of China. It will have significant and realistic meanings on the exact application of laws in judicial practice.*

Keywords: *crime, mafia, mafia-style criminal gangs, crimes committed by mafia-style criminal gangs, criminal group, organizational feature, economic feature, behavioral feature, feature of illegal control, judicial interpretation, legislative interpretation.*

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After the birth of new China, mafias almost vanished until 1955 under the severe crackdown of the Chinese government. From then till 1978, because of a long-term implementation of planned economy, no mafia (-style criminal gangs) existed when there was no hotbed for them to develop. After 1978 of China's reform and opening up, China underwent three phases of economic development, namely, a transition from a planned

economy to a planned commercial economy, an implementation of a planned commercial economy and an implementation of socialist market economy. These periods saw a continuous influx of a vast array of thoughts along with the reform and opening up, which exerted a rather telling influence upon crime. The establishment of commercial economy also created conditions for the birth and growth of crimes committed by mafia-

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style criminal gangs. Since 1980s when Hong Kong gangland's recruitment of new members in Shenzhen was spotted in 1981, the mafia (-style criminal gangs) kept spreading and gradually developed into a non-negligible social organization. Now they have connections and collusions in the underworld, commercial circles and circle of the officials. The crimes committed by mafia-style criminal gangs were startlingly gruesome and posed an increasingly big threat to the society¹. The article 294 in the revised Criminal Law in 1997 stated three types of "crimes committed by mafia-style criminal gangs", namely, crimes of organizing, leading and participating in the mafia-style criminal gangs, crimes of recruiting members of mafia-style criminal gangs by entering the border of China, and crimes of harboring and conniving the mafia-style criminal gangs. In order to launch a tough crack down on the mafia-style criminal gangs through judicial practice, the Supreme People's Court promulgated on December the 15th, 2000, the legal document named *On the Interpretation of Laws in the Trial of Crimes Committed by Mafia-Style Criminal Gangs Cases* ("judicial interpretation" in short as follows), which stated the four characteristics of the crimes committed by mafia-style criminal gangs. In light of ambiguities in the statements of these four characteristics, on April the 28th, 2002, the 9th Standing Committee of the National People's Congress passed *On the Interpretation of Article 294 in the Criminal Law of the People's Republic of China* ("legislative interpretation" in short as follows), which made an even more concrete and strongly performative explanation of the definition of crimes committed by mafia-style criminal gangs. Yet, major conflicts still existed between judicial interpretation and legislative interpretation². In order to appropriately apply the Criminal Law, legislative interpretation, judicial interpretation in the statements of crimes committed by mafia-style criminal gangs,

the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security, jointly issued on December the 9th, 2009, the notice of *Summary of the Symposium Concerning the Handling of the Crimes Committed by Mafia-Style Criminal Gangs Cases* ("summary" in short as follows), proposing the uniform standards of justice of handling crimes committed by mafia-style criminal gangs, clarifying the four features of mafia-style criminal gangs as "organization, economy, behavior and hazard" and specifying the understanding of each of them. Besides, the notice also touched upon such issues as the assumption of subjective requirements about the crime of harboring and conniving mafia-style criminal gangs, the criminal liability of members in mafia-style criminal gangs, the definition and handling of evil force cliques, and so on. In recent years, a lot of brand new conditions emerged with the economic and social development, making its crackdown even more difficult. In view of the severity of crimes committed by mafia-style criminal gangs, the Amendment (VIII) to the Criminal Law, ("Amendment (VIII)" in short as follows) voted by the 11th Standing Committee of the National People's Congress on February the 25th, 2011, put the legislative interpretation into criminal norms, which not only clarified the characteristics of mafia-style criminal gangs, but intensified the crackdown of mafia-style criminal gangs through adding and amending relevant clauses. In spite of this, the judicial practice of "crimes of mafia-style criminal gangs" was still fraught with puzzles and confusions, as criminal charges sharply rose. All facts revealed that weaknesses still existed in the legislative explanation and judicial explanation of crimes of mafia-style criminal gangs. This accusation, under certain circumstances, could evolve into the instrument of "the wrong incrimination of the innocent". Concerning the legal practice circles and theoretical circles "who always stick

¹ For the development of Mafia-Style-Criminal-gang-crime, cf. Qiu Geping: A retrospection of Chinese mafia-style-criminal-gang-crime of the Past 60 Years // Journal of Research on Crime, Vol 1, 2001 ; Qiu Geping. The Growth of Gangland Organizations for 60 years from Media Perspective. Zhang Renshan ; Comments on Law in Nanjing University (2010 autumn edition) // Press of Law. 2010. Sept. Page 188—199 ; Comments on the Developmental Phases of Organized Crimes on Chinese Continent. Mo Hongxian. Henan Police Training College. Jun, 2011. Vol. 20. № 3.

² In judicial explanation, "umbrella" is taken as the necessary condition for an organized criminal groups; however, the legislative explanation takes "having umbrella" as the selected condition, which makes their conflict even more obvious. Theoretically, legislative explanation has more effect than judicial explanation; however, concerning the prominent position and practical role of judicial explanation in the judicial practice in our country, unfavorable effect will be not avoided in it.

to their own principles and opinions”, it is sensible to believe that a certain crime committed by the mafia-style criminal gangs is just like a crime “that is not to the point”³. Imperfect legislation and unscientific penalty setting contribute to the failure of legislation concerning the crimes committed by mafia-style criminal gangs to live up to new expectations in the society. When confronted with different crimes committed by mafia-style criminal gangs, a lack of conclusions and theoretical studies about new situations lead to many puzzles, confusions and tough circumstances⁴. Further studies about the definition of the crimes committed by mafia-style criminal gangs will have significant and realistic meanings on the exact application of laws in judicial practice, and some legislation in the perfection of the crimes committed by mafia-style criminal gangs.

Four features of mafia-style criminal gangs have been generally summarized by theoretical circles as “features of organization, economy, behavior and illegal control”. Borrowing this way of property division, I will make a further analysis on Amendment (VIII) to the Criminal Law.

1. ORGANIZATIONAL FEATURE

Organization is the primary legal feature for the mafia-style criminal gangs, which means “forming a relatively stable criminal group with a high density of members, specific organizers and leaders

and basically permanent core members”. It can be further analyzed from the following three aspects, “forming a relatively stable criminal group, a high density of members, specific organizers and leaders and permanent core members”.

1.1 CONSTITUTING A RELATIVELY STABLE CRIMINAL GANG

As Clause Two in Article 26 from the Criminal Law states, “a criminal clique refers to a relatively stable criminal gang formed by over three people to jointly commit a crime.” However, it fails to state the meaning of a criminal gang. This definition in the Criminal Law indicates that a criminal gang includes a criminal clique, which is one kind of criminal gangs. The word “gang”, in Chinese, means “a group that is established on certain creeds and systems”⁵. So, coupled with the stipulations of behavioral property, a mafia-style criminal gang must, first of all, aim to break laws and commit crimes repeatedly in a systematic and organized fashion⁶.

Secondly, “being relatively stable” means generally and overall stable for a criminal gang, and in judicial practice, the duration of time is taken as its standard of measurement. Criteria of confirmation issued jointly by local public security agents and judicial organs vary with respect to the exact time duration for stability. Some explicitly stipulated local criterion is 6 months. Mafia-

³ Bai Xiaodong: Construction of Charge-reducing Cases under Chinese Context---A Case Study of Organized Gangland Crime. Journal of Fujian University of Agriculture and Forestry (Philosophy and Social Science Edition). 2012. Vol.15. Page 46.

⁴ Gu Weishuang & Zheng Lijiang: A Study on the New Features and Tactics of Organized Gangland Crimes. Journal of Yunnan University (Law Edition). Sept, 2012. Vol. 25. № 5. Page 23

⁵ Dictionary editing section of Language Institute of the Chinese Academy of Social Sciences, Modern Chinese Dictionary. Beijing. The Commercial Press. Edition 1. Dec. 1978. Page 1532

⁶ On the Interpretation of Laws in the Trial of crimes committed by mafia-style criminal gangs Cases (Zhejiang Superior People’s Court. 2006. № 282) jointly published in Nov. 2006 by Zhejiang Superior People’s Court, Zhejiang People’s Procuratorate and Zhejiang Public Security Bureau, states in Clause 1 of Article 1, “a criminal organization which has been established for over six months can be said to be a relatively stable organization in order to commit crimes.” Source : Baidu Library, <http://wenku.baidu.com/view/a46868264b35eefdc8d333b8.html>.

Shaanxi, On the Concrete Application of Laws in the Trial of crimes committed by mafia-style criminal gangs Cases and Evil Force Clique Cases (Shaanxi [2007] № 41) <http://wenku.baidu.com/view/14ae0a27a5e9856a56126094.html> & Hubei, On the Interpretation of Laws in the Trial of Gangland Criminal Cases and Evil Force Clique Cases (Hubei [2006] № 56) <http://wenku.baidu.com/view/e479ae81d4d8d15abe234e79.html> both state “a certain period of time” without stating the exact period of duration. Guangdong, On the Interpretation of Laws in the Trial of Gangland Criminal Cases (trial) (Guangdong [2007] № 97) <http://www.110.com/ziliao/article-297837.html> has no statement for time. All of the above websites are visited on February 3rd, 2014.

style criminal gangs must share some common features: “first, it has a well-knitted organization, in spite of different internal structures; it, generally, has a long duration”⁷. From the perspective of judicial practice, it would be more appropriate to take over 6 months (6 months included) as the “relatively stable” standard of mafia-style criminal gangs⁸. A group that has been formed for less than 6 months can hardly reach stability; if it matches conditions of “a relatively stable criminal group”, it will be treated as ordinary criminal gangs; otherwise, it will be handled as ordinary joint crime.

1.2 HIGH DENSITY OF GANG MEMBERS

According to the Criminal Law, it is of no doubt that over three people can be said to have a high density of gang members. Yet, as mafia-style criminal gangs are special criminal groups more advanced than ordinary criminal groups, it will be more realistic to have more than three people. Standards set in different judicial offices also vary. The judiciary of Zhejiang province states that “except for organizers and leaders, a high density should include over three core members. Participants and organizers are relatively stable with at least 10 people; or, in spite of instability, there would be over 10 people who can gather and hire participants temporarily in order to commit crimes”; The judiciary of Shaanxi province states that “except for organizers and leaders, a high density means over 3 core members”; The judiciary of Hubei province states that “over 5 people are needed to form a mafia-style criminal gang with specific organizers and leaders”; Guangdong province judiciary states that “over 3 people are needed in core members”, “with specific organizers and leaders (they can be just one person, or many people)”⁹. From the perspective of legal practice, crimes made by the mafia-style criminal gangs are committed by at least over 9 people¹⁰.

I think that it is both scientific and practical to base judging of large numbers of people on judicial practice. From a logical analysis, a mafia-style criminal gang should, first of all, have organizers and leaders with at least 1 to 2 people; second, it must have close followers of its organizers and leaders with at least 2 to 3 people, which can be also called core members; last, if there are no other participants (at least 3 people), “mafia-style criminal gangs” with much profound influence cannot take shape. Accordingly, except for organizers and leaders, core members and other participants should be no fewer than 5 or 6 people, and the total number of the members in mafia-style criminal gang s should be no fewer than 6 or 7 people

1.3 HAVING SPECIFIC ORGANIZERS AND LEADERS, AND PERMANENT CORE MEMBERS

This condition indicates that the mafia-style criminal gangs have specific and stable organizers, leaders and core members with clear-cut division of responsibilities and levels and stable organizational structures; in this way generally, a more stable internal “rules and regulations” have been set. Without written rules and regulations, all the members in the gang are all well aware of them and obey them consciously (or to be obliged to do so). Public security offices and judicial organs in many places demand to “have written rules or non-written rules” or “rules of conduct or rules established by usage such as rules, commandments, disciplines that can be recognized by gangs and members”, but they “do not demand to have such prerequisites as distinct gang names, guiding principles, regulations and written rules”¹¹. In actuality, it is just the level separation among the gang, leaders and core members, and participants that can ensure “a high density of members” in mafia-style criminal gangs, and that can enable them to “become an organization”; it is just the clear

⁷ American Criminal Law, Press of Peking University. Edition 3. Feb, 2005. Page 125.

⁸ Used “Mafia-style criminal gangs” as key words, I searched the papers of sentence in www.chinacourt.org, 233 results were found in 12 pages. Also I dug into charges and court fact findings of organizing, leading and participating in mafia-style criminals gangs in no less than 10 judgments, it showed that a convicted mafia-style criminal gangs existed for at least 6, others 3 or 4 years, even 7 to 8 years. See <http://www.chinacourt.org/paper/search/keyword/黑社会性质组织/page/1.shtml>, the last time of visit is on February 3rd, 2014.

⁹ Cf. footnote 6.

¹⁰ Cf. Footnote 8, Verdict of Cases on Organized criminal groups Crimes, from Chinese website of Judicial Courts.

¹¹ Cf. footnote 6.

division of labor, the binding of written or unwritten rules that can enable the organized criminal groups to exist more permanently. To be sure, although the public security agencies in all levels regard “rules of a secret society” as a standard of rules in the internal organized criminal groups in judicial practice, in legislation, it cannot be taken as the basic feature of the mafia-style criminal gangs.

2. ECONOMIC FEATURE

By features of economy, it is meant that the mafia-style criminal gangs “obtain economic interests through organized illicit activities or other means; and they have certain economic power to support such activities”. This feature can be further analyzed in the following two aspects, one is “to gain economic interests through organized illicit activities”, and the other is “to have certain economic strength to support such activities”.

2.1 PROCURING ECONOMIC PROFITS THROUGH ORGANIZED ILLICIT ACTIVITIES OR OTHER MEANS

Gaining economic profits is not only the basic objective for the mafia-style criminal gangs, but also the prerequisite for their appearance and development; besides, it is also the basic condition of ensuring the continuity of their existence and growth. The mafia-style criminal gangs secure economic strength through “organized” illicit activities, or “other means”. Accordingly, all economic interests, gained by mafia-style criminal gangs, or used to support their illegal activities, are illicit.

The mafia-style criminal gangs secure economic interests mainly through “organized illicit activities”, and “other means”. “The organized illicit activities” which aim to gain economic profits can be conducted by the uniform scheme by the mafia-style criminal gangs, by core members and other participants incited by their organizers and leaders, or by common members (participants) from the mafia-style criminal gangs. Those who try to gain economic profits for the mafia-style criminal gangs are all included. And “other means”, typically, refer to “save clause”. In actuality, there is no delimitation of the means of gaining economic profits by the mafia-style criminal gangs, thus, the mafia-style criminal gangs obtain economic interests gained through some lawful operation like

investment, running business or starting a company or an enterprise, which aim at “fostering organized criminal activities and benefiting from its power”, are all illicit.

According to Article 7 in judicial explanation, “properties and income made by mafia-style criminal gangs and criminals that organized or led or participated in such groups should be pursued and confiscated in conformity with the law”. So, all the properties or profits gathered by the mafia-style criminal gangs should be lawfully pursued for payment or confiscated without probing into its trace. Therefore, even the lawful interests collected by the mafia-style criminal gangs or their members should also be pursued for payment or confiscated.

2.2 HAVING CERTAIN ECONOMIC POWER TO SUPPORT ILLICIT GROUPS

Obviously, “having certain economic power” alone cannot define mafia-style criminal gangs in the view of some legislators. Their economic power must go to the extent that it can support illicit activities, economically benefit from their illicit activities and financially realize the mutual promotion between “economic power” and “organized activities”.

However, definitions as “certain economic power to support organized activities” and “economic interest” as the goal of the existence of mafia-style criminal gangs are not without questions. First and foremost, economic interest is not the only goal of mafia-style criminal gangs. In judicial practice, it is a common phenomenon that leaders and organizers of mafia-style criminal gangs, after having acquired certain economic power, obtain social status, political capital and political safeguard by money or other means. For instance, Li Qiang, gangland leader in Chongqing, was the former president and general manager of Yu Qiang Group Co. Ltd of Chongqing. He was also the 3rd National People’s Congress (NPC) member of Chongqing and member of the Standing Committee of Chinese People’s Political Consultative Conference (CPPCC) in Banan district; Liu Yong, gangland leader in Shenyang, was the former president of Jia Yang Group in Shenyang, committee member of CPPCC of Heping district and chairman of Shenyang direct branch of Party of Public Interest of China; Chen Yifeng, gangland leader in Shenzhen, was the former board chairman of “Guan Feng Hua” group, director of com-

merce union of Guangdong province, committee member of CPPCC of Guangdong and Shenzhen. Thus, “obtaining economic interest” is not an all-sided epithet in defining the goal of mafia-style criminal gangs and has no edge in combating crimes of mafia-style criminal gangs. In addition, legislative conceptions such as “having certain economic power to support illicit activity” and “such power is acquired through illicit activity or other means” are also one-sided. It is in all possibility that some originally legitimate groups, after obtaining relatively strong economic strength, turned themselves into mafia-style criminal gangs for more economic interest or other objects. A good example in question is the mafia-style criminal gangs organized by Chen Mingliang and Ma Dang in Chongqing. In order to stay away from being threatened, sidelined and disrupted by gangland powers in the fierce market competition or seize advantageous opportunity to seek exorbitant profits, some legitimate business gradually drifted off their illicitly operated path and became a member of the mafia-style criminal gang¹². Last, for some unfledged mafia-style criminal gangs, their economic power may not fully support their illicit activity. It is still possible that the mafia-style criminal gangs managed to survive through illicit means. If they are not defined as crimes committed by mafia-style criminal gangs, we are running the risk of indulging in crimes. Setting such conditions are in violation with anti-gangland crime policies to the effect that mafia-style criminal gangs should be cracked upon while they are unfledged and as early as possible. Therefore, I believe that compared with judicial interpretation, legislative addition of “support criminal activity of the mafia-style criminal gangs” is inappropriate. It is sufficient to keep such judicial interpretation-requested condition as “having certain economic power”.

3. BEHAVIORAL FEATURE

In terms of the features of behavior, the mafia-style criminal gangs will commit many systematic crimes by violence, threat and other means. They do many evil things, bully and persecute the masses. This attribute can be analyzed in the following three aspects, namely, “to commit many systemat-

ic crimes repeatedly”, “violence, threat and other means” and “to do evil things, bully and persecute the masses”.

3.1 COMMITTING MANY SYSTEMATIC CRIMES REPEATEDLY

As is mentioned above, the mafia-style criminal gang, by itself, is a criminal group, which will systematically and repeatedly commit crimes from the perspective of behavioral features. Objectively speaking, activities conducted by the mafia-style criminal gangs are law-breaking, organized and repeated. The sense of organization in law-breaking activities by the mafia-style criminal gangs is embodied in rigorous division of labor and cooperation with premeditation, generally by the scheme or guidance from organizers, leaders and core members. Or some of the group members do it according to plans and schemes for the interests of the gang. If members of mafia-style criminal gangs alone or jointly commit crimes for the interest of group members, their illicit activity cannot be defined as crimes committed by mafia-style criminal gangs. “Repeatedly” is usually understood as “more than three times”. But is committing illegal and criminal acts inclusive of illegal acts and criminal acts, or all illegal acts, or at least one criminal act? The Summary stipulates that “all the illegal acts performed in the mafia-style criminal gangs’ process of committing crimes should be defined as criminal acts. But the groups cannot be classified into mafia-style criminal gangs if only illegal acts are conducted.” I deem such definition as both practical and proper. This is because the groups are not “evil” enough if they only commit illegal acts more than three times, though their acts might be organized. They posed limited danger to society. Thus no mafia-style criminal gangs are formed. It is not a necessary condition for mafia-style criminal gangs if we define such gangs only in terms of criminal acts instead of illegal acts. Therefore, the condition is inappropriately and improperly expanding the strike range. Meanwhile the “summary” stipulates that repeatedly committing illegal and criminal acts is only one of the necessary conditions that define mafia-style criminal gangs. The decisive factor lies in the damaging features (namely, the features of il-

¹² Xu Xiaozhou, Some Notions about the Organized Gangland Crimes, 110 Website of Legal Consultation: <http://www.110.com/ziliao/article-383010.html>, the last time visit is on February 5th, 2014.

legal control mentioned afterwards). Some illegal and criminal acts cannot be defined as mafia-style criminal gangs as their property and order of severity cannot engender illegal control or tremendous impact, though they have committed illegal and criminal acts repeatedly.

3.2 VIOLENCE, THREAT AND OTHER MEANS

Means of violence and threat will not create misunderstandings, except for the understanding of “other means”. “Summary” states that “other means” mainly include: “negotiations”, “consult” and “reconciliation” on the basis of violence and threat by means of group force and influence, and other non-violent means of interfering with and damaging normal economic and social order like vexation, uproar, and mob. That is to say, “other means” refer to “non-violent” means in form but “soft-violent” means in actuality, by which mafia-style criminal gangs impose psychological force and threat upon “other people” in a certain business or locality by committing crimes.

3.3 COMMITTING CRIMES, BULLYING AND PERSECUTING PEOPLE

Literally speaking, this feature means “to do evil things, bully and persecute people (or non-Communists, non-leaders)”, “the definition of crime employs unprofessional language”¹³. As is mentioned above, “to commit crimes”, “to bully and persecute people” are both non-standard legal words, but emotional expressions with a strong ethical color, which makes it difficult to understand and grasp in legal practice. In my point of view, this condition is nothing but gilding the lily. It is not only about the non-standardization of language, but the unnecessary semantic repetition of the condition of “committing crimes”. Let us ask, is there any crime that is not “to commit crimes”, “bully and persecute people”? Can “bully non-Communists and leaders” not be regarded as the characteristic of mafia-style criminal gangs? “This scheme is not the feature of mafia-style criminal gangs”¹⁴ Moreover, “to bully and persecute people” should be taken as the consequences of committing crimes rather than its behavior. So, it

would be a rational choice to eliminate the redundant conditions that is without any pragmatic significance and realistic significance in legislation.

4. FEATURE OF ILLEGAL CONTROL

The mafia-style criminal gangs is characterized by the fact that it plays the tyrant in a locality or a certain line of business by committing crimes and taking advantage of the harbor or connivance from the government workers to breed illegal control or exert substantial influence, thus severely damaging economic and social order. “Summary” concludes it as “feature of hazard”, believing “that the essential attribute of mafia-style criminal gangs is its dominance over a certain region or the illegal control and its substantial influence bred by a business, which, thus severely damages economic and social order. This is vital to distinguish mafia-style criminal gangs from common criminal cliques”. As law-breaking is the common feature for all violations of laws, so it will be much too broad to regard “hazards” as the prerequisite for mafia-style criminal gangs, which fails to manifest the attributes of them. Rather, it will be more exact and specific to take “illegal control” as its precondition. It can be divided into such three aspects as “channels and devices of forming illegal control”, “modes and scope of illegal control” and “consequences of illegal control” for further analysis.

4.1 CHANNELS AND DEVICES OF FORMING ILLEGAL CONTROL

The mafia-style criminal gangs are established mainly through two channels and devices. One is to violate laws and commit crimes, and the other is to take advantage of the harbor and connivance from the government staff. In my opinion, these two different devices are actually complementary, as the bud of law violation will meet with deserved combat, which makes it impossible for the mafia-style criminal gangs to develop. Without government workers’ harbor and connivance to help the mafia-style criminal gangs grow and develop its influence, they would not play the tyrant in a locality. So, it is obvious that the growth of power

¹³ Cf. footnote 4.

¹⁴ Cf. footnote 4.

for the mafia-style criminal gangs cannot go without the harbor and connivance from the government workers; to put it another way, it is just their misconduct-harbor and connivance that allows the mafia-style criminal gangs and its members to commit several crimes and develop their power; it is just their misconduct-harbor and connivance that allows the mafia-style criminal gangs to gain momentum and become dominant in a locality.

4.2 MODE AND SCOPE OF ILLEGAL CONTROL

The mode of illegal control adopted by mafia-style criminal gangs is “seeking hegemony over a region”, whose scope falls in a certain district or industry. The Chinese interpretation of the so-called notion “seeking hegemony” is “to bully and persecute others by his power and position”¹⁵. Such sense verifies our former analysis, namely, mafia-style criminal gangs can succeed in bullying others only when their deterrent force, which is formed by the “right” that comes from the cover and connivance of government officers and the “power” that comes from their repeated illegal acts, comes into play. In the meanwhile, the scope for their hegemony is limited to a certain district or industry. However, how large on earth is their “hegemony region”? How can we exactly understand such notions as “a certain district or industry”? What is the coverage of the “district”? What is the scope of the “industry”? They pose a conundrum to us. “Conceptions such as ‘market sinister gang’, ‘campus sinister gang’, ‘XX street sinister gang’, and ‘railway station sinister gang’ often appeared in media report, which is a reflection of the reading of ‘a region’ by police officers and the mass media in terms of the scope of district and industry. Professor Chen Zhonglin holds that ‘a region’ refers to at least a county (city/district). In accordance with three year’s imprisonment stipulated by the Criminal Law. If such a standard is adopted, ‘campus sinister gangs’ cannot be defined as mafia-style criminal gangs. However, on the one hand, such ‘gangs’ are already defined as mafia-style criminal gangs by judicial courts. On the other hand, since such sinister gangs have already sought hegemony

in at least one country (city/district), how can we give a persuasive explanation if at the same time other organizations are defined as mafia-style criminal gangs? Isn’t this paradoxical? Can it still be called ‘seeking hegemony’ when everyone seeks hegemony here?”¹⁶ In fact, it is not the key point whether the groups seek hegemony or not. It is possible that the groups do not seek hegemony but in fact they have already controlled a certain area or industry. Thus, it is inappropriate to define the features of mafia-style criminal gangs by “seeking hegemony”. The exact range of the “area” should be determined by the degree of detriment caused by the mafia-style criminal gangs. According to the consensus of judicial practice, nature villages in the countryside and one or several roads in cities may belong to the “area” discussed here. ‘Businesses’ include not only lawful ones like digging or food processing, but also some illegal ones like pornography, gambling, usury, drugs transaction, etc. Of course, these lines of business may involve one or many parts in a market, like, production, consumption and exchange”¹⁷. The question of “a certain area or a line of business” needs to be strictly mastered in judicial practice.

4.3 CONSEQUENCES OF ILLEGAL CONTROL

The consequence of illegal control by mafia-style criminal gangs is to “form illicit control or take a heavy toll in a certain area or industry, greatly disrupting the order of economic and social life”. In general understanding, here “illegal control” or “significant influence” means that the mafia-style criminal gangs delimits the scope of power in a certain domain, and within “this territory”, they can make their own decisions without others’ interference. If you “fail to follow the advice”, you will suffer the “lessons”. Mafia-style criminal gangs will impose “illegal control” or badly “significant influence” upon a certain area or a line of business; besides, they “do much harm to the economic and social order”, both of which combined can be taken as an mafia-style criminal gangs. Otherwise, it may be an ordinary criminal group or joint offence.

¹⁵ Dictionary editing section of Language Institute of the Chinese Academy of Social Sciences, Modern Chinese Dictionary. Beijing. The Commercial Press. Edition 1. Dec. 1978. Page 133.

¹⁶ Cf. footnote 4.

¹⁷ Chen Shiwei. Practice of Features of the Organized Criminal Groups. Journal of Henan University (Social Sciences Edition). Jan. 2012. Vol. 52, №1. page 35.

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Аннотация. Преступления, совершенные мафиозными группировками, являются новой категорией преступлений, представленных в Уголовном кодексе Китая в 1997 году. В статье называются три типа «преступлений, совершенных мафиозными группировками», а именно: организация, руководство и участие в мафиозной группировке; вербовка в мафиозную группировку посредством пересечения границ Китая; а также укрывательство и сотрудничество с мафиозными группировками. Однако определение преступления, совершенного мафиозными группировками, остается спорным как на практике, так и в теоретических исследованиях, с момента внесения в 1997 году поправок в Уголовный кодекс КНР, даже несмотря на то, что законодатели и судебный корпус опубликовали ряд разъяснений к нему сразу после внесения данных поправок. Из-за особенностей данного вида преступления ему так и не удалось дать удовлетворительное определение. Чтобы не вызывать путаницу, важно широко применять понятие преступления, совершенного мафиозными группировками, посредством строгого применения законов в судебной практике, или совершенству соответствующее законодательство относительно мафиозных группировок. В статье приводятся результаты теоретического исследования и практического анализа определения преступлений, совершенных мафиозными группировками, а также обсуждаются четыре аспекта характерных данному виду преступлений признаков: организационные; экономические; поведенческие и контролирующие. Аналогичная классификация характерных признаков будет использована и для Поправки VIII в Уголовный кодекс КНР. Она будет иметь огромное значение для строгого применения законов в судебной практике.

Ключевые слова: преступление, мафиозные группировки, преступления, совершенные мафиозными группировками, организационный признак, экономический признак, поведенческий признак, судебные разъяснения, законодательные разъяснения.

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