

A Brief Analysis on the Related Issues of the Judicial Identification of Mafia-Style Crime

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Abstract: Mafia-style crime is one of the focuses of the judicial authority over the years to crack down on and the establishment of mafia-style organizations is one of the prerequisites of the crime. However, there are varied forms of mafia-style crimes. It is difficult to accurately grasp the characteristics. This paper expounds the contents on mafia-style organizations from four aspects such as the characteristics in organization, economy, behavior and perniciousness for accurately grasp in the judicial practice.

Introduction

In recent years, organized mafia-style crimes is increasingly rampant with ever increasing harm, which seriously impair the people's life, property safety, and wreak havoc on the party development and the political construction of our country, and thus destroying the stability of social order. Since January 2018, the CPC Central Committee with comrade Xi Jinping as the its core carried out the campaign to combat organized crime and root out local mafia. Public security organs, procuratorial organs and people's courts at all levels also perform their respective duties according to law and cooperate closely to punish a number of gangland organized criminals. To a certain extent, they have curbed the high incidence of gangland organized crimes and made great contributions to maintaining social stability and ensuring people to live and work in peace and happiness. However, in the judicial practice of identifying and punishing related gangland organized crime, it is difficult to accurately grasp the boundary standard of some convictions and sentencing. This paper discusses in detail the determination of the four characteristics of triad organized crime in this crime based on the 294 provisions of criminal Law on organized crime and related judicial interpretation, as well as the meeting minutes and guiding opinions on organized crime of triad issued in recent years.

1. Grasping the Boundary of "Organizational Characteristics"

According to article 294 of "criminal law" that the prerequisite of becoming mafia-style crime is that the organization is a mafia-style organization, so the organizational stability should be firstly satisfied with relatively more members and strict inner organizations.

1.1 Understanding of Organizational Stability

1.1.1 Identification and Analysis of the Organization's Duration

It means that the members of some criminal groups, within a relatively long period of time, carry out one or several specific illegal and criminal activities in a certain region or industry with purpose and organization, which to a certain extent has formed a bad influence or caused serious consequences in the region or within the scope. This longer period is generally considered to be more than three months after the establishment or existence of the organization. The starting point of this time should not be generalized, but should be analyzed on a case-by-case basis. The first one is the easiest one to identify. If the organization initiated a formal establishment ceremony or held similar establishment activities at the beginning of its establishment, the time of its establishment and its duration of existence shall be calculated based on the time of the holding of the ceremony or

the commencement of the activities. Secondly, the formation and development of general mafia-like organizations often go through a process of qualitative change from evil forces to mafia-like organizations [1]. If you don't have more formal establishment ceremony or activities, the law should actively play the subjective initiative, to review to determine the core interests of the preliminary forming time or within the scope of the organization in the area or industry form a major impact on time, will be subject to the time to calculate the duration of organized crime. Thirdly, according to relevant regulations, if neither of the two situations listed above exists, the time when the ringleader and other participating members jointly implement the project for the first time under the inspiration of the organization or seek profits for the organization can be analyzed and judged.

1.1.2 The Particularity of Identification Method

In practice, whether the ringleaders and some key members of the organization are in stable condition or not often affects the characterization of cases. This will require staff to grasp such stable nature of mafia-style organizations to examine the stability of the organization essence and the core members. The identification of stability of criminal organizations will not be influenced no matter the the pattern of manifestation is stable or loose or regardless of the frequency of change of peripheral members and general participants if the ringleaders, that is, the organizers, founders and backbones who play a important role in operating activities remained unchanged with relatively contact[2]. In addition, compared with common joint crimes, mafia-like organizations are relatively stable criminal groups, with obvious differences in the purpose of crimes and common joint crimes. Generally, the purpose of joint crime is to realize the goals and interests of individual members of the organization, and the purpose of crime is relatively direct and obvious. However, the criminal purpose of triad organizations is to maintain the overall interests of the organization, in order to form a more powerful influence or control in the region or industry.

1.2 Grasping the Characteristics of the Number of People

1.2.1 The Limitation of People in Number is Removed

According to relevant regulation, the mafia-style organization should have certain scales with relatively large number of members, which is more than commonly 10 participants .However, at the present stage, the number of members is not emphasized in the identification of the characteristics of gangland organized crime. Because the mafia-style organization is difficult to be formed in a short period of time, rather it is generally established with stable number of members as it transformed from gang crime to organized crime. Or though the members were not large in scale, they have certain influence on the industry or the region, which have already satisfied the characteristics of mafia-style organization [3].

1.2.2 Expansion of the Organization's Membership

The member of the mafia-style organization includes not only those who reached age for criminal responsibility with criminal ability and those who joined the mafia-style organizations or conducted criminal activities despite they do not reach the age for criminal responsibility or members not prosecuted by public prosecution organs for other factors. Or members who conducted criminal activities with less serious influence or swindled to join the organization without any illegal acts or those who joined the organization with little role in it and not convicted for crime [4].

1.3 Identification of the Characteristics of Strictness

1.3.1 Identification of Ringleaders and Backbone Members

According to relevant laws and regulations, the establishment of mafia-like organizations must have clear organizers, leaders and backbone members in terms of organizational characteristics, so as to form a relatively strict organizational system, which is the reason why mafia-like organizations must have strict confidentiality. The leader of an organization refers to the initiator or founder of a triad organization, or the actual leader in the whole organization, who plays a role of command or

management in the operation of the entire organization, and is generally called the ringleader in theory and practice [5]. Key members are generally directly subordinate to the ringleaders, actively participate in or direct related organized crime activities on a number of occasions, and generally play a greater role in the organization than the general participants.

1.3.2 Identification of the General Participant

Ringleaders and backbone members in the mafia-like organization is generally relatively fixed without great changes. But the general members may vary, when participants were generally recognized two aspects will be taken into consideration, one is that whether the participants conduct criminal activities inspired by the mafia-style organization, that knows it is the mafia-style organization and conduct illegal activities. The second is whether there is a fixed leader-member relation between the participant and the mafia-style organization. If these two aspects are satisfied at the same time, it is sufficient to determine that the participants committed the mafia-style crime [6].

2. Understanding and Grasping of Economic Characteristics

The establishment of mafia-like organizations requires them to obtain economic benefits through illegal and criminal activities or other means, and have certain economic strength to support the activities of the organization.

2.1 The Determination of Economic Strength

Seeking certain economic benefits and finally achieving certain strength is the ultimate goal of the existence of the underworld property organization, but also the underworld property organization survival and development of the necessary conditions. It is generally believed that the source of the economic strength of gangland organized crime is mainly obtained by carrying out robbery, extortion, kidnapping and other illegal crimes. However, in judicial practice, the underworld property organization crime economic strength of the foundation not only comes from gambling, drug trafficking, extortion and other illegal and criminal activities to seek illegal interests, some underworld property organization will start legal form cover limited liability company or joint stock limited company, partnership, such as enterprise to profit for the organization. But, either through a legal type for economic gain, or illegal means to grab the illicit gains, as long as the interests of all or part of daily operations for underworld property organization, the survival and development of maintenance organization, or used to organize behest of illegal and criminal activities, are considered to be part of the underworld property organization economic strength [7].

2.2 Understanding and Grasping the Support of Organizational Activities

Whether the illegal benefits obtained from illegal and criminal activities and the operating income of self-established companies and enterprises are used for the development of triad organizations or for carrying out follow-up other criminal activities is a very important basis and standard for judging whether they support organizational activities. Judgment mainly from the following two aspects, one is to see if it will be of interest or the company operating income for the underworld property organization crime activities related expenses, such as whether the proceeds to buy later commit crime with the crime of tools, whether to the organization members to implement other illegal and criminal activities to provide financial support or other activities related to the implementation of organized crime. The second is to examine whether the benefits or the earnings of the company or enterprise are used for the living expenses, bonuses or nominal salaries of the members or their families, or whether the corresponding funds are used for medical treatment and treatment of the wounded and wounded members.

3. Understanding of Behavioral Characteristics

According to the provisions of article 294 of the Criminal Law, the crime of mafia-style

organizations can be formed if it conduct illegal activities by threat and violence or bullying and harm the health of the public. But the means of crime are not limited to simple means of violence.

3.1 Grasping Behavioral Means

According to the practical case in judicial practice, illegal activities such as robbery, intentionally smashing and destroying goods, and intentionally hurting others' bodies and other violent means or measures were generally used by mafia-style organizations to achieve their criminal purpose. However, in recent years, in order to cover up the nature of their crimes, the criminal means or methods gradually transformed into "soft violence" such as following closely, pestering and attracting people to create momentum, when carrying out criminal activities. Soft violence, refers to that it was not conducted with violence and threats on the surface, but it was, in essence, based on the baneful influence or powerful crime ability formed by the mafia-style organization to cause panic and fear among the public and further influence or restrict the personal freedom, property security of the victims and even imperil life safety of the victims. Fundamentally, it can still reflect the nature of violence or threat, so it is still a means of organized crime of mafia-style organization[8].

3.2 Grasping the Organizational and Behavioral Nature

In the crime by mafia-style organization, there will be a number of organization members with multiple criminal behavior. However, not all the criminal acts committed by the members of the mafia-like organizations are attributed to the mafia-like crimes.[9] In general, for the ordinary participants of mafia-style organizations, they will be convicted for the crimes related to mafia-style organizations if they commit crime inspired by the organization or allowed by the ringleader to commit crime. Besides, their criminal behavior will be judged to be for illegal interests or not. Mafia-style crimes will be convicted if one of the conditions is satisfied.

4. Understanding of Characteristics of Hilariousness

Dominating certain area to illegally control certain area and industry or cause baneful influence to further harm the economic and social order in the area or industry is the key to distinguish triad organizations from other criminal groups, and also the prerequisite for the establishment of mafia-style organization.

4.1 Understanding and Grasping of Regional and Industrial Characteristics

The locality is a certain area controlled and influenced by the underworld organization, which should have certain space scope and carry certain social function. But it is not to say that the organization within the scope of the occupied territory, rather it refers that the organization illegally control the people within the scope and life order or serious influence was caused. By integrating specific cases, the impact of the organization to economy and social order should be comprehensively analyzed [9].

The industry is a certain industry controlled and influenced by the underworld organization, which has the same or similar nature within a space. This includes both legal industries, such as construction, and some illegal ones, such as prostitution, gambling and drugs. But legal or illegal industries, they are generally involved in one or multiple links such as production, transportation and consumption. For example, in the concrete mixing truck transportation industry within a certain area of Taiyuan, a mafia-like organization forcibly monopolizes the concrete mixing truck transportation industry of all construction sites in this area by illegal means such as blocking doors, deflating gas, and site disturbances, which seriously damages the economic order of the concrete mixing truck industry within this area.

4.2 Identification of Illegal Control or Significant Influence

Mafia-like organizations in a certain region or industry within the formation of illegal control or cause a significant impact, in essence, will impact the society economy and order of life. Illegal

control refers to the extent to which the mafia-like organization, by virtue of its own criminal activities or the momentum caused by the group, can control the economic and social life order within a certain area or industry. Severe impact refers to the fact that criminal group within a certain area or industry fails to control the economic and social life order, but its long-term illegal and criminal behavior related to the local economic and social life order caused a certain degree of deterrent, which would wreak havoc on related economy and social life order of the area or industry within the scope. [10]

5. Conclusion

Although the mafia-style organization crime has always been one of the key crimes to be cracked down on by the judicial authorities, since the campaign to combat organized crime and root out local mafia in 2019, we have doubled out efforts to crack down on such crimes. Some evil organizations have been banned according to law, which provided a powerful legal guarantee for the social economic order and people's property safety. For the prerequisite of the mafia-style organization crime, that is, the analysis and judgment of necessary conditions of the establishment of organizations are the indispensable part in the theory and judicial practice. The identification of characteristics in organization, economy, behavior and perniciousness of gangdom is also the main content to combat such crime.

Project

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