



The Identification of Serious Circumstances of Help Information Network Criminal Activity Crime

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Abstract. Since the judicial interpretation of helping information network criminal activity crime was promulgated, there has been a clear incrimination standard for the determination of “serious circumstances” for the crime of helping information network criminal activities, which provides specific judgment ideas for judicial practice. However, there is still a lack of clear regulations on the determination of “other serious circumstances” and “particularly serious consequences”. Meanwhile, there may be deviations in the understanding of the application of judicial practice activities. It can be seen that the relevant provisions of “serious circumstances” in the interpretation remain the deficiency that needs to be perfected now. By relying on relevant judicial cases and referring to other clauses, the bottom line situation can be further refined, so those situations can meet the standard of “serious circumstances” more strictly. Meanwhile, it is conducive to the precise crackdown on crimes and prevents the scope of crimes is expanded wanton.

Keywords: serious circumstances · helping information network criminal activity crime · aider

1 Introduction

The promulgation of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues concerning the Application of Law in Criminal Cases including Handling Illegal Use of Information Networks and Helping Information Network Crime Activities (hereinafter referred to as the “Interpretation”) has made it possible to continuously promote the prevention and control of the cybercrime in judicial practice. However, the judicial institutes lack a unified standard for understanding this regulation, so some of the situations that lack specific regulations need to be explored urgently.

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Based on the judicial interpretation of the crime of helping information network criminal activities, this paper discusses the application of the judicial interpretation with serious circumstances and other situations with serious circumstances that are not directly stipulated in the judicial interpretation, so as to clarify the incriminating standard of the crime. In accordance with a scholar's point of view, when the separate provisions set an independent statutory penalty for assisting offenders, there are three situations including absolute criminalization of assisting offenders, relative criminalization of assisting offenders, and sentencing rules for assisting offenders [1]. This paper adopts the theory that the crime is the sentencing rule for helping offenders, so as to draw a boundary for the determination of the helper's serious circumstances.

Firstly, this article argues that the provisions of Article 12 and paragraphs 1–7 of the Interpretation are all based on the premise that the person being helped commits a crime. If it is verified that the person being helped didn't commit a crime, no matter the degree of the helper's behaviour, he cannot be punished. Secondly, according to the last paragraph of Article 12 of the Judicial Interpretation, the determination of the serious circumstances of helping the offender is still based on the premise of the person being helped commit the crime. According to Article 13, the conviction of the crime is still premised on that the person being helped meets the constitutive requirements and illegality.

2 The Challenge of Identification of Serious Circumstances

At present, there is a lack of clear regulations for the identification of "other serious circumstances" and "causing especially serious consequences" in this crime, which affects judicial practice and results in deviations. The ambiguity of the criteria for the determination of "serious circumstances" undermines the unity of justice, and may even lead to the possibility of excessive criminal circles. Furthermore, when the specific circumstances of serious circumstances are unclear, it probably forces the judicial institutes to abandon this crime and choose other crimes instead [2].

2.1 Serious Consequences Caused by the Person Being Helped

According to the existing judicial interpretation of "serious consequences", on the level of "causing the victim and his close relatives to commit suicide, death or mental disorder", it is obvious that in most cases cyber frauds do not reach the corresponding severity, but are still sentenced to the crime. Thus, it is necessary to effectively prevent the crime from becoming the pocket crime in the new era to make a clear and definite explanation to the unclear provision of "causing serious consequences" and provide the judicial institutes with the basis for judgment.

2.2 Other Serious Circumstances

Currently, except for the six items of serious circumstances in the Interpretation, the only law of identifying other serious circumstances is the ninth item of a judicial interpretation about internet fraud. It writes that knowing others commit cybercrime, providing them

of bank accounts or other payment and settlement tools above five or communication cards above twenty can be identified as serious circumstances. Nonetheless, tools of aiding cybercrime are not limited to the two categories above, which makes it difficult to identify in other situations.

The cases below are evidences of insufficiency of exposition of serious circumstances. In the case of Liu, Wang, etc., the judge deemed that providing Internet access, communication transmission and other technical support can be identified as a serious circumstance [3]. In the other case of Chen Side, the judge deemed that the defendant Chen Side provided technical support to criminal, which can be identified as serious [4]. In the above two cases, the judges regarded the defendants' technical support for cybercrimes as serious circumstances. The judges convicted them of helping information network criminal activity crime without explaining neither the character of the technical support nor the causal relation with the assisted crime.

In addition, there are few regulations about technologies of helping cybercrime related to serious circumstances. In the Interpretation, it writes that one can be identified as knowing by providing procedures, tools or other technical support or assistance which are specially used illegally. Nonetheless, there is no such regulations about serious circumstances.

2.3 Particularly Serious Consequence

Interpretation provides a relatively clear idea for the determination of this crime in judicial practice. The current law also provides relevant provisions on how to determine whether a helper is guilty of the crime when it is impossible to verify whether the helped one constitutes a crime. When the relevant amount reaches more than five times, the standard prescribed from Item 2 to Item 4 of the preceding paragraph in total, or especially serious consequences are caused. The perpetrator should be investigated for criminal responsibility. However, there is no clear provision for the situation of "especially serious consequences". Therefore, to prevent deviations of judicial institutes in determining this crime and this situation, exploring the relevant measures further is needed.

3 Cause of Inadequacy of Exposition

This part mainly explains the reasons of three situations described above. This part tends to discuss those measures by relevant legal provisions and some cases to find the way to tackle those problems.

3.1 Situations Where the Crime Committed by the Person Being Helped Causes Serious Consequences

In Item 6 of Article 12 of the Interpretation, when a crime committed by a person being assisted causes serious consequences, it is "serious circumstance" as provided in the first paragraph of Article 287 of the Criminal Law. In this part, the author summarizes the situation of "causing serious consequences" to the crime of the object of assistance through two bases of determination [5].

First of all, it is determined through legal provisions and judicial interpretations.

In judicial practice, legal provisions are important basis for the determination, and they possessed the best operability as well. At the same time, on the problems existing in the judicial application of some legal provisions, the Supreme People's Court and the Supreme People's Procuratorate will make judicial interpretations with quasi-legal effect. In the case of Leng Jinggao, the judge determined that the defendant Leng had provided communication services such as call forwarding and recharging phone bills to make profits. Under the circumstances that the victim Lou X was defrauded of RMB3.59 million, the case was considered to have caused serious consequences as it is socially harmful [6]. However, according to *the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Telecommunications Network Fraud*, the "serious consequences" should be made up with suicide, death, or mental disorders caused by the victim or his close relatives. Obviously, at this level, most cases of online fraud do not reach the corresponding severity. Fortunately, there is an effective way to prevent this crime from becoming a pocket crime in the new era. That is to make specific interpretations of "causing serious consequences" following legal provisions and judicial interpretations. Then, it would be possible to provide judicial institutes with a basis for judgment [7].

Secondly, the determination is based on the Guiding Cases issued by the Supreme People's Court.

According to the legal thinking principle of "formal rationality is better than substantive rationality", the rationality of rules is more general rationality that can be quantified, while the rationality of substance depends more on the judge's rationality and there are accidental factors. The problem of "different judgments in the same case" may exist in the judicial practice of this crime. Given that, compared to the abstract legal text, the introduction of guiding cases such as 10 typical cases of telecommunications network fraud can provide a more intuitive reference for the determination in practice. Besides, it can effectively limit the discretion of judges, thus ensuring the uniformity of the application of the law.

3.2 Other Serious Circumstances

The reason why the exposition of other serious circumstances is few is that the circumstances of this crime may be based on the result of the helped crime or the level that aiding action contributes to the result, which is different from principal crime. It is hard to make laws to regulate the level of quantity such as amount of data information, messages and time because aiding actions don't infringe legal interests directly. Besides, the causal relation with the assisted crime is difficult to recognize. Nevertheless, a method to limit the punishment range is needed. This part focuses on the explanation of the character of technologies used in aiding cybercrime.

In the Criminal Law, there is a crime of providing programs and tools for intruding and illegally controlling computer information system. By providing such technologies with serious circumstances, one should be convicted of crime. That is to say, some technologies are more dangerous than other and are forbidden by law.

There are three categories of technologies with criminal uses that would help distinguish the dangerous one. The first is technology clearly designed for illegal use. The second is technology designed for legitimate use but overrunning with criminal use. The third is technologies designed for good but susceptible to criminal misuse [8]. That is to say, the character of technologies can be defined by the purpose it was created. The first kind of technology is called “technologies used specifically for criminal purposes” in this passage which will be discussed in the suggestions’ part.

3.3 Particularly Serious Consequence

The law stipulates two types of situations when the object of assistance cannot be verified due to objective conditions. Under the premise that it is impossible to find out whether the assisted person is guilty or not, the amount requested by the helper shall reach the amount of crime stipulated in the article. The other is that when it is impossible to verify whether the person being helped constitutes a crime “causing particularly serious consequences”, the law does not specify the conditions under which the latter situation can be satisfied.

The first type of situation has already appeared in judicial practice. For example, in the case of Li Xiongyu, the defendant Li Xiongyu helped Wang 2 to install and maintain the fraudulent voice CRBT software with the content of “seeking children with a lot of money”, although the defendant knew the behaviour committed by Wang 2 is a fraud. In the absence of evidence to prove the existence of objective conditions, whether the behaviour of Wang 2 reached the level of a crime of fraud is the decisive factor for whether the defendant in this case constitutes a crime. However, the judgment did not specify whether the person being helped constituted the crime of fraud, but directly identified the defendant as the crime of help information crime [9]. However, in this case, the amount of Li Xiongyu’s illegal income should be 54,000 RMB, which is more than five times the fourth standard stipulated in the law. Therefore, on the premise that the person being helped commits a crime, even if it is not determined whether the offender of being helped constitutes the crime of fraud or not, the helper can still be convicted.

From the judgments of above cases, we can find that specific and clear provisions can provide clear judgment ideas for judicial practice, but do not completely deprive judges of their discretion. Accordingly, when making specific provisions to reach the level of “especially serious consequences”, the amount of crime or other criminal results can be evaluated by regarding the specific provisions of the preceding paragraph.

4 Suggestions

Under the premise that the person being helped has already constituted a crime, the provisions of Articles 6 and 7 of the Criminal Law of “serious circumstances” are still not enough to express “the crime committed by the person being helped has caused serious consequences” and “other serious circumstances”. In addition, when it is impossible to verify whether the person being helped has reached the level of a crime due to objective conditions, in addition to the specific provisions of the law, there are also situations that “cause particularly serious consequences” and it is not clear enough. Therefore, the authors will start from these aspects to find solutions.

4.1 Situations Where the Crime Committed by the Person Being Helped Causes Serious Consequences

After comparing and analysing some relevant judicial interpretation of illegal fundraising and concealment of criminal proceed, it is not difficult to find that there are two consensus among the judicial departments on “serious consequences”: one is causing others to commit suicide, death or mental disorder, etc., the other is causing bad social impact.

Concerning the latter, to ensure the vitality and tension of criminal law provisions, the judicial department does not make a clear definition but has proposed two principles. One is that judges should exercise a certain degree of discretion in handling cases. The other is that procurators should refer to judgments in similar cases while considering their life experiences, logical rules, etc. [10]. However, in practice, taking into account the existence of contingency and the above-mentioned discussion on the superiority of “technical means over legal means”, the author believes that it is still necessary to limit its scope accordingly.

Considering the existence of commonalities and characteristics in judicial determination, after making an organic summarize of the interpretations above and the judicial judgments issued by the Supreme People’s Court, the author has obtained the following conclusions on the determination of “bad social impact”. Firstly, it has a large scale of infringement which could involve multiple people and times, as well as categories. Secondly, the criminals possess subjective malignancy, bad nature, cruel or novel and complex means, and they could bring great danger to society. Thirdly, the criminal has used the network to pose a serious threat to others’ personal property security and the vulnerable groups in society. Fourthly, it has seriously affected people’s production and living, even causing serious chaos in public order and national interests. Certainly, there still are things that cause a bad social impact existing, but they cannot be listed completely.

The author would return to the discussion on “causing serious consequences”. It may be advisable to link it with the common consequences of Help Information Network Criminal Activity Crime such as information leakage and economic losses because of the characteristics of cybercrime. Meanwhile, it is beneficial to refer to the furthered interpretation of “Causing Serious Consequences” based on the interpretation of “Crime of Destroying Computer Information Systems” as a reasonable supplement to the above content [11].

First of all, the author would take the characteristics of this crime into consideration. It is contingent on two aspects whether the leakage of user information has caused serious consequences. One is the importance of user’s information, and the other one is the degree of harm resulted from the leakage. In addition to the latter, it could be measured by the aspects of the number of information and users involved, as well as losses.

Moreover, this crime is highly related to the crime of fraud and theft, which would pose a great threat to the safety of citizens’ personal property. Besides, causing greater economic losses to others shall be severely punished. Referring to judicial cases, it is recommended that 5000 yuan should be used as the starting point for “larger economic losses”.

Besides, Article 4 of the Interpretation has explained “causing serious consequences”, which can be paraphrased as follows. The first one is causing the disclosure of information may affect personal and property safety and the next one is causing serious consequences such as death, serious injury, mental disorder or kidnapping of others. Besides, causing major economic losses include seriously disrupting social order, endangering national profits and so on.

In summary, the “serious consequences” stipulated in “the crime committed by the helped object constitutes serious consequences” can be further refined as follows. Firstly, in violation of relevant national regulations, the acquired citizens’ personal information is sold or provided to others. Meanwhile, it is used by others to commit a crime, which has led to the victim being kidnapped, physically or mentally disturbed and dead. Secondly, the act has caused major economic losses, no matter public or private property. In addition to those, seriously disrupting social order, causing a bad social impact as well as endangering national profits should be mentioned. As new things are constantly emerging, there would certainly be some serious consequences that cannot be enumerated.

4.2 Other Serious Circumstances

It is suggested that if one provides technologies used specifically for criminal purposes to cybercrime and the criminal does use them to commit a crime, the helper’s action should be identified as a serious circumstance. A notion can support this measure when the result should be attributed to the act of help, it is necessary to judge whether the benefit brought by the act of providing Internet technical support is less than the infringement of legal interests [1]. If technology support can only result in infringement of legal interests, it is illegal and serious. In most situations, the first category and technology for illegal use would merely endanger the society since it is not designed for good purpose. Thus, providing this technology to criminal could be a serious circumstance.

There are two steps to employ this measure. The first step is to identify the provided technology whether used specifically for criminal purposes. That is to say, the technology was designed for illegal use. The second is that a crime is related to this technology or it can be easily foreseen that this technology will lead to bad result of a crime. For example, one designed a fraud software and provided it to an internet fraud criminal. The criminal operated it and committed a crime. This helping crime situation is a serious circumstance because the software was designed for illegal use and the crime is attributed to it. If the criminal just committed a part of a crime, but it is foreseeable that the technology was bound to lead to the result of the crime, it is also a serious circumstance. In the case of Liu, Wang, etc., [3] the signal receiver equipment was designed for criminal purpose. Meanwhile, Liu and Wang, etc. were trained by criminals to operate this technology. Obviously, this act of operating technology is bound to result in crime, which could be identified as a serious circumstance. In the other case of Chen Side, [4] the fake shopping website was clearly designed for illegal use. Chen Side provided server hosting and interception prevention technologies for it, which can be seen as operating technology used specifically for criminal purposes. At the same time, it was used by the principal criminal to commit crimes. Therefore, Chen’s act can be identified as a serious circumstance.

This measure which limits discretion would unify the employment of the law of this crime in every similar case. In some circumstances, the judge can convict only those who provided technologies used specifically for criminal purposes as crime. In other words, if one provides tools designed for legitimate use to criminal without meeting other items of serious circumstances, he should not be sentenced. In short, this measure could build a clear line between crime and innocent.

4.3 Particularly Serious Consequence

Protecting human rights and interests is the unchangeable goal of criminal law. Nowadays, the security of cyberspace is increasingly penetrating and replacing the dominance of traditional legal interests [12]. At the same time, in the light of the requirements of the principle of statutory crime and punishment, the sub-rules of the criminal law should upgrade the operability in terms of constituent elements. Beyond that, it can try to use the description of crimes to allow the legislation to be more detailed and clearer [13]. From the perspective of current judicial practice, the judgments of most cases belong to the situations stipulated in the first few paragraphs of the judicial interpretation. It can be noticed that the criminals are found guilty by reaching the amount of crime or meeting other conditions stipulated by law. Therefore, the circumstances under which the criminal consequences of the act of assistance are sufficient to reach a particularly serious level can be explored regarding other provisions.

For meeting the condition of “especially serious consequences”, the specific consequences can be judged from three aspects including the victim’s safety, property, and the expansion of the scope of influence. First of all, whether the damage caused to the victim’s property has reached the level of “especially serious consequences” can be determined by the “extraordinary amount” stipulated in other relevant crimes. For example, the use of the Internet to commit fraud crimes can be evaluated with reference to the level of related fraud crimes. In this way, it not only avoids the inappropriate expansion of the scope of the crime but also restricts the scope of application. It is noticeable that the legitimate daily business activities, the threshold of the number of illegal gains, and sales are calculated from the time when it is known or should be known. Since the amount before the crime is legal income, it is not calculated [12]. Secondly, from the perspective of the victim’s safety, if the victim’s reputation is seriously affected or spirit is severely damaged, even chooses to commit suicide, the crime committed will seriously jeopardize the victim’s rights. Accordingly, violating estimating personal interests can also meet the “especially serious consequences”. Thirdly, the helper commits some actions to amplify the impact of the crime, which can also be regarded as a particularly serious circumstance. Because the accomplices lure more people to participate in the crime, it will undoubtedly deepen the social harm. It is true that countries from a wide variety of legal and cultural backgrounds already accept the premise of aiding and abetting liability. In its extensive study on the principles of international customary humanitarian law, the International Committee for the Red Cross found the law included that nobody might be convicted of an offense unless it is based on individual criminal responsibility”. It is needed to be understood that the individual criminal responsibility described above includes facilitating, aiding, or abetting the commission of a crime [14]. Based on that, abetting to expand the scope of the crime can be regarded as the third situation.

5 Conclusion

The main purpose of this passage is to improve the Interpretation. Specifically, it is time to improve the criminalization standards and judgment rules by combining the objective situation in judicial practice and relevant theoretical basis. For instance, the legal provisions of a crime can be improved by referring to the judgment results of other cases and the legal provisions of other crimes. With the development of science and technology, cybercrime cases are endless and legal provisions should also keep pace with the times. The conclusion of this study provides more specific ideas and directions for perfecting legal provisions. It is expected that the research results should be paid attention to by some more prestigious scholars in the legal field, and the existing problems could get attention. Corresponding regulation of crimes is the premise and foundation for the existence of good order in cyberspace. The improvement of laws and regulations is more conducive to the precise fight against crimes and the healthy development of the network environment, which is of great significance to the effective deterrence of crime.

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