

The Judicial Application of Crimes of Helping Information Network Criminal Activities

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Abstract: With the in-depth development and extensive application of information technology, the use of information network crime is increasingly rampant, and the fundamental purpose of this is to regulate the helping behavior in network crime. In judicial practice, the application of this crime shows a trend of rapid expansion, but at the same time, there are also some difficulties and disputes, which are mainly reflected in the subjectivity of the identification of “knowing” in the constitutive elements, and the ambiguity of the definition of “helping behavior” and “serious circumstances.” Based on this, people should clarify the connotation of the constituent elements of the crime, and unify the identification standards of the crime, to achieve accurate application in judicial practice for better governance of network crime.

Keywords: Crime of helping information network crime; Constitutive elements; Judicial application

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1. Information network criminal activities crime assistance overview

Since the establishment of this crime, the academic circle has extensively discussed the nature of the crime of helping information network crime. “Sentencing rules” and “the crime of helping behavior” are two mainstream views at present ^[1]. The view of the sentencing rule is that the establishment of the crime is only to better regulate and punish the helping behavior of cybercrimes, which is a special sentencing rule. Some scholars point out that the crime of helping information network crime is a unified sentencing rule for the crime of helping information network crime, which still needs to be subject to the crime of assistance, so it still needs to abide by the traditional accomplice theory ^[2]. It is also the current mainstream view of helping behavior, which holds that as long as the legislature sets independent charges and sets an independent statutory punishment for the helping behavior, it is the legislative provision of the helping behavior ^[3]. Under the framework of this view, the helping behavior is no longer limited to the subordinate status of the accomplice, that is, it is not the necessary condition of the helping object to realize the constitutive elements of the crime. On the contrary, as long as the act of helping meets the constitutive elements of this crime, it can independently constitute a crime.

This study shares the point of view that network crime activities now are more complex and hidden, helping behavior in the independence and role of the network crime activities more prominent, if confined to the traditional accomplice theory, the network crime is not investigated for criminal responsibility, so the predator will not be convicted and sentenced, which will increase the difficulty of network crime governance.

2. Judicial application of information network criminal activities accomplice

2.1. The current situation of the judicial application of the crime of helping information network criminal activities

According to the search results of the author on the judgment documents website, the number of judgment documents on the crime of information network criminal activities complicity shows a significantly increasing trend. Specifically, there were 31 in 2017, up to 61 in 2018 and 144 in 2019, then climbed to 3,054 in 2020, 21,425 in 2021, 11,781 in 2022, 16,235 in 2023, and 5,843 by August 2024. In H province, for example, through the judgment in online retrieval “information network crime assistance” in 2023, H province grassroots court listed 1775 cases of information network crime assistance. Based on the search by keywords “innocent” and “probation”, there are 7 cases of not guilty and 961 cases of probation sentences respectively.

According to the above search results, it can be seen that the crime rate of helping information network crime activities in judicial practice is relatively high. On the one hand, it is due to the surge of network crime activities; on the other hand, crime is widely used in judicial practice, showing a trend of helping the bottom line. At the same time, the probability of the perpetrator of the crime finally receiving the applicable probation sentence is relatively high. This situation shows that the subject of the crime is relatively light in terms of subjective malignancy and social harm. At present, when the crime of helping information network crime is widely used in the governance of network crime, how to correctly understand its connotation and accurately apply it has become an urgent problem to be solved in judicial practice.

2.2. The dilemma existing in the judicial application of the crime of helping information network criminal activities

2.2.1. The identification of “knowing well” is not clear

According to the relevant provisions in the Amendment to Criminal Law (IX), the crime must require the actor to be “knowing” subjectively, but the identification of the actor “knowing” is also a difficult problem in judicial practice. Nowadays, as for how to determine whether the actor “knows” others use the information network for criminal activities, Article 11 of “Interpretation of Help Letter Crime” clarifies the presumption that the actor subjectively “knows” under seven circumstances, and establishes the rule of the constructive knowing for the subjective identification of the crime. In addition, the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security jointly issued in 2021 on the telecom network fraud criminal cases of some issues of applicable law (2) “(hereinafter referred to as the “electric cheat opinion (2)”)”, has been clear about the actor can judge “knowing” others use information network criminal activities related behavior pattern.

In the actual judicial trial, it often tends to expand the explanation of “knowing”, and interpret “knowing” as “should know” or even “may know”, which increases the probability of the crime of helping information network criminal activities. By referring to the relevant legal documents, it can be concluded that the judge-specific trial involving information network crime cases assistance, for “knowing” elements often appear

insufficient, documents failed to show the determination of the defendant's subjective knowing state basis and reasoning process, but just repeat the crime prescribed by the law. Investigate its reason, on the one hand, is to reduce the proof and trial difficulty, thus more effectively combat and governance network crime because the specification level has not established unified standards, which led to the judicial practice of "knowing" inconsistency, thus affecting the crime in the judicial application.

2.2.2. The definition of "help" behavior is unclear

As for the definition of "helping" behavior in the crime of helping information network criminal activities, the expression of the Amendment to the Criminal Law (IX) mainly covers the forms of technical support, advertising promotion, and payment and settlement, and also implies that there may be other forms of helping behavior. In the judicial interpretation issued by the two high schools, the specific connotation of "help" behavior is not further elaborated, and the interpretation of the word "etc." in the law is not detailed, which to some extent leads to the court in the "help" behavior ^[4]. "Electric cheat opinion (2)" article 7 of the variety can be identified as the crime of "complicity" and "help" for a more detailed list and instructions, but in the actual case processing process, usually, there is still ambiguity in other types of complicity situation.

In judicial practice, the court usually expands the scope of application of the crime in addition to the helping behavior clearly listed in the provisions. A common kind of help behavior is reflected in the person's personal bank card or phone card rented or transferred to others to use. For such cases, in the process of hearing, the court usually regards the behavior of the perpetrator in providing the bank card as the payment and settlement support for the criminal behavior of others, and then convicts and sentences the perpetrator only based on the amount of capital circulation in the bank card. However, it must be prudent to point out that if the actor does not participate in other links to the crime after providing the bank card, it is necessary to explore the substantial similarity with the payment and settlement behavior such as bank card transfer and POS machine withdrawal and whether it constitutes payment and settlement help ^[5]. If the act does not meet the identification criteria of payment and settlement assistance, its legal nature and the corresponding legal evaluation should be further evaluated. In addition, it can be learned from the judgment documents of some cases that the judicial organs also judge the labor activities of the defendant to pick up the transit personnel as auxiliary behaviors, which exceeds the scope of the crime of helping information network criminal activities listed in the legal provisions.

2.2.3. The identification standard of "serious circumstances" is vague

In Article 287 of the Criminal Law of China and its related interpretations, the definition of "serious circumstances" has somewhat ambiguity and generalization, which makes it widely controversial in the qualitative and quantitative judgment of the crime. As one of the constitutive elements of the crime of helping information network criminal activities, "serious circumstances" occupy a core position in the evaluation. When the actor's assistance is consistent with the constitution of the crime, but the overall evaluation does not reach the degree of "serious circumstances", the perpetrator shall not be convicted and punished ^[6]. However, because of the ambiguity of the "serious circumstances" boundary, the court has different standards in judging whether the actor has acted up to this standard. If the helper commits the crime only with the assistance of the perpetrator, the assisting behavior is identified as "serious circumstances", or the seriousness of the crime of the assisted object is directly presumed as the "serious circumstances" of the perpetrator's assistance behavior,

which may lead to the deviation of conviction and execution.

3. The application of information network criminal activities assistance

3.1. Reasonably define the judgment standard of “knowing”

When discussing the legal meaning of “knowing”, it is necessary to distinguish two situations: one is the clear knowledge of the actor; the other is the common knowing or collusion in the joint crime. According to the legal norms of joint crime, when the actor participates in criminal activities together, the basic communication and confirmation of criminal intention are necessary, that is, the common part of subjective intention^[7]. However, given the non-specific nature of the behavior object in the cybercrime and the concealment of the helping behavior, the definition of “knowing” in cybercrime does not require two-way contact between the actor and the accomplice or the knowing^[8].

When determining the crime of helping information network criminal activities, it is only necessary to confirm that the perpetrator has a general understanding of the object of helping to commit the crime. As long as the actor subjectively knows the other may be committing a crime, corresponding legal evaluation and conviction can be performed in the application of judicial practice. In addition, according to the interpretation in article 11 and the electric fraud opinion (2) article 2 of article 8 on nine basic facts, judging whether the actor constitutes “knowing” must also consider the actor’s experience, cognitive ability, trading object, profit, and the frequency of rent or selling bank card. The method of comprehensive identification should run through the whole process of “knowing” judgment. In the absence of the applicable presumption rule, the actor is “knowing” by the comprehensive determination, even if the presumption conditions are met.

3.2. Clarify the boundaries of “helping” behavior

The definition of “helping” behavior should be rigorous and rational. If the “helping” behavior is simply understood as the criminal activities carried out by the helping object, without distinguishing specific functions, the application scope of the crime may be too broad^[9]. In judicial practice, a large number of cases that help the crime of information network criminal activities involve the behavior of providing bank cards, which provides convenience for criminals to pay and settle accounts, and realize the purpose of defrauding others of money. Although there is a causal link between the behavior of providing bank cards and the network fraud of criminals, there is still a difference in the harm between it and the direct payment and settlement help behavior. Therefore, in the judgment, the defendant’s profit, subjective knowledge, and other factors should be considered, and it should not regard all the behavior of providing bank cards as constituting a crime. In addition, if there is a causal relationship between the criminal behavior of the perpetrator and the helping object, but the helping object has not yet entered the criminal state, the crime construction standard of the perpetrator’s helping behavior should be more strictly grasped.

In addition to the specific help behavior, other help behaviors should be according to the same interpretation rules as the other types of behavior with listed behavior analogy, judge the law infringement and other help behavior should be with listed help behavior of the law^[10]. In this substantive investigation, the court needs to analyze the other help behavior and case homogeneity, homogeneity means that other help behavior in nature should be similar to listed help behavior, namely the role in the process of crime, the promotion of crime results, and the harm to society should be comparable.

The substantive investigation also requires the assessment of the legal infringement of the helping act, which refers to the degree of damage caused by the helping behavior to the interests protected by the law. When evaluating, it is necessary to consider whether helping acts directly or indirectly lead to the occurrence of criminal results, and the extent to which the results undermine social order and public interest. Only when the infringement of other helping behavior on legal interests is equal to the listed helping behavior, can it be included in the category of legal regulation.

3.3. Standardize the identification of “serious circumstances”

In addition to the crime of helping information network criminal activities, the legislation adopts general technology and lacks clear standards for the definition of “serious circumstances”. To optimize the operability of judicial practice, the relevant explanations have clarified the number and amount of helping acts and other specific circumstances, and provide a specific basis for the judicial members. In judicial practice, the definition of “serious circumstances” needs to be more detailed consideration. When judging the “serious circumstances”, judges should mainly focus on the objective damage results, and comprehensively consider the substantive role of helping the right offender in the criminal process and its resulting economic loss ^[11]. Given all kinds of helping behaviors, the nature, means of implementation, and other factors should be deeply analyzed to determine the degree of harm caused by the behavior to the society, and combined with the subjective understanding of the actor, to comprehensively evaluate whether the behavior constitutes “serious circumstances” ^[12].

In addition, given the definition of the “serious” standard, judges can start from the guidance case, through the enacted information network crime-related guidance case, for the lower court in the case, to ease the current judgment information network if the problem is “serious” ^[13].

4. Conclusion

With the continuous development of network technology and the constant change of social needs, cybercrime has become one of the important factors threatening social security and stability due to the complexity and concealment of cybercrime. By establishing information cybercrime law, the spread of cybercrime can be curbed from the source. However, the application of law is not invariable. With the continuous change of criminal forms, the application of the crime of helping information network criminal activities also needs to be constantly improved and adjusted ^[14].

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