

The Dilemma and Perfection of Subjective Factors Identification in Network Joint Crime

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Abstract

With the continuous development of network information technology, a large number of hidden and fuzzy network joint crimes began to appear. Because of the complexity of its behavior, it is difficult to identify it subjectively. Through the identification and analysis of “connection of intention” and “knowing” in network joint crime, this paper studies the dilemma of identification of these two factors in network joint crime, and puts forward relevant improvement measures to strictly regulate network joint crime and create a good network space.

Keywords

Cyber Crime, Joint Crime, Meaning Connection, Knowing That

1. Introduction

As the world's most populous country, China has a large number of Internet users and advanced network infrastructure. At the same time, the development of Internet technology has brought convenience to our communication, but under the condition of profit-driven and its own advantages, cyber crimes emerge in an endless stream. At present, the legislation of combating network crime has become one of the mainstream of criminal legislation (Yu, 2015). But because of the characteristics of network joint crime, it is difficult to identify it subjectively. It is very difficult to strike network joint crime. Through the study of Peking University zuobai, Chinese Judgment document network and related theories, it is found that there exist some problems in the subjective aspect of network joint crime, such as the disunity in the determination of “knowing clearly” and the difficulty in confirming the intention of the connection. Through the research and exploration of the problems, on the basis of summarizing judicial experience and aca-

demographic experience to explore the path of improvement.

2. Overview of Joint Crime

Before the study of information network joint crime, we should first clarify the identification of general joint crime in China. According to the provisions of Article 25 of China's Criminal Law, "joint crime refers to the intentional crime committed by more than two people together". According to the relevant laws, the subjective conditions of common joint crime in China are mainly stipulated in three aspects.

2.1. There Is a Connection between the Co-Perpetrators

In the determination of common single crime, in the subjective aspect, we should mainly consider its will factor and cognition factor, in addition to consider whether there is a connection between criminals, which is a unique element of joint crime. In order to establish a joint crime, there must be intention connection between the joint criminals, that is, the perpetrators of the crime communicate with each other about their intention of the crime. In the practice of our country, only express and explicit intention connection can be regarded as intention connection in joint crime. Through the study of relevant cases, at present, the identification of the connection of intention of network joint crime mainly depends on the identification of extracted evidence, that is, in accordance with the legality, authenticity and relevance of evidence, so that all reasonable doubts can be eliminated. Through the study of relevant evidence, we can determine whether there is meaning connection between the actors.

2.2. Knowing Factor Is Knowing Well

After the completion of the liaison, the actors involved in the joint crime should be "aware" of the personnel factors of the joint crime. Here knowing well mainly refers to two aspects: first, each co-offender's understanding of other actors, that is, they realize that they are not a person in the crime, there are other people's existence. Secondly, the joint offenders' understanding of harmful results: they not only realize that their own behavior will lead to harmful results, but also realize that other people's behavior will also lead to harmful results, that is, their understanding of the social harmfulness of their behavior and the joint offenders. At present, in the field of network joint crime, some scholars believe that only those who are deeply involved in the crime can be punished, that is, knowing does not include the possibility of knowing, but the certainty of knowing. Some scholars believe that including may know. Through the legislative and judicial interpretation, the subjective cognition of the perpetrator in the network joint crime requires to know the degree of the crime.

2.3. The Factor of Consciousness Is Hope or Abandonment

Under the condition of intention connection and knowing realization, the joint

criminal decides to participate in the joint crime through his choice of free will, and the perpetrator holds a hopeful or laissez-faire attitude towards his own harmful behavior and the consequences of others' harmful behavior. The "hope" here means that the actor actively pursues the occurrence of the harmful result in the case that the harmful result is possible or inevitable. "Laissez-faire" means that the actor holds a resigned attitude towards the occurrence of the harmful result when he knows that the harmful result may happen. In terms of determination of the will factor, the common determination of joint crime is adopted, that is, hope or abandonment.

3. The Subjective Identification Dilemma of Information Network Joint Crime

3.1. The Dilemma of Identification of Meaning Connection in Network Joint Crime

The intention connection is an important index to judge whether the various actors constitute a joint crime. The purpose is to prove whether there is criminal will between the various actors. If there is no common will to commit a crime, it can not be regarded as a joint crime in criminal law that each actor commits a crime of the same nature at the same time and in the same place. Compared with the traditional joint crime of meaning connection, network joint crime is more complicated and difficult to identify meaning connection because of the particularity of its media (Mei & Zhang, 2019).

First of all, it is difficult to identify meaning contact. Under the condition of the Internet, the limitation of space and time of communication is broken, and the communication is more convenient and immediate. Through the retrieval of relevant cases, in practice, the actor has a strong sense of self-protection when communicating and communicating on the Internet, and generally uses some vague symbols and words to express himself. This problem exists in a large number of judicial cases. For example, in the fraud crimes of Zhong Yuying and Zhang Haiyan, the perpetrator used "jin" on the network social networking platform to indicate that investors put money into the platform. In addition, the network has the characteristics of virtuality. The perpetrator uses one or more accounts with hidden nicknames to commit crimes, forming a network communication mode of one-to-many, many-to-one and many-to-many. In the case mentioned above, the actor has multiple accounts and uses virtual nicknames to communicate with each other. Therefore, the use of sign language as a special means of meaning communication is a major barrier to the intentional presumption of joint crime on the Internet (Gou, 2022).

Then, ambiguous identification of meaning connection in chain crimes. At present, the main form of network joint crime is chain type, that is, there are various links in the upper, middle and lower reaches, and the actors in different links form the intention connection to carry out the specific implementation of the crime. This type of network crime is characterized by ambiguity and uncer-

tainty. Through the retrieval of related cases, this feature is particularly prominent in the crime of fraud. Take telecom network fraud as an example, the perpetrator of the upstream link is responsible for collecting citizens' personal information, and then sell the information to the perpetrator of the middle link. The perpetrator of the middle link uses citizens' personal information to carry out specific crimes, and the perpetrator of the downstream link is responsible for laundering the illegal income. In this kind of chain crime, it is difficult to identify the joint crime of the actor and the organization in each link because it is impossible to identify the degree of participation of the actor in each link in the connection of intention.

3.2. It Is Difficult to Identify “Knowingly” in Network Joint Crime

In the information age, there is no doubt that we should still adhere to the traditional subjective fault standard of criminal law, but in the face of a large number of alienation of traditional crime in the network, we have to think about how to reasonably expand the interpretation of the traditional legal doctrine of crime to respond to the progress of The Times and the renewal of criminal means (Yu, 2010). In view of the current development trend of Internet technology, the number of cyber crimes in China has been increasing in the proportion of crimes, among which the difficulties in the identification of “knowingly” in cyber joint crimes mainly lie in the following two aspects:

Firstly, with the development of information network, network information crime has formed a complete criminal chain from technical support to information collection and then to concrete implementation. With traditional criminal conspiracy “sense” between multiple crime subject is the logical starting point of joint crime was established, the characteristics of concealment, virtual network space itself, hidden in the virtual identity after actor through the network of resources and information sharing mechanism, need only weak point contact mean don't even need to contact can be objectively are involved in the crime (Yu, 2018). For joint crime in the crime of the main body of the crime that is difficult, at present our country for the cognizance of “knowledge” is controversial, which include the degree of certainty degree, should know the result, and whether, for the purpose of making profits for the cognizance of “know” is different, resulting in different in specific cases. For example, in the crime of helping information network crime, some scholars believe that punishment should be based on this crime when the specific object is deeply involved in this crime, that is, it should be known indeed. However, some scholars believe that limiting knowledge to actual knowledge will excessively limit the severity of punishment.

Secondly, Judicial interpretation is out of step with practice. Currently existing in the judicial interpretation in the second, knowing that there was a problem with the way constructive mode, the criminal law explanation to the purpose as the guide, follow the principle of is closely related to the purpose and rules, to explore the significance of the norms of criminal law through the magic weapon

of Peking University and Peking University in Italy, the relevant case retrieval research, found that the current in the fight against cyber crime in judicial practice. There are very few cases in which the accomplice is deemed to constitute a crime according to the presumption rule (Qu, 2012). According to the principle of interpretation of criminal law, “knowingly” should be identified in judicial practice through the inference of individual cases. There are many kinds and complex contents of network joint crimes, such as accomplice, one-sided accomplice and accomplice. The presumption of “knowingly” by judicial organs lacks consideration of the characteristics of the existence of cyber crimes, making judicial interpretation disconnected from practice to a certain extent.

4. The Perfect Path of Subjective Identification System of Network Joint Crime

In the changeable and complex network environment, from the subjective aspect, the study of network joint crime, facing the regulation problems mentioned above, put forward the improvement path, and reconstruct the subjective recognition system of network joint crime. In the face of the difficulty of the identification of “meaning connection”, different identification conditions should be set up and clear requirements of cognition level should be stipulated. In view of the difficulty of “knowing well”, this paper gives full play to the role of guiding cases, combines legislation with practice, and presumes “knowing well” based on the whole.

4.1. The Perfection on of Meaning Connection under Information Network

At present, the expression of common intention in joint crime requires that one’s criminal intention and criminal purpose be clearly displayed to the counterpart in an express way. But network joint crime is more complex, based on special symbols, network joint crime is not limited to express. In view of this phenomenon, should be identified according to specific circumstances. For the perpetrator to temporarily use symbols that can be understood by ordinary people to express his intention, there is a clear purpose of crime, that is, the existence of meaning connection; for an organization formed over a long period of time rather than a temporary idea by the actor, a special symbol that is difficult for ordinary people to recognize is adopted, but the counterpart knows the meaning of the symbol, that is, the existence of meaning connection is recognized.

For the chain type network joint crime, we can make clear identification rules on the degree of participation of the actor in each link. In this type of crime, generally as long as the organizer, the manager and the perpetrator of the specific crime have a complete understanding of the purpose of the crime, the perpetrator of other links, generally only with their own understanding of the work content, the purpose of the joint crime is not very obvious. Therefore, according to the specific role played by each actor in the crime, the cognition degree of

each actor is stipulated in different degrees, so as to solve the identification of intention connection in the chain network joint crime.

4.2. The Perfection on of “Knowing” Presumption Rule under Information Network

At present, there is no uniform regulation on “knowing well” in judicial interpretation, which is more prominent in judicial practice. Therefore, the presumption of “knowing well” in joint crimes should not only consider the subjective and objective comprehensive factors of the suspects, but also make normative provisions on the presumption of “knowing well” from different angles based on the overall criminal law, starting from legislative interpretation, judicial interpretation and judicial practice. Rising to summarize case for judicial interpretation, shall be based on the behavior of the multiple and high probability as the standard, by summing up experience about knowing that, in the judicial practice of “knowing” unified interpretations, be helpful for maintaining the authority of criminal law, at the same time better is suitable for the current network status of joint crime.

With the rapid development of the network, crimes in this field are complicated and changeable. In order to combine justice and practice organically, we need to make good use of and play the role of guiding cases. Guiding cases can meet the needs of countries with written laws to refine legal rules and face special cases through their functions of interpretation, clarification and declaration (Chen, 2018). At present, China has a variety of channels to learn about the latest cases, such as Peking University Zubi, Peking University France and Italy, China Judgment Documents network, etc. Releasing guiding cases on the website is conducive to courts in the subjective aspect of network joint crime reasoning more complete. Through issuing guiding cases, the presumption rule of “knowing well” is elaborated in detail, and the practice is combined in judicature.

5. Conclusion

The network of traditional crime and the traditionalization of network crime brought about by the continuous integration of real society and network society make the current means and identification way can not meet the needs of combating network crime in the information age (Zhu, 2020). The detailed identification of joint crime in the information network is to achieve the goal of security and order. Security and order is the premise of the sustainable development of information technology. Strict legal regulations on joint crime are carried out to establish and improve the security order of network environment, so as to make them healthy and orderly development of network technology.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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