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Analysis of the Causes and Solutions for the Imbalance in Sentencing of the Crime of Assisting Information Network Criminal Activities

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Abstract. In recent years, with the rapid development of digital technology, many types of cybercrimes have been on the rise, such as telecommunications fraud and online gambling. Among them is one of the key cybercrimes in contemporary times - the crime of assisting information network criminal activities (hereinafter referred to as "Aiding Information Network Crime"). Concurrently with the escalating number of cases involving assistance and credit, there has emerged the issue of sentencing imbalance in judicial practice. The main reasons causing this issue are threefold: insufficient sentencing space, mechanized application of the "serious circumstances" criterion, and the imperfect "serious circumstances" criterion. To solve this problem, the following three points need to be achieved: First, expand the scope of severe punishments and establish corresponding criteria for "particularly serious circumstances". Second, flexibly apply the identification criteria to comprehensively evaluate the behavior of the perpetrator. Thirdly, people should refine the criteria for identification. Different types of assistance in crime activities should have their own corresponding standards for "serious circumstances". This measure not only effectively maintains the credibility of the judiciary but also helps to implement the basic principle of "correspondence between crime and punishment".

Keywords: Assistance in cybercrime activities crime, imbalanced sentencing, severe circumstances

1. Introduction

With the rapid popularization of technology, online criminal assistance has become a hot topic of discussion, presenting characteristics such as diversified types, younger criminal subjects, and novel criminal behaviors. Although many countries have made significant efforts to combat this behavior, for instance, China has established the "aid in crime" crime category and has repeatedly issued judicial interpretations to facilitate its application in judicial practice, the European Union's Investigation and Criminal Police Organization has proposed to combat cybercrime through a public-private partnership, and Indonesia has promoted the new draft of the "Criminal Code" to address the ambiguity in the definition of the act of aiding in cybercrime and other related issues

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[1,2]. However, it is undeniable that the number of cases involving the crime of assisting in illegal information transmission continues to rise, and it has even become one of the top five criminal charges in China. At the same time, in judicial practice, there have been many issues regarding the crime of assisting in information technology crimes. In particular, one of the key elements that can reflect whether the principle of matching crime responsibility with punishment is achieved - the issue of sentencing - has also emerged.

Judging from the handling of assisting behavior in cybercrime by countries around the world today, the sentencing imbalance of assisting behavior in cybercrime has become an international judicial dilemma, and different countries are facing similar governance challenges. A study based on 148 cases of online marriage and love fraud in the United States shows that although the sentencing outcomes of perpetrators are mainly influenced by statutory factors, the lack of sentencing gradients for different assisting behaviors has led to extremely small or even overlapping sentencing disparities among accomplices with different levels of harmfulness [3]. This phenomenon has seriously affected the uniformity and authority of the judiciary. Similar issues also exist in the European Union, manifested in significant differences in penalties for the same type of assisting behavior in different countries. Especially for cybercrimes of the technical assistance type, the sentencing disparity among member states can reach several years, showing a "polarized" characteristic [4]. Similarly, this issue also exists in China, specifically manifested in the sentencing imbalance between low and high profits under the same circumstances; the sentencing imbalance between those who actively recruit subordinates and those who merely participate in similar payment and settlement behaviors; and the sentencing imbalance between core technical personnel and auxiliary personnel in technical support-related assistance and information provision behaviors. The emergence of similar predicaments in different countries further highlights the universality and severity of the facilitation of crime behavior, as well as the urgency and necessity of addressing the imbalance in sentencing for such acts.

The emergence of the aforementioned issues not only severely violates the basic principle of the proportionality between crime, responsibility, and punishment, but also erodes public trust in national justice to a certain extent, weakening the deterrent and preventive functions of punishment. The phenomenon of "different punishments for the same crime" will fundamentally shake the foundation of social rule of law, causing the public to doubt the fairness of justice, and easily making years of efforts in judicial work go down the drain. Potential criminals may also take advantage of this situation, feeling more emboldened to commit crimes. At the same time, the educational and preventive functions of the law will gradually diminish. The existence of sentencing imbalances undermines the credibility of the state and is detrimental to its dissemination of the concept of fair and just law to society. The "polarized" nature of sentencing disparities has, in some respects, fueled the "arrogance" of criminals. Criminals who commit more harmful acts but receive lighter sentences fail to recognize the consequences of their criminal behavior and are highly likely to commit crimes again after serving their sentences. They may also use rhetoric emphasizing the low cost of committing crimes to attract more people to join them in criminal activities, exacerbating the surge in cybercrime. Correctly addressing this issue will help enhance the deterrent effect on criminal gangs and provide the right guidance to potential criminals [5]. Therefore, based on the significant impact of sentencing imbalance in the crime of assisting and abetting, this article aims to analyze its causes and identify solutions. This is not only a practical need to combat this illegal behavior, but also an inevitable requirement for building a society ruled by law.

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2. Specific manifestations of sentencing imbalance for the crime of assisting in information network criminal activities

In recent years, the number of cases involving "aiding and abetting crime" has been on the rise rather than falling. In 2023, the number of people prosecuted for such crimes by the prosecution authorities reached 147,000, an increase of 13% compared to the same period in 2022.Meanwhile, the vice president of the Supreme People's Court clearly pointed out that the crime of helping information networks has risen to the third place among all types of criminal cases. Various data indicate that the crime of assisting in information provision has gradually become one of the major crimes in China, and it must be taken seriously. While the number of cases involving this crime continues to rise, numerous issues have emerged in judicial practice, among which is the imbalance in sentencing of various types.

2.1. Under the same circumstances, there is an imbalance in the sentencing of low-profit cases and high-profit cases

When sentencing, courts often consider the amount of payment and settlement as well as the amount of illegal proceedings, that is, the transaction volume and profit amount. In judicial practice, according to statistics from scholars, over half of the cases involving assisting illegal activities involve transaction amounts far exceeding the "serious circumstances" threshold of 200,000 yuan, yet less than 30% of the perpetrators have illegal gains exceeding 10,000 yuan. This indicates that although the overall profits from assisting the illegal activities cases are relatively low, they pose serious social harm [6]. More research has shown that in sentencing, there is a high correlation between the perpetrator's turnover amount and their prison term, reflecting an unhealthy sentencing trend of "relying solely on turnover amount" and ignoring the perpetrator's profitability. This leads to sentencing imbalances in cases of assisting and abetting where there is high turnover but low profitability, and vice versa [7]. For instance, in the case of Zhang's money laundering assistance, Zhang handed over his bank card and other items to others. The court only considered that the bank card transaction record of 450,000 yuan met the "serious circumstances" standard for sentencing but overlooked that Zhang only made a profit of 400 yuan and had a relatively minor subjective malignancy. Therefore, the court sentenced him to three months of detention and a fine of 5,000 yuan for money laundering crime. In the case of Lian and Li's assisting the illegal use of information, Li provided his bank card to others for use, with a bank card transaction amount of over 630,000 yuan and illegal income of 16,200 yuan. Both the transaction amount and illegal income far exceeded those of Zhang, but he was only sentenced to four months of detention with a six-month probation and a fine of 3,000 yuan for the crime of assisting the illegal use of information. The difference in sentence length between Li and Zhang was only one month. There are many similar cases where the transaction amounts are almost identical, but the profit amounts vary greatly. However, the sentences imposed on the perpetrators are extremely uneven, which violates the principle of proportionality between crime, responsibility, and punishment.

2.2. The sentencing imbalance between those who actively develop subordinates for similar payment and settlement activities and those who merely participate

Individuals who actively recruit subordinates intend to expand the scale of criminal activities, attracting more people to participate in criminal acts. Their subjective malice is stronger, and their social harmfulness is greater. They should be severely punished. Those who merely participate are

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generally "cannon fodder" under the control of others, meaning they are merely lenders or sellers of bank cards or phone cards, possessing a subordinate role. Such individuals, who have participated for a short period of time and have obtained relatively small amounts of illegal income, should be given lenient punishment [8]. In judicial practice, the significant differences in sentencing between the two have not been fully reflected. In the case of Tan XX assisting in illegal activities, Tan XX not only provided seven bank cards to the upper-level perpetrator, but also actively lured more people to participate in the crime and recruited two subordinates. The court sentenced him to nine months of imprisonment with a one-year and six-month probation for assisting in illegal activities, and imposed a fine of five thousand yuan;In the case of Cai's money laundering crime, Cai provided his corporate account and bank card for others to use. Eventually, he was sentenced to eight months in prison, with a one-year probation period and a fine of 4,000 yuan by the court for the crime of money laundering..The subjective malice of the two is not equal, yet their sentences only differ by one month. Cases like these reflect the sentencing imbalance between those who actively expand the scale of crime and those who merely participate as "card farmers" in payment and settlement-related cases of assisting in illegal activities.

2.3. In cases of technical support-related assistance in crime, there is an imbalance in the sentencing of core technical personnel and auxiliary staff

Core technical personnel are the foundation for the beginning of criminal activities in technical support behaviors and the key to their continuation. In terms of their subjective aspects, they actively drive the development of criminal activities and possess extremely high social harmfulness. From the very beginning, they are illegal [9]. The auxiliary personnel mostly "follow orders" and have little influence on the entire criminal process, with relatively weak subjective malignancy. However, in judicial practice, it is impossible to discern the difference in sentencing between the two. For instance, in a certain case, Li employed Wang and He to develop a chat software. The three of them, along with Liu, sold this software to others for use in criminal activities..The illegal gains of the four individuals were 159,446.13 yuan, 114,482.08 yuan, 57,241.04 yuan, and 19,069.80 yuan respectively. They were sentenced to one year in prison and a fine of 20,000 yuan by the court for the crime of assisting in information technology crimes; ten months in prison and a fine of 20,000 yuan; ten months in prison and a fine of 20,000 yuan;eight months of fixed-term imprisonment and a fine of ten thousand yuan.In another case, Zhai XX assisted the mastermind in conducting fraud by helping to make phone calls. He illegally gained 11,082 yuan and was sentenced to one year in prison and fined 10,000 yuan by the court for the crime of assisting in information technology crimes. Whether analyzed from the perspective of subjective malice or illegal gains, the criminal circumstances of Zhai are milder than those of the aforementioned four individuals. However, his sentence is the same as that of Li, who played the role of a "leader" in the criminal process, which seriously violates the principle of proportionality between crime, responsibility, and punishment.Similar cases all reveal the imbalance in sentencing between core technical personnel and support staff that exists in judicial practice..

Through some specific cases, it becomes even clearer that the types and severity of the imbalance in sentencing in judicial practice are extremely numerous and serious, and urgent solutions are needed.

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3. Analysis of the reasons for the imbalance in sentencing for the crime of assisting in information network criminal activities

3.1. Insufficient sentencing discretion

The statutory penalty for the crime of assisting in information crimes is imprisonment of up to three years or detention, along with a fine or a single fine. Only the criterion of "serious circumstances" has been established, but there is no corresponding regulation for "extremely serious circumstances". This results in an inadequate sentencing gradient for the crime of assisting in illegal activities in judicial practice, making it difficult for judicial personnel to make precise judgments based on different circumstances. Similar but different types of assisting behaviors often fall within the same sentencing range, with small differences in sentencing, failing to distinguish the specific social harm and severity of assisting behaviors, and failing to reflect the differences in the harmfulness of criminal circumstances [10].

3.2. Identification standard mechanization

Mechanization of the determination criteria refers to the situation in judicial practice where judicial personnel solely rely on the transaction amounts in bank cards to determine guilt, while neglecting to consider the subjective aspects of the individuals involved, thereby violating the principle of the unity of subjective and objective factors. In the criteria for determining "serious circumstances" in payment and settlement-related assistance behavior, factors such as payment and settlement amounts exceeding 200,000 yuan and illegal gains exceeding 10,000 yuan are considered as determining factors. This method of determination is overly simplistic and mechanistic, failing to take into account the complexity and scale characteristics of payment and settlement-related assistance behavior. This has led judicial personnel to focus solely on objective criteria such as the transaction records of the offender's bank accounts and the number of phone cards lent out when handling cases, for determining the punishment. Although this is convenient in judicial practice, it tends to overlook the consideration of the offender's subjective malignancy, thereby expanding the scope of the criminal subjects [11]. When imposing the penalty of fines,the judge mainly focused on the amount of payment and settlement or the amount of profit, and paid less attention to the subjective factors of the perpetrator [12]. However, in real life, cases are not all the same. There are some cases that are rare and have unique circumstances. If people continue to judge cases based on a uniform standard in such cases, it will not be conducive to the long-term development of judicial work.

3.3. The identification criteria are not perfect

So far, there is only a unified standard for identifying "aiding and abetting" behavior, which requires that the perpetrator must have "knowledge" in their mind and must perform a helping action and meet the "serious circumstances" criteria. However, there is a lack of specific standards for specific behaviors. For example, in the case of assisting behavior in technical support, there is no corresponding identification standard based on its criminal characteristics. In judicial practice, judicial personnel cannot meet out punishment by considering the comprehensive criminal situation of technical support behavior and fail to distinguish between core technical behavior and auxiliary technical behavior. This results in the coexistence of "heavy punishment for minor crimes" and "heavy punishment for minor crimes", which is difficult to have a sufficient deterrent effect on criminals and cannot achieve the effect of suppressing the occurrence of crimes. Meanwhile, due to

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the absence of corresponding identification standards and the lack of professional technical knowledge among the case handlers, it takes them a considerable amount of time to explore and distinguish the severity levels of the perpetrators' actions during the case handling process. This significantly increases the difficulty of the case handling and wastes both the case handling time and judicial resources.

4. Solution for achieving balanced sentencing for the crime of assisting in information network crimes

4.1. Expanding the sentencing discretion

Properly expand the scope of sentencing, increase the sentencing gradient, and establish relevant criteria for determining "particularly serious circumstances". Increasing the sentencing gradient is not about expanding the scope of criminal acts, but rather about distinguishing between serious and particularly serious acts of assisting and abetting through clear identification criteria, in order to facilitate precise crackdowns on different criminal behaviors. Increasing the level of severe punishment, applicable to those who organize and implement the act of assisting and abetting, lure multiple individuals to form a criminal gang, and those who "refuse to mend their ways despite repeated education", that is, those who have already been punished but commit serious offenses again within a short period of time. Such offenders have extremely high subjective malignancy and should be severely punished. By increasing the sentencing gradient, so that criminals with different roles and functions during the crime can receive penalties that are commensurate with their harmfulness, it can prevent imposing overly severe penalties on criminals with relatively minor criminal circumstances [13]. Establishing specific criteria for "particularly serious circumstances" helps judicial professionals determine the severity of the offender's actions based on the corresponding criminal circumstances, addressing the issue of small differences in prison terms for cases with varying degrees of harm. This not only ensures a better balance between guilt and punishment but also serves as a warning to potential criminals.

4.2. Flexibly applying the criteria for determination

When determining the circumstances, it is necessary to comprehensively consider the actions of the perpetrator and the extent of their influence in the criminal process, rather than solely relying on a specific provision or judicial interpretation. It is also important to consider other subjective and objective circumstances. Based on the assessment of factual actions, one must also take into account their subjective value aspects. When assessing the act of assisting in the provision of information related to technical support, factors such as the complexity of the technical means employed by the perpetrator and the degree of assistance provided to upstream crimes should be considered. These aspects can reflect the perpetrator's subjective malice, enabling the perpetrator to be punished in accordance with the degree of harm caused [14].

4.3. Clarifying the criteria for determination

Different standards should be established based on different types of assistance-in-crime behaviors, and the characteristics and traits of each behavior should be taken into consideration. In technical support-related assistance and facilitation (A&F) behaviors, based on the technical attributes of the behavior, the degree of participation, and the consequences of the harm, the behaviors can be classified into two types: providing basic tools and providing core technologies. Those who provide

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basic instrumental assistance should be given lenient sentences due to their low technical involvement, minimal influence in the criminal process, and low social harmfulness.Those who provide core technologies have greater subjective malignancy and play a more significant role in the criminal process. There is a stronger causal relationship between their actions and the criminal outcome. Therefore, they should be given a heavier sentence. Making a more detailed classification of different types of assistance behavior can provide judicial personnel with direction and approach for identification, enabling them to accurately crack down on criminal activities.

5. Conclusion

This article analyzes the imbalance in sentencing for money laundering activities in various countries around the world, including China. It reveals that to address the common problem of sentencing imbalance for money laundering activities in all these countries, corresponding solutions should be formulated based on the underlying causes. To address the issues of the lack of sentencing range and sentencing gradient, legislative measures should be taken to increase the number of sentencing levels and establish provisions for particularly severe circumstances; Regarding the issue of mechanized identification standards in judicial practice, which excessively focuses on objective criteria and ignores subjective identification, efforts need to be made by the judicial authorities to impose requirements on judicial personnel to comprehensively consider both the subjective and objective aspects of the perpetrator; to break through the predicament of imperfect identification standards, it is necessary to make more detailed classifications of different acts of aiding and abetting based on different standards. The above-mentioned issues do not constitute the entirety of the problems in determining the crime of assisting in information crimes. The governance of cybercrimes is a protracted battle. Only by continuously optimizing and adjusting the sentencing system for the crime of assisting in information crimes and creating a sound sentencing system with detailed sentencing rules, unified judicial standards, and a complete sentencing gradient, can people provide a more solid guarantee for building a safe and orderly cyber space.

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