

The Construction of Judicial Standards for the Crime of Provoking Disturbance on the Internet

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Abstract

As an extension of the crime of picking and provoking trouble on the Internet, its legitimacy has been questioned, and there is an obvious trend of expansion in judicial practice. However, if the crime is found to be invalid, it will inevitably cause some fabricating and disseminating false information to lose the criminal law. Based on this, after a brief analysis of the crime, it is necessary to briefly analyze the problems in its judicial application and propose a targeted response path to obtain a reasonable and legal application in judicial practice.

Keywords

Internet Crime of Creating Disturbances; Public Places; Public Order; False Information.

1. Introduction

The so-called crime of provoking quarrels is an aspect of the crime of provoking quarrels confirmed by the Supreme Law and the Supreme People's Procuratorate in the relevant judicial interpretations. It is essentially a product of the crime of provoking quarrels and provoking quarrels and spreading to cyberspace. It can be said to be a standard for the crime of provoking quarrels. Therefore, it cannot be regarded as a standard crime. The judicial interpretation clearly stipulates that acts of fabricating and disseminating false information that cause serious public order are convicted and punished for the crime of creating disturbances. Since the establishment of the crime of creating quarrels and provoking troubles on the Internet, controversies have been intensified. In particular, the "Criminal Law Amendment (9)" added a new charge: the crime of fabricating and deliberately disseminating false information. The related disputes have intensified. Therefore, many scholars are even more questioning: Is there still a need for the crime of network-based quarrel-provocation and provocation? In the author's opinion, if there is no new charge that can completely replace the crime of provoking quarrels on the Internet or before the legislature explicitly denies it, the crime of provoking quarrels on the Internet still has its value, but the specific criteria for its application need to be based. Further Discussion.

2. Investigation on the Status Quo of Judicial Determination Standards for the Crime of Provoking Quarrels on the Internet

The above-mentioned judicial interpretation has been questioned since its promulgation, and its judicial application is even more chaotic. For example, in September 2013, a young junior high school student in Gansu published a question about a death in a local entertainment venue and was found to be a crime based on this interpretation. The incident developed to the end, and the student was released. Another example is that in law enforcement, relevant departments cannot treat online reports with a tolerant attitude, and threaten them with "violations and crimes" at every turn. This makes the crime of provoking trouble on the Internet show the attributes of a pocket crime. The manifestation of the attributes of pocket crimes has greatly enhanced judicial personnel's arbitrariness in understanding the provisions of the

criminal law and the selectivity of law enforcement. It has also enabled judicial personnel to greatly tolerate judicial errors due to various reasons. In turn, this It has further promoted the expansion of the Internet to find trouble and provocation. However, if the relevant regulations on the crime of picking and provoking trouble on the Internet are directly abolished in accordance with the suggestions of some scholars, it will inevitably make it difficult to effectively control the spread of rumors on the Internet. In this regard, the People's Daily commented on this as "The classics are good classics, but unfortunately the monk's thoughts are crooked."

It is precisely because the crime of network-based quarrel-provocation and provocation is needed by the current society, there are many specific applications for this crime, and it is not uncommon for cases of criminal judgments based on the relevant provisions of the crime to be carried out. For example, in the 2018 case of Zhu Moumou and Hao Moumou for provoking quarrels, the two refused to demolish their self-built houses and other buildings in order to obtain government compensation under the premise of a clear agreement, and in order to put pressure on the government, they even made Molotov cocktails. , Fabrication and dissemination of false information on the Internet have seriously disrupted the social order and produced extremely bad negative effects. Another example is the case of Zhang Moujia's provocation and provocation. The perpetrator insisted on petitioning his mother because his mother was administratively detained and his nephew stolen and died abnormally. He spread false information through the Internet without getting the desired result, and was determined to seriously disrupt social order. For the crime of provoking troubles. In the author's opinion, there is nothing wrong with these cases being identified as the crime of quarreling and provoking trouble, but there are some controversies about the definition of some issues, and the related concepts are not clear. Specifically: First, is cyberspace equivalent to public places? Secondly, is it reasonable to change the order of public places to public order? Finally, how to identify false information? However, it is precisely for this reason that many scholars believe that the crime of creating quarrels on the Internet is not necessary, and therefore advocates abolition. Therefore, it can be said that the above-mentioned problems are the core issues of the disputes in the crime of online quarrel and provocation, and they are also the problems that must be resolved in judicial practice when the crime is applied.

3. Examination of the Judicial Determination Standards for the Crime of Provoking Disturbance on the Internet

(1) Inspection of public places

One reason for the controversy of the crime of provoking disturbances on the Internet is that the definition of the concept of "public place" is questionable. To determine the crime of provocation and provocation, the space where it occurs must be in a public place, and the crime of provocation and provocation on the Internet occurs in cyberspace. The ambiguity of the meaning of public places makes cyberspace present certain obstacles and controversies when it is identified as a public place.

With the further development of scientific research, the Internet has become more and more important in the daily life of the public, and its influence has become more and more extensive. It can be said that it has become an important platform for people to communicate across geographical restrictions. The cyberspace formed by people interacting with each other must have a public attribute, but does this mean that it is equivalent to a public place? On this issue, some scholars insist that cyberspace can be interpreted as public places: (1) With the development of the information society, the concept of public places can be explained in line with the development of the times, and cyberspace also has public places. Attributes; (2) The definition of public places in the criminal law is not consistent; (3) Making disturbances in

cyberspace is more harmful than public places in reality. In addition, some people think that strictly speaking, there is no completely private space on the Internet, so there are neither theoretical difficulties nor practical obstacles in identifying a public space.

But the denialists insist that cyberspace cannot be recognized as a public place. The specific reasons are as follows: First, the definition of information networks as public places is an analogy, which is the same as interpreting electric bicycles as motor vehicles. There is no essential difference between the two interpretations. Second, it is based on the criminal law system. When thinking about it, it is impossible to conclude that the information network belongs to the public place, because the public place should only refer to the real space, and the legislator also distinguished between the cyber space and the real space when making legislation.

Faced with this problem, the Supreme People's Court and the Supreme People's Procuratorate once said in response to reporters: Today with the rapid development of information technology, information networks have been highly integrated into the real life of the public, and there is an extremely close connection between the two, and it is difficult. The distinction is made completely, so it is difficult to say that cyberspace is not a part of public space, and network order is of course an important part of public order. This kind of argument seems to show that there is no substantial difference between the Internet and the reality of picking and provoking troubles, but this kind of reason is really hard to convince the public.

In my opinion, the negation theory is worth supporting. The so-called public place, according to its connotation, is a place where an unspecified majority of people can freely enter and leave. This should be a realistic and physical concept. The existence of the concept of cyberspace is essentially a virtual concept. As a virtual and man-made cyberspace, it obviously does not possess the attributes corresponding to the physical reality concept of "place". If the cyberspace is regarded as a public place, since the human body obviously cannot enter the cyberspace, the "free access" must include speech. This will cause some unacceptable phenomena. A published magazine and a published newspaper have become public places. After all, these are places for unspecified people to express their opinions. In addition, a message board is also because of It can be recognized as a public place by leaving a message on it. Obviously, cyberspace is not the same as public places. The Internet is essentially just a communication tool. Just as the emergence of agricultural tools has changed the way people work, the emergence of the Internet has changed the way people communicate. This change does not expand the space. After all, "people are the subject of using tools, and will not become part of the tools." Ignoring this property of the network, it is not surprising that two different concepts are considered the same.

(2) Reflections on "Serious Public Order Disorder"

1. Public order and public place order. With the development of information technology, cyberspace has increasingly become an important link for public communication, and network order has naturally become part of today's social order. Observing the ethics and management order that exist in real life on the network as a public communication platform is As it should be, this means that the network order naturally belongs to the public order. But it is obvious that the concept of public order stipulated in the judicial interpretation cannot be equated with the order of public places stipulated in the criminal law. It can be said that the connotation of "public order" is obviously smaller than that of "public order", but it is only part of it. That is to say, although the behavior has caused serious chaos in public order, it does not mean that it must seriously damage the order of public places. , Causing serious confusion.

2. The order of cyberspace and the order of public places. In order to avoid failing to meet the requirement of order in public places, the judicial interpretation stipulates a wider range of "public order", but public order cannot replace the order in public places, as discussed above.

But if it is determined by the order of public places, it obviously cannot include the order of cyberspace. This seems to form a strange cycle. In the author's opinion, this situation is essentially due to the ignorance of a problem: this crime cannot cause serious chaos in the order of cyberspace itself. Professor Zhang Mingkai has explained this. He believes that only those acts of sabotaging computer information systems and network communications that may be convicted of sabotaging computer information systems can disrupt the order of cyberspace itself, and these crimes obviously cannot be established as crimes of quarreling and provoking trouble. In other words, what is infringed by the crime of cyber-picking quarrels is not the order of cyberspace. The object of the crime should be combined with the actual function of the criminal law. "Under normal circumstances, the criminal law can only be applied to actual violence in the real world, not virtual 'violence' in the online world." Therefore, what the crime has violated should be the "order in public places" stipulated in the provisions of the criminal law.

(3) Examination of false information

The identification of the crime of provoking disturbances on the Internet is closely related to "false information", but the identification of false information is obviously weakened in judicial practice. Generally speaking, false information should refer to unfounded information, which means that once relevant information has a corresponding factual basis, it can never be regarded as false information. However, in judicial practice, there are situations in which netizens publish information on the Internet that reflects social issues, government officials' violations of the law, and criticism of political policies and other sensitive issues are deemed to be the crime. On the one hand, this is due to some non-legal reasons, but on the other hand, it also shows that there are certain problems in the identification of false information in judicial practice. In addition, although some online statements have certain exaggerations, they have a certain realistic basis after all. It would be too much to deal with them as a crime without confirming their falseness.

An important reason why the crime of network provocation and provocation is criticized is the lack of accuracy in the conviction, and this is precisely because the definition of false information takes too much into account the meaning of daily terms and cannot accurately grasp the concept of false information. The false information that constitutes the requirement of this crime is a concept in the criminal law. If judged directly from daily terms without any restrictions, it will inevitably expand the scope of the criminal law, which will further expand the crime of picking quarrels and provoking quarrels, which has a tendency to expand. If the common concept of false information as inconsistent with the facts is understood, it will be difficult for the public to have their own thinking, especially for commentators or scholars to continue to write articles. Because people's subjective thoughts are not the same, and their perceptions of objective existence are not the same. As a result, there will be deviations in understanding. The existence of such deviations is difficult to deny the requirement of "inconsistent with the facts". This makes it possible for the public to commit crimes when expressing their views. Therefore, the identification of false information must not be based on daily concepts, but should be limited in consideration of the particularity of the criminal law.

4. The Due Path for Judicial Determination of the Crime of Provoking Quarrels on the Internet

In the author's opinion, there is still a need for the crime of online quarrels and provocations to exist. First of all, the view that the narrower the scope of penalties in the criminal law is, the better is actually going to another extreme. As the social situation changes, the degree of infringement of a certain behavior on legal interests may reach a level worthy of criminal punishment. At this time, there is no theoretical obstacle to defining it as a crime. If it insists on

"decriminalization", it is unreasonable. Secondly, it is not only the act of fabricating and disseminating false dangers, epidemics, disasters, and police conditions that may cause serious social disorder. Fabricating and disseminating other false information may also cause similar or even more serious consequences. If the crime of network-picking disturbances is deemed invalid, Then the behavior will inevitably escape the due criminal law sanctions, which is obviously contrary to the concept of the rule of law, and it is not conducive to protecting legal interests. Third, the uncoordinated and unfair application of penalties is caused by insufficient current legislative experience and imperfect legislative techniques, rather than the unreasonable nature of the crime itself. In this regard, it is entirely possible to improve the crime of provoking disturbances on the Internet in the form of an amendment, adjust its statutory penalty, and coordinate the application of penalty. This is not difficult, and this move can get rid of the suspicion of making the law with judicial interpretation. The emergence of the crime of cyber-picking and provoking trouble is undoubtedly in line with the current social forms and the requirements of the rule of law. The relevant staff failed to make a reasonable definition of the related concepts of the crime of cyber-picking and provoking trouble, or failed to correctly identify the crime of cyber-picking and provoking trouble. The constitution of the crime is the source of criticism of the crime of creating disturbances on the Internet. What we have to do is to apply the Internet to the judicial practice in a reasonable and legal way.

(1) Accurately define "space"

According to the foregoing, the information network is different from the real space. Interpreting the information network as a public space can be said to be an analogy interpretation of the concept of the information network, which cannot be tolerated by the principle of statutory crimes and punishments. Therefore, the author believes that the information network cannot be regarded as the space required by the crime of picking quarrel and provoking trouble. However, the author also believes that there is a necessity for the crime of cyber-picking and provoking trouble, which makes it necessary to make an accurate definition of the concept of space.

In the author's opinion, the space in this crime should be regarded as real space. The information network exists only to meet the needs of public social life. In other words, the information network is essentially a human tool. Although the information network has obvious openness and sociality, it cannot change the nature of its tools. And because of the virtual nature of the information network, it is difficult to cause substantial damage to the social public order. In other words, in order to constitute the crime of creating quarrels and provoking quarrels online, it must be carried out through the Internet, and ultimately acting in the real space, otherwise the application of the crime must be ruled out. Therefore, if the act of fabricating false information and provoking troubles is simply carried out on the Internet, but does not affect the real space, if it meets the constituent elements of other crimes, the crime can be convicted and punished, otherwise it cannot be punished as a crime. Those who carry out acts of provoking troubles through the Internet without causing serious chaos in the real space can be effectively regulated through public security management penalties.

(2) Strictly grasp the "severe public disorder"

In order to identify the crime of provoking disturbances on the Internet, the concept of serious public disorder cannot be avoided. This is not in doubt, but how to identify it requires further discussion.

First of all, the public order stipulated in the relevant provisions should be recognized as the order of public places. The author has already mentioned that the order of public places clearly stipulated in the criminal law is only part of the public order, and its differences cannot be ignored and directly applied. If the crime of network-picking and provoking disturbances is applied indiscriminately and in accordance with public order, it is obviously against provoking

disturbances. Sin has been expanded and applied unduly. Therefore, the public order must be strictly controlled to harmonize it with the order of public places stipulated in the criminal law. To put it simply, when applying the crime, the crime must be determined in strict accordance with the provisions of the Criminal Law to "cause serious disorder in public places", rather than the expanded "public order".

Secondly, public order should refer to the order in real life. The Internet is virtual and cannot be equated to a real public place. What the crime of creating quarrels and provoking trouble can only destroy is the real public order, not the order of the virtual world. In other words, in order to constitute the crime of provoking quarrels on the Internet, it needs to spread false information in cyberspace and have contact with the real world. Only related acts of provoking quarrels seriously damage the good order of public places in the real world and meet the provisions of the criminal law. In order to be regarded as a crime, some online speech that only plays a role in the virtual world but does not affect real life cannot be applied to the crime of provoking quarrels. If it is possible to constitute other crimes, it can be dealt with according to the crimes that may constitute. Those that do not constitute a crime can be punished by other laws.

Third, the "serious chaos" should be strictly controlled in light of the nature of the real-world public places, the scope and extent of the impact. As far as public places of different nature are concerned, the degree of harm is different. For example, the public transportation convenience is more affected on wide roads, and the consequences are generally not too bad, but it will undoubtedly cause extremely serious consequences in densely populated stations or squares. The scope and extent of the impact are different, and the confusion it causes will obviously also be different. Compared with a city or even a province, the impact of a village and a town is not the same; the provocation in a special period is obviously different from the provocation in a general period. This makes it necessary to make a comprehensive judgment in strict accordance with the various situations affected in reality when determining "serious chaos", and it cannot be determined because of the needs of a certain person or a certain department.

(3) Accurately identify false information

First of all, the identification of false information is very important to this crime and must be accurately identified. The author believes that false information should be restricted to be interpreted as unfounded information. The reasons are as follows: 1. The unfounded news is basically inconsistent with the facts, but the news that is inconsistent with the facts may not be unfounded. Such a definition can effectively limit the scope of false information and does not exceed what it may have in the criminal law. Meaning; 2. Defining it as unfounded information can better coordinate various laws and avoid loopholes in legal convergence or over-evaluation of criminal law.

Secondly, the identification of false information can not be done by defining its concept. It also needs to be carried out according to certain methods. First, it is necessary to judge the nature of the information, that is, to judge whether it is a factual statement or an opinion. Remarks to prove whether it is false information. As mentioned in the previous article, opinions are expressions of subjective thoughts. There are many differences, and it is difficult to identify them as false. Only factual remarks need to be judged, because it is essentially based on some basic factual elements to make a statement, there is a difference between true and false, and it is not very difficult to distinguish. But the difficulty lies in the discrimination of speech with an intermediate nature. For example, some speeches seem to be designed to verify the form, and it is difficult to distinguish them directly. In this regard, Professor Sun Wanhuai believes that language has many different meanings due to different environments. To accurately understand the meaning of language, it must be placed in a specific environment, such as the identity, knowledge, language habits, and Factors such as the release time, content, and nature of the information should be considered, and judgments should be made from the perspective

of ordinary rational people, and conclusions should not be made at will. The author agrees with this point of view. Second, if it is judged to be a factual statement, it needs to be judged whether there is a basis for it. Although some information has a certain factual basis, but the main part of the information or the decisive part of the information does not conform to the objective facts, it should also be regarded as false information. Professor Sun Wanhuai believes that when judging whether the information is valid, the phenomenon of information "distortion" should be considered. If the content of the "distortion" part has no fundamental difference from the original information's impact on the public, it should not be denied. The information is well-founded. This point should be taken seriously.

Professor Sun Wanhuai believes that the method of identifying false information is among the above steps, and there is another step: the possibility of causing chaos in public order. The author does not agree with this. Whether there is a possibility of causing public disorder should be made when judging whether it meets the other constituent elements of the crime. If the judgment is made when false information is found, the subsequent judgments will be repeated.

5. Conclusion

The crime of provoking disturbances on the Internet is a provision of judicial interpretation, and there is a suspicion of "implementing legislation in the name of interpretation". The provision itself is also subject to many controversies, but it is necessary for its existence at the moment when Internet public opinion is extremely developed. However, its existence is in line with the needs of the current rule of law, so it cannot be simply denied. In the case that the legislature does not explicitly deny the legitimacy of the crime or has no legislation to establish a new crime to replace it, its existence should still be affirmed. However, in the specific application, attention should be paid to maintaining the coordination of the provisions of the criminal law, and the definition of related concepts cannot be separated from the criminal law on the crime of provoking quarrels. In addition, it is also controversial whether the application of the crime requires "rogue motives", and the author believes that this is unnecessary. Because the existence of rogue motives not only cannot effectively solve the related conviction issues, but even because of its own ambiguity and uncertainty, the possibility of artificially expanding the crime of picking and provoking troubles has been strengthened. The crime of picking quarrel and provoking trouble is a product of history, because at the beginning, the "laws were not strict" and the crime of hooliganism was set up in order to fill the loopholes. With the development of society, the crime of hooliganism has become outdated, but there are still considerable loopholes in the formulation of the law, so the crime of hooliganism is resolved. It has become an inevitable choice, and the crime of picking and provoking trouble arises in response to the needs of social governance. This change in legislative needs can also reflect from the side that rogue motives have been abandoned. In short, the application of this crime must be cautious, and it must not violate the principle of legally prescribed punishment for crimes and the modest nature of the criminal law.

References

- [1] Zhang Lei, Yu Xiaohai. The use of information networks to implement the definition of "fabricated false information" in the crime of quarrel-picking and provoking trouble[J]. Chinese prosecutors, 2020 (18).
- [2] Sheng Haojie. The boundary of criminal laws and regulations for the crime of cyber-picking quarrels and provoking troubles---the narrow interpretation of behavior space and result space as a path[J]. Journal of Jiangxi Police College, 2019 (05).
- [3] Zhang Haoyue. Application of Network Rumor-type Crimes of Provoking Disturbance[J]. Journal of Zhengzhou Institute of Aeronautical Industry Management (Social Science Edition) 2020 (05).

- [4] Liu Ziliang. Can the crime of chaos in cyberspace be convicted [J]. Journal of Anyang Institute of Technology, 2020 (05).
- [5] Ma Dangku. From "crime of hooliganism" to "crime of quarreling and provoking trouble": the evolution of norms and the policy constraints of qualitative determination [J]. Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition), 2020 (11).
- [6] Zhang Feifei. Textual reflection and improvement of the judicial interpretation of the crime of picking and provoking disturbances[J]. Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition), 2020 (11).
- [7] Zhang Tingting. Government-led social governance in the prevention of the crime of picking and provoking troubles[J]. Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition), 2020 (11).
- [8] Zhang Mingkai. Criminal Law [M]. Beijing: Law Press, 2016: 1063-1069.
- [9] Zeng Yuexing. The understanding and application of the Internet to provoke troubles[J]. Journal of Henan University of Economics and Law, 2014, 29(02): 139-146.
- [10] Wang Hongfei. A Probe into the Jurisprudence of the Crime of Picking and Provoking Disturbance[J]. Journal of Henan University of Science and Technology (Social Science Edition), 2018, 36(05): 92-98.
- [11] Chen Xingliang. The image of legal doctrine of the crime of quarreling and provoking troubles: Focusing on making disturbances[J]. Chinese Law Science, 2015(03): 265-283.
- [12] Sun Wanhuai, Lu Hengfei. Criminal law should rationally respond to online rumors---an empirical evaluation of the judicial interpretation of online rumors[J]. Law Science, 2013(11): 3-19.
- [13] Zhang Mingkai. Freedom of Speech and Criminal Offences [J]. Tsinghua Law Science, 2016(1): 56-74.
- [14] Zhang Qianfan. The application of criminal law should follow the basic spirit of the constitution---taking the judicial interpretation of "picking trouble and provoking trouble" as an example [J]. Law Science, 2015(4): 3-9.