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Help information network crime limited application: legal logic and rule expansion

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ABSTRACT

Technology support and the catalysis of the epidemic, the effective implementation of the card breaking action, and the influence of the trend of judicial expansion have led to a surge in the number of crimes helping information network crimes. However, the improper expansion of the interpretation of the crime of assisting information network crime is easy to cross the criminal law ladder which is compatible with crime, responsibility and punishment, and violates the legal implication that everyone is equal in the application of criminal law, and should be limited. "Knowing" in the crime of helping trust should be carefully determined in form, content and degree. As for the "serious circumstances" in the crime of helping the letter, it is suggested to eliminate the second paragraph of the judicial interpretation which has a strong criminal law preventive color but has no legitimate basis, and further clarify the specific requirements of the sixth paragraph "causing serious consequences to the object of help". At the same time, priority may be given to the application of non-custodial measures to persons who have committed crimes.

KEYWORDS

The crime of helping information network criminal activities; limited application; knowing; serious circumstances

1 Introduction

On August 29, 2015, the Standing Committee of the National People's Congress passed the Amendment to the Criminal Law (IX), adding Article 287 bis of the Criminal Law to the crime of assisting information network criminal activities (hereinafter referred to as the crime of helping letters), which stipulates that "knowing that others use information network to commit crimes, Those who provide Internet access, server hosting, network storage, communication transmission and other technical support for their crimes, or provide help in advertising promotion, payment and settlement, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined ", which is the realistic response of our lawmakers to criminal assistance in cyberspace. At the beginning of the establishment of the crime, the application rate had been at a low level until November 2019, when the Supreme People's Court and the Supreme People's Procuratorate (hereinafter referred to as the "Two High") formulated and issued the Interpretation on Several Issues concerning the Application of Law in Criminal Cases such as Handling Illegal Use of Information Network and Helping Information Network Criminal Activities (hereinafter referred to as the "Interpretation").

There has been a sharp increase in the number of cases of helping trust. When the author searched the China Judgment Documents Network, he found that such judgment cases from the past average annual average of less than 100, to 3013 in 2020, 20901 in 2021, the growth rate is not high, and the crime of helping the letter has jumped to the third place in the main charges of the procuratorate's acceptance of review and prosecution cases in 2023[1].

In sharp contrast to the criminal law practice, there are still a lot of disputes about the nature and legislative purpose of the crime in the criminal law theory. There is a fierce confrontation between "non-expansion theory" and "expansion theory" in view of the basic question of whether the crime of helping faith has expanded the scope of punishment. The non-extensionist believes that the legislature adds the crime of helping others on the basis of the traditional theory of joint crime. If the Criminal Law Amendment (IX) does not add this offence, it is sufficient to properly deal with all acts of assistance.

The crime of helping letter only sets sentencing rules for the accomplice of information network crime, not only does it not expand the scope of punishment, but also reduces the scope of punishment with the requirement of "serious circumstances"[2]. The representative scholars of this camp are Zhang Mingkai, Professor Li Hong and so on. The extension theorists believe that the crime of helping others expands the scope of punishment, and explicitly defines the helping behavior that cannot be convicted according to the theory of joint crime or that is still controversial as a crime, so as to settle the theoretical disputes. The representative scholars of this camp are PI Yong, Yu Zhigang, Jiang Su and so on.

At present, scholars have different opinions on the specific behavior that the extension theorists refer to include the scope of punishment for the crime of helping the letter, which can be roughly summarized as the following four kinds: (1) Help for "non-principal criminals". This view holds that the crime of helping others breaks the link between illegal and criminal activities, so that the act of helping is no longer attached to the upstream crime. (2) Assistance to accomplices. This view holds that the crime of helping a letter is the criminalization of the act of helping a letter[4]. After the original act of helping a letter is an independent crime, the act of helping a letter is punished. (3) One-sided help. According to the different degree of communication between the helper and the assisted, joint crime can be divided into three categories: one-sided accomplice, tacit accomplice and conspiratorial accomplice. Therefore, one of the legislative values of the crime of helping others lies in the establishment of the penalty of one-sided assistance in information network crime. (4) Neutral help. According to this view, neutral helping behavior refers to the daily behavior that subjectively does not pursue illegal purposes and objectively does not have the appearance of criminal violation, but in fact plays a helpful role in the illegal and criminal behavior of others.

The position of our official judicial interpretation obviously supports the enlargement theory. Article 12, paragraph 2, of the Interpretation states: "It is indeed impossible to verify whether the object to be helped has committed a crime due to objective conditions, but the total amount of the relevant amount has reached more than five times the standard specified in items 2 to 4 of the preceding paragraph, or has caused particularly serious consequences", shall be investigated for criminal responsibility for the crime of helping the letter, In fact, this is to help the crime of "knowing that others use the information network to commit a crime" "crime" is interpreted as "illegal crime", and the help of "non-principal criminals" is also included in the scope of punishment, and the distinct tendency of expansion of interpretation is self-evident. In addition, in the first paragraph of Article 12 of the Interpretation, five of the seven criteria for determining that the act of helping is "serious" are centered on the act of helping rather than the act of being helped, such as "providing help to more than three objects; The settlement amount paid is more than 200,000 yuan; Providing funds of more than 50,000 yuan through advertising, etc." It can be seen that these standards are not directly related to whether the assisted behavior constitutes a crime, and it can be seen that the official position no longer discusses the crime of helping trust under the theoretical framework of joint crime.

Based on the background of complex and frequent cyber crimes in the post-epidemic era, this paper makes a cold reflection on the tendency of the expansion and application of the crime of helping trust in judicial practice. First, it analyzes the phenomenon and causes of the surge in the number of cases of helping trust crime and demonstrates the practical necessity of limiting the application of the crime. Second, it clarifies the types of behaviors regulated by the crime of helping trust. It argues that the form, content, degree of "knowing" and the criteria of "serious circumstances" should be different under different behavior types, and finally puts forward a complete and specific doctrinal explanation scheme based on the position of limited application.

2 Analysis of the reasons for the surge in the number of crime cases

The reason why the number of cases of helping the letter has surged to such a degree in a short period of time is not completely explained by a single factor, but may be related to the comprehensive effect of economic, social, judicial and other factors, and there are roughly several reasons.

2.1 Technology support and epidemic catalysis

The development of network technology has provided support for the diversification of crime modes and the flexibility to break through the limitations of time and space. The low cost of algorithms and data acquisition, coupled with the pervasive nature of the web, makes it a preferred tool for criminals. Social distancing has highlighted the need to work remotely, and has greatly promoted the development of technological applications. Its impact on cybercrime naturally can not be ignored, such as the use of GOIP devices, seconds to dial IP, while improving the efficiency of crime as much as possible to escape the supervision of the authorities. Compared with traditional crimes, cybercrime breaks through the limitation of crime time and space, and brings significant challenges to network supervision. The outbreak of the new coronavirus epidemic at the end of 2019 has severely depressed the national economy, and in order to ensure the survival of the social situation of economic downturn and supply imbalance, various industries have to carry out a large number of layoffs, and at the same time, their ability to absorb employment has decreased, and the number of recruits has been greatly reduced. The economic situation and employment situation under the epidemic led to more people taking risks and committing crimes, which objectively catalyzed the growth of cybercrime.

2.2 Effective implementation of the card break action

In recent years, there have been frequent cybercrimes, and in order to combat cybercrimes, on October 10, 2020, The State Council held an inter-ministerial joint meeting on combating new types of crimes and crimes in telecommunications networks and announced the launch of the "cut off card" action. Together with the Ministry of Public Security, it issued the "Notice on Cleaning up and remediating fraudulent Phone cards, Internet of Things Cards and Associated Internet Accounts in accordance with the Law", guiding telecommunications enterprises to establish a "secondary real person certification" system for high-risk phone cards.From the establishment of the charges in 2015 to the launch of the "card cutting" operation in October 2020, more than 6, 000 people were prosecuted for the crime of helping letters. Since the launch of the "cut off card" operation, the number of people prosecuted has skyrocketed. In 2021, the growth reached a peak of nearly 130, 000 people, which is 9.5 times that of 2020.

2.3 The influence of the tendency of judicial expansion

Since the promulgation and implementation of the crime, up to the scale of the anti-cybercrime action such as "broken card operation", the phenomenon of cybercrime in our country is still very serious. However, due to the lack of relevant judicial interpretation and the controversy over the nature of the crime itself, the judicial organs are somewhat "afraid of the hands and feet" in the trial of cases, and dare not easily apply this crime. In October 2019, the "Two high" deliberated and adopted the "Interpretation", which made a certain range of explanations on "knowing" and "serious circumstances", fully highlighting the tendency of expansion of application, and creating conditions for the judicial organs to set aside the identification of the relationship between principal and accomplice, and instead independently identify the punishable behavior of helping.This shows that in the judicial practice, the conflict on the problem of identifying the accomplice of this crime is relatively large. It is easy for judicial personnel to abuse their discretion in the borderline between crime and non-crime, which makes the crime become a new version of pocket crime.

3 The value orientation and legal logic of the crime of helping others are applied

3.1 The implementation of crime, responsibility and punishment: do not cross the "crime and punishment ladder"

In his book On Crime and Punishment, Beccaria likens crime to a ladder of deviant acts: each criminal act follows an invisible ladder, ranking from highest to lowest in order of magnitude. This also points to the existence of a corresponding penalty ladder, precisely graded from strongest to weakest. If the criminal law improperly expands and even destroys the principle of the compatibility of crime, responsibility and punishment, the ladder will collapse and cause great damage to the stability of society.

From the perspective of human rights protection, when the criminal law is improperly expanded, overpursues the effect of social governance and ignores the principle of the compatibility of crime, responsibility and punishment, the human rights of criminals will be difficult to be protected.Some scholars have classified the collateral consequences of Chinese crimes into eight categories: Negative consequences of prohibiting or restricting occupation, negative consequences of undertaking specific obligations such as truthful reporting, negative consequences of prohibiting or restricting examination qualifications, negative consequences of restricting household registration, negative consequences of restricting reputation and honor, negative consequences of excluding social security, negative consequences of restricting activities related to risky work or adoption, and other restrictions such as not issuing passports for a certain period of time. See Wang Ruijun, " For example, the "criminal record reporting system" in Article 100 of the Criminal Law, as well as the eight categories mentioned earlier. These incidental consequences have a common feature, that is, they all directly show the criminal law's deep sense of "estrangement" to criminals, intending to exclude them from society to a certain extent. When the criminal law is improperly expanded, this sense of exclusion is then deepened, which leads to the intensification of the contradiction between the two groups of social "good citizens" and "former criminals".In addition, criminal law, as the last cornerstone of maintaining a stable society, has a value guiding and normative role in various social rules and regulations. If the criminal law itself has great arbitrariness and artificial operation, and the application of the crime of helping trust in judicial practice does not follow the principle of matching crime, responsibility and punishment, it is likely to lead to other departments' lack of rigor on related issues, resulting in the situation of "killing criminals with a stick". For example, Xinluo District of Fujian Province issued the "Xinluo District Telecommunications Network New illegal and criminal Comprehensive Measures Ten uniform", which stipulates that "all children involved in telecommunications network new illegal and criminal suspects will be enrolled in urban schools when they study." The policy has caused great controversy. We can see from this that the negative collateral consequences of the improper expansion of criminal law expand with it. And the breadth and depth of its expansion is often in the direction of our unforeseeable development, it is very likely to be from the simple restrictions within the provisions of the law to further penetrate into all aspects of the life of criminals, thus making the above mentioned problems into a vicious circle.

From the perspective of social governance, violating the principle of the compatibility of crime, responsibility and punishment will make the effect of criminal law governing society weaker.If the so-called pragmatism continues to expand and become vulgarized, the seriousness and sanctity of criminal law as the last guarantee law will no longer exist, and criminals will even have the psychological effect of "following the crowd" : When he found that many people around him were punished for violating the crime of helping others just to get a small profit, his moral shame would be reduced, thinking that even breaking the criminal law is "not a big deal." Secondly, social governance requires front-end social management and back-end rule of law management to work together and complement each other in order to achieve better results.It will also easily lead to the weakening of social management means. Liszt famously said that the best social policy is the best criminal policy. Social policy is the root of solving problems, while criminal policy is the auxiliary means of solving difficult problems in the later stage. For example, if we simply expand the scope of application of the criminal law, it can only play a certain degree of deterrence and prevention, but it does not fundamentally solve the essence of the problem. Considering the high profitability and concealment of cyber crime, criminals often have a lucky mentality of "taking a chance". Therefore, the improper expansion of criminal law and the neglect of the importance of social policies that change the social environment will easily lead to the phenomenon of putting the cart before the horse, which will greatly reduce the effect of cybercrime management.

3.2 The implication of equality for all in the application of criminal law: the living conditions of vulnerable groups should not be ignored

John Rawls wrote in A Theory of Justice that "social and economic inequalities should be addressed in such a way that they are: (1) suited to the greatest good of the fewest beneficiaries; 2) Subject to the opening of offices and positions to all under conditions of fairness and equality of opportunity." As will be discussed later, the second point is less likely to be realized in the current post-pandemic era. This makes us once again focus on the first point "the greatest benefit of the least beneficiaries", that is, the importance of implementing the principle of differential justice and caring for the living conditions of vulnerable groups.

This makes people ponder "What is equality in the true sense? Is equal application of the law equal to equal application of the law?" If the criminal law does not know how to discriminate various criminal acts according to their specific social background and criminal groups to a certain extent on the basis of respecting differences, but improperly expands regardless of the living conditions of vulnerable groups, it is not only detrimental to the realization of social fairness and justice, but also aggravates the difficulty of social governance. In the current post-epidemic era of social transition should be more cautious. As mentioned above, the improper expansion of criminal law will increase the antagonism between "good people" and "criminals" in society. And when the so-called good people and criminals in the original social class has a tendency to solidify, it may stimulate a deeper level of class antagonism, which is not conducive to social management.

The current era is still in the post-epidemic era, the most difficult moment of the "city-wide lockdown management" has passed, but the larger negative economic impact of the company closure and worker unemployment that it left behind has remained until now. And far from being a "balancing force," COVID-19 will actually "exacerbate imbalances in income, wealth, and opportunity. "It can be said that the COVID-19 pandemic has increased the role of the Matthew effect in economic distribution and has been more directly presented to the public. This explains why, in the current post-pandemic era, the numbers of the sick, the unemployed, the hungry, the haters, and the miserable are exploding. The tragedy of society is unfolding every day and is becoming more and more intense, and all marginalized social groups (such as the poor, prisoners, minorities, the homeless, etc.) will breed more and more intense resentment. However, the criminal subject of some crimes in criminal law is mostly the vulnerable groups, and the crime of helping faith is one of the charges, which is mainly the group with low education and low income. In this special period, if excessive emphasis on the doctrine of heavy punishment and improper expansion of the criminal law, it will further intensify the contradictions of class antagonism, easily cause the bottom people to break the idea of breaking the pot, and even launch riots.

4 Su limits interpretation of "knowing" in the crime of helping trust

"Knowing" is the subjective constitutive element of the crime of helping faith, and it is the indispensable condition of all helping acts such as collusive help, one-sided help and neutral help. In particular, neutral helping behavior objectively does not have the appearance of criminal violation, subjectively does not pursue illegal purposes, and the basis for investigating its criminal responsibility is mainly from its "knowing" of other people's crimes. Therefore, it is necessary to deeply study the form, content and degree of "knowing" in the crime of helping the letter, so as to achieve the purpose of reasonably limiting the application of the crime of helping the letter.

4.1 Forms of "knowing" : knowing and presumptive knowing

As for the form of "knowing", there are currently differences between the one-point theory and the two-point theory. Some scholars have further pointed out that "ought to know" is a form of factual presumption, based on which the result can be either "clearly known" or "possibly known", and that it is not logical or practical to identify the result of a presumption only as "clearly known". Another scholar who holds the dichotomy theory summarizes the form of "knowing" into actual knowing and having reason to know, and believes that from the perspective of civil law aid infringement, when the Internet service provider only has "should know" the infringement facts, it is generally not established to aid infringement. From the perspective of criminal crime, the threshold of criminalization should also be raised, such as the Internet service provider only has the form of "should know" the criminal facts, it should not constitute aiding the crime.In fact, "there is reason to know" and "may know" are just another way of expressing presumed knowledge, and there is no essential difference between them.

The essence of the dispute between the one-point theory and the two-point theory lies in whether "knowing" in the crime of helping faith includes presumptive knowledge.Positive opinions believe that the current network crime is more dispersed in time and space, the perpetrator's intention is weak, and the evidence is more difficult to confirm each other, and only by adding appropriate constructive elements can the effective punishment of the crime be realized. However, because the presumptive elements themselves cannot be directly proved by evidence or no evidence, and the judicial personnel are easy to make different decisions, they cannot expand the scope of identification because of uncertainty on this basis, and strict restrictions should be imposed on the conditions of "should know" (that is, presumed to know), so that it does not violate the principle of statutory punishment.

Considering the actual situation of the crime of helping trust, this paper supports the dichotomy theory.On the one hand, because the actual case situation is more complicated, on the other hand, it also reflects that the legislative plan is not sound and in line with the actual situation, and needs to be further adjusted and improved. For example, in article 1 of the judicial interpretation, "those who still carry out relevant acts after being informed by the regulatory authorities", what is the way of notification? Is it necessary to actually reach the parties or to give notice? Article 3 What is the degree of obvious abnormality of "the transaction price or method is obviously abnormal"? The civil law determines that the transfer price is significantly lower than the market price when it does not reach 70% of the guiding price or market price at the time of the transaction, and it also takes into account other relevant factors. For example, how to define ordinary network infringement and criminal behavior, and the identification of obvious abnormal transaction prices or methods require professionals in various fields to participate in the process of refining judicial interpretation to ensure the professionalism and fairness of judgments. The perfection of judicial interpretation is conducive to framing the scope of presumptive factors, thus greatly reducing the possibility of the crime of helping faith to be reduced to the crime of pocket. In addition, while allowing the judicial organ to carry out limited presumption, it must also protect the counterproof system of the defendant, and appropriately reduce the proof obligation, so as to effectively eliminate reasonable doubt.

4.2 The content of "knowing" : the understanding of the principal offender

Professor Chen Xingliang has made statistics on the content of "knowing" in the specific provisions of our criminal law, which can be summarized into four situations: (1) knowing the object of behavior; (2) knowledge of the state of conduct; (3) knowledge of the negligent crime.In the view of scholars who do not agree to the understanding of the crime of helping the faith as an accomplice, the "knowing" in the crime of helping the faith does not belong to the knowing of the accomplice. For example, Professor Jiang Su believes that from the perspective of independence, since this behavior does not belong to the category of aiding the crime, there is no need to worry too much about "whether the helper knows the specific behavior and subjective mentality of others".This view is obviously not valid, the author has demonstrated the accomplice attribute of the crime of helping the letter in detail in the previous article, advocating that it is not appropriate to break through the principle of accomplice, "others use information network to commit crimes" must become "knowing" content, the criminal law has clearly stipulated. The essential question is, how to understand the meaning of "crime" in "others use information networks to commit crimes", and whether "illegal" is included? At present, there are mainly two kinds of theories: the affirmation of illegal and the negation of illegal.

Illegal affirmation believes that the "crime" in the crime of helping the letter does not exclude illegal acts.The essence of this view is that the constitutive elements of the crime requirements (only illegal) are also considered as "crimes" in the crime of helping trust.

The negation theory of illegal believes that the "crime" in the crime of helping faith does not include illegal.Of course, even scholars who hold the negation of illegal law admit that the "crime" in the gang letter only refers to the crime in the sense of the illegal class, not the crime in the sense of the responsible class, let alone the actual criminal responsibility.

In this paper, we should insist on the illegal negation theory. On the one hand, China's current criminal law tends to objectivism, and the legal interests protected by criminal law should have substantial illegality. It is very likely that the principal offender will be exempted from punishment and the accomplice will be punished if the characteristics of the illegality of the constitutive elements are ignored. This ignores the status of the "secondary responsibility" of the assisting offender, and in practice, the "secondary responsibility" may be heavier than the "primary responsibility", and the punishment of the assisting offender is heavier than that of the aided offender, which obviously violates the principle of the compatibility of crime, responsibility and punishment. On the other hand, it is appropriate to refer to the judicial interpretation of another crime closely related to the crime of helping the letter: the crime of illegal use of information network. This paper holds that the crime and the crime of helping trust are both stipulated under Article 287 of China's Criminal Law, and both are established under the social background of the new form of cyber crime in the Criminal Law Amendment (IX) in 2015, which has strong reference value.

4.3 The degree of "knowing.

As mentioned above, the forms of "knowing" include knowing and presumptive knowing. The so-called "should know" and "have reason to know" actually express the meaning of presumptive knowing, rather than referring to the obligation to foresee, so more and more scholars suggest discarding the expression "should know". Compared with knowing, the proof standard of presumed knowing is slightly relaxed. How far, then, must it be proved before a presumption of knowledge can be reached?

At present, there are mainly three opinions: the theory of possible knowing, the theory of concrete cognition and the theory of majority rule. The doctrine of probable knowledge holds that knowledge can be presumed as long as it can be reached to prove that the perpetrator "probably knew".

This paper holds that it is possible to know that the subjective elements of the theory are strong, which is easy to cause the problem of excessive arbitrariness of judicial determination and the confusion of application. On the other hand, it is possible to know that the application of the theory is not justified because the act of helping the information network crime itself does not have great social harm or illegality. The theory of concrete cognition is partially limited on the basis of the theory of possible knowing, but there is still a large elastic space for "relatively concrete". Although the majority rule solves the problem of strong arbitrariness of the first two methods by putting forward a clear quantitative standard, it also has a suspicion of "one-size-fits-all" if it does not combine the actual situation of the crime of helping the faith and divide the standards according to the different types of participants in the crime.

Therefore, this paper argues that we should distinguish the different types of accomplices and set up targeted and differentiated proof standards of presumptive knowledge. For example, it can be divided into conspiratorial aid, one-sided aid and neutral aid. The requirements for the degree of knowledge of these three types are: conspiratorial aid offender > neutral aid offender > one-sided aid offender. For conspiring to help offenders, they can usually be determined to help the letter crime and the upstream crime of imaginary competition, punishment is heavier, the degree of knowing requirements for their identification is also correspondingly increased, there needs to be clear evidence to prove that the helping offender and the upstream crime have two-way intention. As for the controversial neutral helping behavior in the crime of helping trust, the author believes that it can be divided into two cases: formal neutrality and substantive neutrality. In other words, crimes that only meet the form of neutral help will not be punished. Although there are possible circumstances of such behavior, it is impossible for the parties to anticipate and control it, and it is naturally not necessary to be convicted in order to protect the needs of normal social order. However, when there is sufficient evidence to prove that the neutral helping behavior has a clear cognition of the specific crime: if the assisting offender is engaged in daily business behavior, but he clearly knows the criminal intention of a specific assisted person, he can be directly identified as knowing; When the number of helpers is large, the rule of greater than half can be adopted, that is, when the number of helpers engaged in information network crimes reaches half, it is enough to infer the illegality of their daily business. For one-sided accomplices can take probable knowledge. Because one-sided help is guilty of intentional help and criminal intent, and the victims are usually not specific groups in the society, for example, I realize through experience that others may be committing online fraud, but I still choose to actively forward fraudulent information.

5 "Serious circumstances" in the crime of helping letters

Another component of the crime of helping letters, "serious circumstances", is also controversial in judicial practice, especially in the judicial interpretation of Article 2 "payment settlement amount of more than 200,000 yuan" and article 6 "serious consequences to the object of help". Some people think that evaluating the seriousness of the circumstances of the perpetrator according to the amount of payment and settlement violates the principle of legal punishment. However, some scholars have pointed out that the parties have subjtively anticipated that the bank card will be used for criminal acts when renting or selling the bank card. Therefore, no matter how much money is in the card, they all hold an indirect and intentional attitude, and it is appropriate to convict and sentence the bank card funds involved. These two points of view focus on a jurisprudential debate, "Should we be responsible for situations beyond our own knowledge?"

5.1 The limited interpretation of "serious circumstances" under the doctrine of prevention of criminal law

Objective intention theory holds that when the perpetrator is not sure whether the result of the infringement will occur in advance, it is equivalent to being quite sure that the result of the infringement will occur, so the perpetrator should give up his behavior. On the contrary, if the perpetrator's behavior is treated as negligent behavior, it expresses another kind of appeal in criminal policy: In the case that the perpetrator is not sure whether the result of the infringement will really happen, the perpetrator can still gamble the legal interests of others to try his luck, even if the gamble is lost, the law still gives mild liability, as if he did not think that the result of the infringement might happen. And the crime of helping faith is a typical embodiment of the preventive doctrine of criminal law. In this light, Article 2 of the judicial interpretation seems reasonable. And Article 2 of the judicial interpretation of the crime of helping letters "where the payment and settlement amount is more than 200, 000 yuan" is far from the extent of damaging major superpersonal legal interests, and "where the object of help causes serious consequences" is not clearly explained. In contrast to other countries, preventive criminal law is mostly used to deal with serious terrorist crimes.Therefore, the second paragraph of the serious judicial interpretation of the circumstances of the crime of helping the letter, which has a strong criminal law preventive color but no legitimate basis, should be eliminated, and further clarify the sixth paragraph "the specific requirements of the object of help causing serious consequences, such as" the perpetrator helps others set up a fake website of the official state agency, Where the perpetrator helps others to destroy the network of institutions of public affairs such as medical care and education, or to provide assistance in criminal acts that endanger national security, the circumstances shall be deemed as serious."

5.2 The application of non-custodial measures

For those who are found to be guilty of helping people with serious circumstances who should be investigated for criminal responsibility, priority should be given to the application of non-custodial measures. Data show that the high detention rate of criminal cases and the excessive detention time of some criminal suspects and defendants have not yet changed from quantitative to qualitative change, that is, the proportion of criminal suspects sentenced to light sentences or suspended sentences after arrest is still high.Non-custodial measures are a typical representative of responding to this judicial policy, and play a positive role in implementing the criminal policy of combining leniency with severity, resolving social conflicts, and effectively protecting human rights.

There are two main reasons for the preferential application of non-custodial measures to persons convicted of helping others. First, the people of the crime of helping the letter are mostly first-time offenders, occasional offenders, no criminal record, and meet the conditions for the application of non-custodial measures.Sun Changyong,The social danger here usually refers to situations involving personal safety or huge economic losses, and the possibility of reoffending is high, such as the husband who repeatedly abused his wife.Being seduced by people around and becoming a "tool person" of crime, the personal risk is not high, and the prerequisite for the application of non-custodial measures is met. Second, the application of non-custodial measures can help reduce judicial costs and improve the effectiveness of social governance. The cost of detention measures is high, with the input of physical resources such as sites, personnel and equipment, which also implies the invisible cost of detainees not being able to produce and live normally and create value for the society. The main part of the crime of helping trust is the private enterprise. A series of butterfly effects caused by the detention of private entrepreneurs, such as the stagnation of company operations, the break of capital chain, and the crash of the stock market, not only have a serious impact on the entire enterprise and employees, but also may cause certain harm to the market.

6 Conclusion

Under the background of complicity in the crime of helping trust, the improper expansion of its application is particularly worthy of attention. In fact, based on the traditional criminal law theory of accomplice, crime, responsibility and punishment and criminal law equality principle of three dimensions of investigation, the crime of helping faith has a limited application of the legal basis. The specific limiting content needs to explain the content and form of "knowing" at the legal doctrinal level. At the same time clarify the specific requirements of "serious circumstances". In this paper, the limited application of the crime of helping trust is elaborated in detail, but the deep exploration of the traditional theory of criminal law and the application of non-custodial measures are still a little weak, because of the limited space, it is not written. The above problems are worthy of reflection by the author and further exploration by the academic circle.

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