

The Application of the Crime of Picking Quarrels and Provoking Trouble in Cyberspace in China

Duoran¹, Daorentuya¹ & Gegen¹

¹ Inner Mongolia University of Technology, China

Correspondence: Duoran, Inner Mongolia University of Technology, China.

doi:10.56397/SLJ.2023.12.02

Abstract

In 2013, The Supreme People's Procuratorate, the Supreme People's Court issued "about the use of information network defamation criminal cases of applicable law" (hereinafter referred to as "the interpretation"), the judicial interpretation of article 5 on the Internet intimidation, abuse others or trouble, can also establish stir-up-trouble crime. This article in "Interpretation" expands the scope of the crime of picking quarrels and provoking troubles to cyberspace, forming a mode of the crime of picking quarrels and provoking troubles. Although the introduction of the Interpretation has played a positive role in regulating the behavior of picking quarrels and provoking troubles, the threshold of the crime of picking quarrels and provoking troubles is vaguer than the traditional identification of the crime of picking quarrels and provoking troubles, which to some extent leads to the confusion of the crime of picking quarrels and provoking troubles. Therefore, based on the theory and judicial basis of the crime of picking quarrels and provoking troubles, combined with the actual needs of the current cyberspace governance, it is necessary to study the related problems of the crime of picking quarrels and provoking troubles.

Keywords: picking quarrels and provoking trouble, cyberspace, public place, interpretation of criminal law

1. Interpretation of the Connotation of the Crime of Picking Quarrels and Provoking Troubles in Cyberspace

1.1 Identification

1.1.1 Identification and Treatment of Abusing and Threatening Others by Using the Information Network

The Supreme People's Court, the Supreme People's Procuratorate on the use of information network defamation criminal cases of applicable law issues (hereinafter referred to as the "explanation") the first paragraph of article 5, to

stir-up-trouble crime conviction and punishment including using information network to abuse, intimidation, if the circumstances are bad, destroy social order, etc.

In practice, we need to grasp the following two points: First, if the information network is used to abuse a specific individual, there may be competition and cooperation behaviors of picking quarrels and provoking trouble and committing insults. Whoever insults others, if the circumstances are bad and destroys social order, shall be convicted and punished in accordance with the provisions of Article 9 of

the Interpretation, that is, punished for the heavier crime of picking quarrels and provoking trouble. Second, the criteria for guilt should be strict. The abuse and intimidation must reach the degree of “bad circumstances”, and cause the damage to the reality of the social order. For some netizens to vent their dissatisfaction and abuse others on the Internet, they should focus on education and strengthen management. Generally, the provisions are not easily applied to this paragraph according to criminal treatment.

1.1.2 Identification of Fabricating and Spreading False Information on the Information Network and Making Trouble

“Interpretation” the second paragraph of article 5: “make false information, or knowing is fabricated false information, spread on the information network, or organization, letting personnel spread on the information network, the disturbance, causing serious chaos of public order, in accordance with the first paragraph of article two hundred and ninety-three of the criminal law of the first paragraph (4), to stir-up-trouble crime convicted and punished.”

1.2 Characteristics

Compared with the traditional crime of picking quarrels and provoking troubles, the crime of provoking troubles is more intense. The reason for this is largely that many local courts have biased legal understanding in practice and cannot grasp the spirit and essence of judicial interpretation. It can be said that “the classics is good, but let the crooked mouth monk to read crooked”¹. At present, the network crime of picking quarrels and provoking troubles presents the following two main characteristics.

One is the lack of clear guidance on key concepts. The crime of picking quarrels and provoking trouble has the characteristics of unclear concept. For example, what is “public place”, how to identify “destroy social public order” and so on. Many courts are uncertain about their key concepts, and then they cannot accurately apply the crime. Second, it is wanton sex. The subjective state of the actor who insults or threatening or fabricating or spreading false information in cyberspace is arbitrary and arbitrary, and its essence is to make trouble about nothing. If the perpetrator fabricates or spreads false information for a specific purpose, such as being entrusted by foreign spy forces to release false information to create a terrorist

atmosphere, his subjective state is not wanton, nor does it constitute a crime.

1.3 The Difference from the Traditional Concept of Picking Quarrels and Provoking Troubles

The crime of picking quarrels and provoking troubles refers to the crime constituted by the perpetrator of wanton provocation, arbitrarily beating, harassing others or arbitrarily destroying or occupying public or private property, or heckling or causing public trouble, resulting in serious damage to social order. Network type stir-up-trouble crime refers to the use of information network abuse, threatening others, if the circumstances are bad, destroy social order, and fabricate false information, or knowing is fabricated false information, spread on the information network, or organization, directed personnel spread on the information network, the disturbance, causing serious chaos of public order crime, to stir-up-trouble crime convicted and punished. The difference between the two lies in: first, the communication media presents the characteristics of the network. The essential difference of the crime of picking quarrels and provoking troubles and the traditional crime of picking quarrels and provoking troubles lies in the characteristics of network media. Second, the criminal behavior is non-violent. According to the provisions of the Interpretation, there are two main forms of the crime of picking quarrels and provoking troubles, namely abuse and intimidation and false information, both of which are completed in cyberspace without direct violence. However, due to the borderless and fast nature of information dissemination in cyberspace, the use of information network to abuse, intimidate others or fabricate false information will spread rapidly in cyberspace, causing serious damage to the social and public order.

2. Disputes over the Judicial Determination of the Crime of Picking Quarrels and Provoking Troubles in Cyberspace

2.1 Whether Cyberspace Belongs to a “Public Place”

2.1.1 Definition of the Characteristics of “Public Places” in China’s Legislation

A public place, or public space, is a place where everyone has the right to enter, regardless of their identity, age, economic status, or social status. The earliest normative document defining “public places” can be traced back to the (Fan Zhengwei, 2013) Regulations on the Administration of Public Health promulgated

by The State Council in 1987. Article 2 of the Regulations stipulates that for public places that can be managed according to law, some common places can be found, such as high concentration and large population mobility; the equipment and facilities in public places are oriented to the public and can be reused. China's legislation does not clearly stipulate the concept of "public places", but only enumerate it in various legal provisions. By listing the "public places" in the legal provisions, it can be seen that "public places" have the characteristics of public nature, free access and exit, personnel mobility and information exchange and dissemination. Public nature is the most basic feature of public places, and it is also the first criterion to measure public places. If a place does not have the public nature, that is, privacy, it will never become a public place. Is virtual cyberspace a public place? (Pan Ziheng, 2021)

2.1.2 Information Cyberspace Has the Characteristics of "Public Places"

Information revolution has brought great changes to the human society, the future society is the information society, human life without the product of information technology, represented by smartphones during the outbreak of health code outbreak, popularization and usage, mobile terminal epidemic information dynamic and real-time information, etc., has become a part of the real society, network society let us cannot leave the information technology. Initial role of information network, from its birth as a information transmission tool, to now undertake more social work, especially affected by the outbreak, "cloud" service instead of offline services, such as online office, online government service platform, the Internet gradually has more social attributes, start from virtual to reality, "gradually formed their own social structure, and the reality formed a huge radiation effect of space" (Yang Tianjiao, 2021). Although the network does not have the attribute of physical space, the technical equipment and other servers on which the network depends have certain physical space characteristics. The network world is the mapping of the real society, which is artificially constructed on the real society, and closely linked with it, online and offline influence each other. The network world is also a human society, and every network behavior is also an individual behavior. The use of information

network to carry out criminal activities is essentially a kind of human activities. In this sense, although the human body cannot directly enter the network space, but the human will be everywhere and everywhere. The characteristics of physics are not public, and because the network space is a virtual space, with no physical space, we can judge it as a public place in the sense of criminal law, can not be able to fully enter the body as the standard, but should be the main body. It should be based on whether people can freely express their wishes, and whether this kind of speech belongs to the scope of the criminal law. Simply put, the freedom of body in and out should not be the standard to measure whether a space is a public space.

2.1.3 The Identification of Information Cyberspace as a "Public Place" Is in Line with the Requirements of the Development of the Times for Combating New Crimes

When China's Criminal Law was revised in 1997, there were huge differences between economy, culture and other aspects and the current social situation. The Internet in China was still in the early stage of development, far from reaching today's popularity. For the vast majority of families, "Internet" was a concept that cannot be unfamiliar. If the criminal law is required to be interpreted with the will of the legislators at that time, it obviously does not conform to the current level of social development. We should see that scientific and technological progress has also revolutionized the means and means of committing criminal acts, which requires the legislative or judicial organs to respond quickly to new problems in practice. (Yan Jiuhong, 2020)

The speed of information transmission in cyberspace is incomparable to the traditional media. The high-speed dissemination of information makes the bad influence caused by false information wider, higher degree and more difficult to control. In order to adapt to the information society and better safeguard the interests of individuals, national interests and social order, the Criminal Law Amendment (IX) adds the crime of fabricating and spreading false information in Article 291. From the original case, the crime is very similar to the content of article 5, paragraph 2. All stipulate the legal consequences of fabricating, spreading or knowingly spreading false information. By different, it limits the content of the false information, including the crisis, outbreak, alert, disaster four types of false information, and to

provide provocative, disruptive of false information crime type is not restricted, namely in the network rumor type does not belong to the above four categories, adopted the “explanation” penalty. At present, most of the false information involved in the spread of online rumors can be covered by these four ways. Compared with the provisions of the interpretation, the stipulation of this crime is more. In particular, during the fight against the epidemic, criminals took advantage of the negative feelings of the public about the epidemic to repeatedly spread rumors on the Internet, stir up antagonism and create panic. For example, fabricating government inaction, concealing information about the epidemic, dying of a large number of diseases; or claiming that some food or medicine is a specific drug for COVID-19, or claiming that food shortage and food supplies are scarce, resulting in a large number of citizens to go out to “snap up” during the closed management period. In the special period, although this information comes from the invisible virtual space, the negative impact of these false information on the real world is still great due to the existence of virtual and real identity. Should see, our country’s current legislative trend is the space information network crime as illegal crime gradually into the punishment regulations, the cyberspace order crime into the public order scope, or the scope of traditional charges directly to the network field, or in the criminal law in our country add new crime specific regulation, from this perspective, the network space for public places in line with the legislative trend, also conforms to the requirements of the era of new crime.

2.2 Whether There Is a Difference Between Public Order and Public Place Order

“Criminal law” regulation, troublemakers in public places, causing public disorder is one of the traditional stir-up-trouble crime behavior, and “explanation” will cause public disorder as a network stir-up-trouble crime behavior, in the judicial practice “public order” and “public order” meaning is unified dispute. Some scholars believe that it is not necessary to replace public order with public order, and it may be difficult to grasp in practice. (Liu Hao, 2022) In practice, public order includes public order, which is a conceptual relationship between up and down. It is reasonable to replace public order with public order. Public order is actually an abstract concept, which involves a wide

range of aspects. If the public order replaces the order of public places, it will make the constituent elements of criminal acts lose their function, which is unfavorable to the stability of the criminal law. In fact, the insult, intimidation, false information and other remarks published by the perpetrator in cyberspace are not synchronized with the result of destroying the social order, but there is a certain time difference. In the range of poor time interval, the transmission of information in cyberspace is very fast. Even if the actor removes the relevant remarks in the later stage, it is difficult to prevent the dissemination of information, which leads to very difficult to predict information within the radiation range of cyberspace. The malicious remarks and false information spread by the actors will not only affect the production and life of the normal people, but also seriously damage the social order. Therefore, the need to be regulated through legal means. It can effectively crack down on insults, intimidation, false information and other behaviors released by unspecified objects in cyberspace.

2.3 Whether the Dissemination and Dissemination of False Information on the Information Network Is a Noisy Disturbance

The traditional crime of picking quarrels and provoking trouble is to cause trouble in public places and seriously damage social order. The Interpretation convicts and punishes acts of spreading false information and seriously disturbing public order. At this time, there will be relevant disputes “whether spreading false information belongs to picking quarrels and provoking trouble in the dissemination of information network”. Generally speaking, the connotation of heckling and disturbance is basically the same. It means that a particular majority of people gather together, create, and cause through words or actions. “Speech” can be either real information or false information. In order to avoid excessive intervention in the freedom of speech on the Internet, the Interpretation only spreads in cyberspace, and regulates the crime of spreading false information and seriously damaging social order, that is, the interpretation of the dissemination of information network is smaller than the traditional regulation scope of provoking crimes and creating crimes. Integrating the dissemination of false information on the information network into the category of disturbance can effectively crack down on the

behavior of using the Internet to destroy social order, and also effectively prevent the spread of network language violence and false information, so as to ensure the clean and upright order in cyberspace.

3. The Countermeasures of the Crime of Picking Quarrels and Provoking Troubles in Cyberspace

3.1 Clarify the Basic Legal Benefits of the Protection of the Crime of Picking Quarrels and Provoking Troubles

At present, China's legal provisions on the crime of picking quarrels and provoking troubles are quite special, which is mainly reflected in the various legal benefits of protecting the crime according to the provisions. In order to avoid the abuse and expansion of the crime of provoking trouble, the basic benefits of the crime should be clearly protected. No matter from the perspective of legal provisions or legal norms system, the basic law benefit of protecting the crime of picking quarrels and provoking troubles should be public order. In other words, only the behavior that destroys the social and public order will be included in the scope of crime regulation. The crime of network picking quarrels and provoking troubles regulates the behavior of network picking quarrels and provoking troubles, and the legal interests of protection are the social and public order. That is to say, when examining whether the actor constitutes the crime of network picking quarrels and provoking troubles, destroying the problem of social and public order should be the primary consideration. As long as the actor's online remarks are not enough to cause legal benefits to destroy the social and public order, it should be deemed guilty of the crime of picking quarrels and provoking trouble.

3.2 Clarify Whether Cyberspace Belongs to a "Public Place"

Since the 21st century, the network information technology in China and even the world has shown a blowout development, the network has been gradually opened, and we media people all over the network space. From the perspective of expanding the channels for citizens to participate in social affairs, cyberspace has unique advantages. However, what cannot be ignored is that the number of Internet users is huge and the comprehensive quality is uneven. It is inevitable that some people will attack

others maliciously or incite illegal remarks under the guise of information dissemination, which seriously damages the rights and interests of others and hinders the benign development of online empty inquiry work. Article 5 of the Interpretation is to respond to the expectations of the broad masses of the people, and to clarify the criminal nature of the Internet to implement harmful acts, so that the spread of cyber crimes can be effectively contained. This has some positive significance. In fact, it is not necessary to attribute "cyberspace" to "public places". First of all, the "network empty question" can be used for an unspecified majority of people free access and use, and there is no obvious restrictions, in line with the instructions of the Commission. Second, although the Interpretation does not make it clear that "cyberspace" is a "public place". But the judicial interpretation was introduced in 2013. So far, the objective situation of network technology and network popularization has undergone major changes. The meaning of the law and its text is not fixed. Much of what happens in the real world is unexpected by the rules. (Liu Hao, 2022) Cyber crime is becoming increasingly common. The importance of network emptiness can not be ignored. Integrating it into "public places" can to some extent adjust the contradiction between the lag and dynamics of legal provisions in real life.

3.3 Clarify Whether the Network Order Belongs to the "Social and Public Order"

Both the Criminal Law and the Interpretation regard "destroying social order" as the threshold of the crime of picking quarrels and provoking troubles. Article 5 of the Interpretation stipulates that those who fabricate false information, or knowingly spread the false information on the information network, or organize or instruct personnel to spread it on the information network, causing serious disorder in public order, shall be convicted and punished for the crime of picking quarrels and provoking trouble in accordance with the provisions of the criminal law. Some scholars said that the crime of picking quarrels and provoking troubles occurs in public places, and the provisions of the Interpretation mean that the Internet clearly belongs to public space. (Guangming Daily)

In 2012, Sina Weibo user Dong Moumou used an account called "Environmental Protection Dong Liangjie" to fabricate false information about "birth control pills in tap water". The content is:

“China is the first consumer of birth control pills, not only people eat, but also invented new uses, such as aquaculture. The contamination of the environment by birth control pills can cause wildlife to become sterile or reduce their ability to regenerate. Scholars studying estrogen disruptors in drinking water found that 23 water sources, the highest in the Yangtze River Delta region. Moreover, they act as persistent pollutants that cannot be removed by general water treatment techniques; the human body accumulates with unpredictable consequences. Country comparison, startled.” It spread on China’s information network, leading to a large number of false information forwarding and comments, misleading the public to produce wrong cognition, causing people’s concerns and doubts about the safety of public services. After the examination of Beijing Chaoyang District People’s Procuratorate, it was believed that Dong committed the behavior stipulated in paragraph 1 (4) of Article 293 of the Criminal Law of the People’s Republic of China, but the crime was minor and the attitude of confession was good, and he did not need to be punished in accordance with Article 37 of the Criminal Law of the People’s Republic of China. In accordance with paragraph 2 of Article 173 of the Criminal Procedure Law of the People’s Republic of China, we decided not to prosecute Dong Liangjie on June 6, 2014. The main question in this case is whether the order of cyberspace belongs to the “public order” in the crime of picking quarrels and provoking trouble.

Some scholars say that the crime of picking quarrels and provoking troubles occurs in public places, and the provisions and promulgation of the Interpretation clearly mean that cyberspace belongs to the public space. 1) Cyberspace has a common property. Cyberspace order is an important part of social and public order. The public exchanges information through the Internet, buys and sells goods, and enjoys leisure and entertainment, forming a space with public attributes. Secondly, the net chrome space itself has order. After nearly half a century of rapid development, cyberspace has formed an order. The broad sense of cyberspace order includes both the order between network users and the order of the network itself.

3.4 The Regulation Path of the Judicial Restriction of the Crime of Picking Quarrels and Provoking Troubles in Cyberspace

In view of the crime of “pocket”, network

stir-up-trouble crime in the judicial level countermeasures not only limited to the limited interpretation of constitutive elements and the general definition of legal interest content, and should be in the interpretation level of network type stir-up-trouble crime system analysis and construction, including in the interpretation of the constitutive elements of network troublemakers crime, special emphasis on follow the basic principles of criminal law, will limit the unreasonable expansion of crime as the basic principles of criminal law interpretation. On the basis of clarifying that the contents of the crime include social order and individual rights, the logical relationship between the contents of the legal interests is explained, and then the scope of the establishment of the crime is restricted in the process of judicial application. In order to avoid the suspicion of analogous interpretation of the crime, the main interpretation method of the criminal law conducive to restricting the scope of the establishment of the crime should be specified, and the analogical interpretation and the expanded and easily guided analogical interpretation should be prohibited, so as to reasonably control the judicial application of the network crime of picking quarrels and provoking troubles with the interpretation method. We should pay attention to the effective coordination between the laws of different departments, follow the principle of humility, observe the participation of criminal law in social governance in the whole governance system, and adhere to the normative status of criminal law as the guarantee law (Liu Hao, 2022).

4. Epilogue

The crime of picking quarrels and provoking trouble stems from the behavior of the crime of hooliganism. With the popularization of information network, the traditional crime of provoking quarrels has gained a new situation. Whether the network behavior of picking quarrels and provoking troubles constitutes the crime of picking quarrels and provoking troubles lies in whether the information cyberspace is the public space in the sense of criminal law. Information cyberspace has public, open, communication and place attributes, which are very similar to the “public place” in the legal sense. The identification of information cyberspace as a public place meets the development requirements of combating new crimes. The openness and sharing of cyberspace

are increasingly increasing, and the demand for public order is also gradually increasing. In the network society and the real society of the gradual overlap, it can be said that the network order has gradually become a part of the public order. Therefore, when a behavior has produced serious consequences of endangering the information network security, that is, it has social harm, it should be regulated from the perspective of criminal law.

We should keep pace with The Times and accept the new things in cyberspace. With the development of the Internet, the information space is no longer limited to the tool attribute, and its social attribute is becoming more and more important. Relying on the information network technology, the information network is destined to be more and more “realistic”. If we still adhere to the reality or physical rationality of public places, and adhere to the real society as the standard of judging public places, it is obviously not in line with the needs of the current social development. We should look at problems from the perspective of development and focus on the future.

References

- Chang Jinfang. (2013). From “privatization” to “citizen”: the publicity of the main body in cyberspace. *Social Science in Shandong Province*, (7), 35-39.
- Fan Zhengwei. (2013). Administering the internet according to law requires police to punish “crooked mouth monks”. *People’s Daily*, 2013-09-25, (5).
- He Jiayu. (2015). Take “two high” “Network libel interpretation” as the perspective. East China University of Political Science and Law.
- Liu Hao. (2022). The pocket judicial restriction path of the crime of picking quarrels and provoking troubles. *Journal of Beijing Institute of Technology (Social Science Edition)*, 24(01), 162-172. DOI:10.15918/j.jbitss1009-3370.2022.5202.
- Pan Ziheng. (2021). The public attribute of cyberspace from the perspective of picking quarrels and provoking troubles. *Journal of Heilongjiang Political and Legal Management Cadre Institute*, (02), 62-66.
- Yan Jiahong. (2020). “Cause serious disorder of public order”, — takes the crime of spreading false information online as an example. *Journal of Beijing Vocational College of Political Science and Law*, (4), 15-22.
- Yang Tianjiao. (2021). Research on the judicial determination of the crime of network picking quarrels and provoking troubles. Gansu University of Political Science and Law.

¹ Article 2 of the Regulations on the Administration of Health in Public Places, these Regulations shall apply to the following public places: (1) hotels, restaurants, hotels, guest houses, horse shops, cafes, bars, tea houses; (2) public bathrooms, barber shops, beauty shops; (3) theaters, video halls (rooms), entertainment halls (rooms), dance halls and concert halls; (4) stadiums (halls), swimming pools (halls) and parks; (5) exhibition halls, museums, art galleries and libraries; (6) shopping malls and bookstores (shops); (7) waiting rooms, waiting rooms (machines and boat) rooms and public transportation tools.