

Research on Criminal Protection of Personal Information of Citizens

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Abstract: With the social and economic development, personal information in the crimes is not in the minority, which has brought great harm and influence to society and people's life, and hindered the process of the rule of law in china. In order to protect personal information better, it is very important to strengthen the criminal law construction. Based on this, this paper studies the criminal protection of the personal information of citizens, hoping to provide reference for better protection of personal information.

In a society, the disclosure of personal information of citizens is a general phenomenon, which not only has a serious impact on people's lives, involves the violation of personal privacy, but also causes serious consequences. In order to protect the citizen's personal information better, it is necessary to construct the legal clause in the criminal law, and to punish the criminals. That is to say, only when the individual information of citizens is protected by criminal law can the protection of citizens' personal information be realized.

1. Personal information content of citizens

As for the definition of citizen's personal information, different countries have different definitions, and there are many differences between them. About the definition model of personal information of citizens, the most important ones are identification, privacy, enumeration, generalization and so on. The United States is the representative of privacy type definition mode, that those who steal personal information of citizens, a behavior is a crime; Holland and the EU approved type definition recognition mode, that citizens' personal data on their own is a true portrayal of the situation, the use of these data, can distinguish the residents. Personal information of our country mainly includes: name, duty, date of birth, ID number and other data information. It is related to citizen's personality right and has no connection with public life [1].

First, the personal information of citizens is different from personal data. Personal information can play a very good role in protecting personal data. The main carrier of personal information is personal data. More attention is paid to the material objective state of personal data, while the personal information of citizens pays attention to the subjective state. Besides personal data, the personal information of citizens also includes other ways of expression. With the rapid development of the service industry, personal information is often violated, and the state has promulgated relevant laws to protect personal information well [2].

Second, the personal information of citizens is different from personal privacy, privacy is an individual private affair, and there is no connection with public relations. Although the law protects individual privacy, there is no specific provisions. Privacy belongs to the rights of individual citizens. Compared to privacy, citizens have a wider range of personal information, and personal information includes privacy content.

In the object of the personal information of citizens, the legal attribute mainly refers to the personality right, the ownership and the right of privacy, and so on. The object is different, and the individual information of the citizen is different. The object of the right of personality that opinion, personality right belongs to a kind of absolute power, to protect the interests of individual citizens and personal information should be the same degree, Germany dedicated to the introduction of

relevant laws and regulations clearly protection of citizens' right of personality. The object of ownership that opinion, as long as the public interest, the ownership of all information is attributed to all individuals, personal information of citizens belonging to the category of the object of real right, being citizens to use at the same time, will produce economic benefits. In the view of the object of privacy, the status of privacy is equivalent to the status of personal information of citizens, and the legal protection of the two should be the same. The United States has specially promulgated laws to guide the government to make scientific use of citizens' personal information and pay attention to the protection of citizens' privacy [3].

2. The shortcomings of the criminal protection of the personal information of citizens

According to the relevant provisions of China's criminal code, although the sale of illegal information to provide citizens information, but the prerequisite is to violate the relevant provisions of the state. Although according to the provisions of article ninety-sixth of the criminal code, which refers to the "state regulations", including legal, administrative regulations, administrative measures, decision and order, but for the personal information, no unified law on the protection of personal information. There are 24 laws or documents concerning the protection of personal information of citizens, all of which belong to administrative laws and regulations. Therefore, the infringement of personal information of citizens once harmful behavior, it has the nature of administrative violations, and the characteristics of administrative prisoners in line with. At this stage, in view of the behavior of infringing personal information of citizens, our country lacks systematic and perfect administrative legal sanctions system, and can not carry out the connection with criminal sanctions [4].

In China's criminal law, although in the "serious plot" in terms of expression, in line with the relevant provisions of the principle of a legally prescribed punishment for a specified crime, but it can not be a very good implementation of the principle of legality. China has not yet formulated and promulgated the "personal information protection law for citizens". It is impossible to define the words such as citizens, information and individuals accurately. There are many disputes over the criminal law circle. Such as: "personal information", some of the experts of the national legislature, that is able to identify the individual information of citizens. Some scholars believe that information that reflects the rights of individual privacy can be expressed. In addition, in the crime of illegal acquisition of personal information of citizens, in terms of behavior, themes and other elements of the meaning, the resulting differences of opinion is also relatively large. For the infringement of citizens' personal information behavior, our country did not establish a unified and complete legal system in administrative sanctions, many issues need to be addressed urgently, the relationship between criminal sanction and administrative laws and regulations and administrative law, which is a very important aspect.

In April 2003, the State Council Information Office organized deployment of personal information legislation research activities, in early 2005, experts have submitted the "personal information protection law", however, the problem is not representative of the overall research on the legal protection of personal information. In the light of the issue of whether human flesh search is a crime, a heated discussion has been held in the theoretical circle. In the relevant provisions of China's criminal code, there is also disagreement on the understanding and application. Such as: in the "above information", some people think that it should be limited to the scope of public power or public service. It is difficult to deal with the situation of selling, seriously illegal use of personal information collected from the Internet and conniving at some violations of personal information of citizens. In a certain extent, the state legislature lack of harm to the infringement of citizens' personal information network behavior and the severity of attention caused by the existing provisions, the harm behavior of criminal sanctions serious infringement of citizens' personal information in a dilemma [5].

3. Legislative improvement of criminal law protection

Although the interpretation of citizens can be interpreted in an extended way, anyone will be included, including foreigners and stateless persons. However, the "citizen" itself is an extremely serious legal concept, both the connotation and extension are fixed, the foreigners and stateless persons including, very serious of "citizen" concept of the original distortion, did not take this legal term serious. The related content of the personal information protection provisions, other countries and regions will not "citizens" of the word, in the back of personal information pertaining to, for example: whether the criminal law of People's Republic of China Special Administrative Region of Macao code 189th provisions of the crime of breach of confidentiality, or the provisions of article 190th not justified secret crime, don't use "residents" these are similar to the modification of the words in front of others, and the secret ". Therefore, in order to make the content of the law more concise and clear, at the same time, in order to avoid entering into a certain misunderstanding when interpreting, the word "citizen" in the first paragraph of the 253rd paragraph of the criminal code can be basically removed.

In China's criminal law, in the provisions of the personal information infringement or secret crime, many countries and regions for personal information or secrets of the definition and scope did not make the relevant provisions, such as the People's Republic of China criminal law of the Macao Special Administrative Region Code 189th, 190 is the case. Different from other countries and regions, China has not formulated and promulgated the personal information protection law. Therefore, since the promulgation and implementation of the criminal law amendment (seven), one of the more important issues is how to determine the definition and scope of personal information, which has led to many disputes. To these problems will be solved smoothly, and the debate completely destroyed, the most suitable solution is in the personal information infringement crime in our criminal law and the provisions of the use of the special one, clearly defined the concept of personal information. In the penal code, many places are using the legislative model, has a typical, in article 219th of the criminal code, the relevant provisions on the crime of infringement of business secret, there are many similar places with one of 253rd. In China's criminal law point 219th, clearly defined at the same time on the crime of infringement of business secret crime and legal punishment, through the use of special two contents, clearly defines the two concepts of commercial secrets, commercial secrets of human rights. In the law of the People's Republic of China on commercial secrets, these two concepts have already been stipulated in detail. For the rest of the department law has the relevant concepts of legal terms are defined, the penal code can also be specified, the so, for some of the provisions is not clear or no legal terms involving any departments of law, regulations on these legal terminology, the criminal code should be further clear.

In accordance with the relevant provisions of the first two paragraphs of the 253rd criminal code in our criminal code, the "information" mentioned in the second paragraph is similar to the information in the first paragraph. Although this analysis is consistent with the original intention of legislation, it is consistent with the content of illegal activities to obtain personal information of citizens. However, along with the continuous development and progress of social economy, this method of analysis has many inappropriate aspects in the judicial practice and the specific needs of the struggle against illegal activities of personal information. According to the relevant provisions of the criminal code of China one of 253rd of the second paragraph of the two scientific treatment can not have harmful behavior: first, from the rest directly on the personal information of illegal access, or through open channels, collect, collate of personal information. Second kinds of personal information from the rest of units or individuals to steal, buy or cheat. In the light of the first act, before the promulgation and implementation of the criminal law amendment (seven), many people supported the inclusion of "human flesh search" in criminal activities. However, the behavior subject, subjective intention and the way of using information are different in the aspect of harmfulness, and it is possible to deal with it directly by means of penalty. There may be many unsuitable places. According to the second kinds of behavior, based on the judicial practice of

criminal law, the 253rd article of the second paragraph of the "information" scope, regardless of the judiciary has quietly changed, for through open channels, collect and sell information on others, are to be held criminally responsible for example, since the promulgation and implementation of the "criminal law amendment (seven)" since the first case of infringement of citizens' information crime case, on the basis of the crime of illegally obtaining personal information, personal information data of the defendant Zhou illegal sale of conviction and punishment. In the case of personal secrets or information, whether the acquisition unit has the public power, the criminal code of other countries or regions is not clearly defined. In the specific situation of our country, the act of obtaining personal information in the performance of service or service provided by public service units or staff members is guaranteed. At the same time, through the criminal law, the protection of non public service units or individuals to obtain personal information behavior [6].

At this stage, according to the relevant provisions of China's criminal code article 253rd of the units and individuals for legal or illegal access to personal information of citizens, and the behavior of illegal use of personal information, do not hold the relevant criminal responsibility. However, in real life, similar situations are getting worse. For example: in March 2009, CCTV once a year "3.15" in the evening, according to Shandong mobile communication company recklessly spam messages that were exposed to. Through SMS and base station, Shandong mobile communications company will send text messages to users, in order to seek relevant benefits. In daily life, users often receive similar harassing calls or messages that affect their normal life. These acts are not for sale and illegal provision of personal information of citizens, but belong to the category of illegal use. For the illegal use of personal information or secrets act, most countries and regions through the criminal code, to make special provisions of the penal code, in Germany, to "use the other secrets", made clear.

4. Conclusions

The protection and improvement of personal information has gradually become the focus of social attention, and also is an important content of the protection of people's privacy. The criminal law needs to be expanded in this respect. On the one hand, in combination with the actual situation of social development, on the one hand, in combination with the needs of the development of the rule of law in criminal law, we should further improve the criminal protection measures of the human rights of citizens. Through the construction of the criminal law protection of personal information, so that everyone can live better in the society, so that each person's information to be the most comprehensive protection to our society, because of the construction of criminal law and get better development.

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