

The Problems in the Protection of Personal Information of Citizens and the Regulation of Criminal Law

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Abstract: With the rapid development of network and technology, more and more places for citizens' personal information registration are needed. At the same time, the spread speed and scope of personal information are fast and the scope of personal information is wide, which also brings about the problem of personal information disclosure, which causes the widespread worry of the public. This paper starts from the point of the protection of criminal law, and puts forward a series of relevant measures and Thoughts on the protection of personal information criminal law.

Keywords: Personal information; Criminal law protection; Criminal law regulation

The rapid development of information technology has accelerated the progress of social information data in China. The provision of personal information and real name system in Internet surfing also makes the collection of information more important, but also poses potential risks to the social stability. How to protect personal information of citizens through criminal law deserves our discussion.

1. The definition of personal information in criminal law

As for the concept of citizen's personal information, the current criminal law of our country has no clear provisions, and the legal theorists hold different views on it. The concept of personal information is not unified, which is not conducive to judicial practice. To this end, the Supreme People's court and the Supreme People's Procuratorate issued the interpretation on Several Issues concerning the application of law in handling criminal cases of infringing citizens' personal information (hereinafter referred to as the interpretation) on May 8, 2017, in which the definition of citizens' personal information is clearly defined. If it is recorded by electronic or other means, the record can identify special information alone or in combination with other information All kinds of information that includes natural person's identity or specific natural person's activities, including name, ID number, contact method, address, password, property status, whereabouts, etc.

2. Problems in the criminal law protection of citizens' personal information

In recent years, China has actively taken measures to improve the relevant laws and regulations on the protection of citizens' personal information, but there are still problems and loopholes, such as the lack of the concept of citizens' personal information, the lack of pre-existing laws and so on. The protection of citizens' personal information still has a long way to go.

2.1 The lack of the concept of citizens' personal information

Although in 2017, the "two high" issued a judicial interpretation to define the concept of personal information, adding information about life socialization to the concept of personal information, such as track of tracks, property status, etc. Compared with the past, the definition of citizen's personal information is more perfect, but it should be noted that with the development of science and technology, new things are increasing, and new personal information is constantly emerging. Once the new personal information is not clearly defined in the legal sense, it may bring trouble to judicial practice.

2.2 The lack of pre-existing laws

Personal information protection in the criminal law is lack of the corresponding pre law, according to Article 253 of the criminal law According to the article, the premise of selling, providing and illegally obtaining citizens' personal information to constitute a crime is "violating the relevant provisions of the state". However, it is not clear where the relevant provisions in "violating the relevant provisions of the state" point to. There is no specific legal content about citizens' personal information in the current criminal law, and its provisions are scattered in different legal documents, For example, in the civil code, the e-commerce law and the ID card law, the lack of a unified and specialized prepositional law will lead to many problems, such as confusion of basis and different penalties. These problems will have a certain impact in judicial practice, and even lead to the phenomenon of different judgments for the same case, which is contrary to the maintenance of judicial credibility. Therefore, it is necessary to establish the prepositive law.

2.3 The lack of criminal behavior to regulate personal information

According to the current criminal law, the infringement of citizens' personal information is mainly in the form of illegal acquisition,

theft, provision and sale On this basis, the “two highs” published information on social platforms or used it for exchange, acceptance, purchase and other ways, which enriched the way to identify the infringement of citizens’ personal information. However, we learned from real life that illegal embezzlement, illegal use and illegal destruction of citizens’ personal information are also quite common, and these behaviors are not reflected in the criminal law When citizens’ personal information is illegally infringed, they may face the situation of no legal basis.

3. Measures and thoughts on criminal law protection of citizens’ personal information

For the above problems in the criminal law protection of citizens’ personal information, the author puts forward the measures and thinking of the criminal law protection of citizens’ personal information, such as the definition of the concept of citizens’ personal information, adding the “personal information protection law” as soon as possible, adding the way of conviction, etc. Specific measures and thinking are mainly expressed in the following point^s.^[1]

3.1 Defining the concept of citizens’ personal information

The foundation of criminal law protection of citizen personal information is that it needs to be clearly defined in the concept of personal information. In the definition of personal information, we can consider adding new personal information of the new era into judicial interpretation, so that the protection scope of personal information of citizens can be covered comprehensively.

3.2 Enact personal information protection laws

It is necessary to introduce the prepositive law to protect and maintain citizens’ personal information. In recent years, the appeal for the promulgation of the “personal information protection law” in China’s legal theory circles is growing. The State Council announced the “personal information protection law (Draft)” in March 2017, which makes more detailed provisions on the concept of personal information, legislative principles, personal information rights and other contents. However, the provisions of the draft are still neglected, such as the lack of classification of personal information, insufficient legal liability and punishment, and the absence of supervision and management system. In this regard, the author suggests that China should further modify and improve the provisions of the draft, and introduce the “personal information protection law” as soon as possible, so as to provide practical protection for the protection of citizens’ personal information through the “criminal law”.^[2]

3.3 Adding the way of convictio

In the judicial interpretation, there are still limitations in the protection of citizens’ personal information, especially in the form of personal information crime. For example, there is no new way of incriminating behavior in the criminal law. In the judicial interpretation, only the existing provisions of the criminal law are detailed, so it is difficult to restrict the new behavior by law. It is necessary to take supplementary measures to add the new way of incriminating behavior to the criminal law At the same time, we should pay attention to the setting of the disclosure clause, which can play a significant role in the prevention of citizens’ personal information crime. With the development of network and the change of social production mode, the way of citizens’ personal information being infringed becomes more and more strange. Therefore, the criminal law protection of citizens’ personal information should add new explanation on the way of incriminating behavior.

Reference

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