

Research on the Coupling of Internet Gambling and Telecommunications Fraud Crimes

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Abstract: In recent years, there has been a clear trend of the combination of online gambling and telecommunications fraud. Generally speaking, the number of cases involving the combination of the two and the level of public attention to them have both been on the rise. There are couplings between the two in many aspects such as means, subjects, organizational structures, and capital flow channels, which has also given rise to many practical dilemmas. At the theoretical level, there are difficulties in distinguishing between different charges, clarifying the relationships among them, and determining the number of crimes. At the practical level, law enforcement officers have long been troubled by the difficulties in apprehending suspects and recovering stolen goods. In response to these theoretical and practical dilemmas, on the one hand, it is necessary to clarify the concepts, logic, and train of thought, and use typical cases to guide judicial judgments. On the other hand, there is an urgent need to establish an all-round and multi-level cooperation model. This includes promoting cross-border collaborative governance, strengthening international judicial cooperation, cracking down on the outflow of funds, and safeguarding the property interests of the general public.

1 INTRODUCTION

With the rapid development of the information society, there have been significant changes in the current crime structure. The proportion of traditional illegal crimes has been continuously decreasing, while the proportion of new types of cybercrimes represented by telecom network fraud and online gambling has increased substantially. These cases occur frequently, involve a wide range of aspects, result in large losses, and have drawn strong reactions from the public. This phenomenon is also reflected in film and television works. A realistic-themed movie titled *No More Bets*, which exposes the inside stories of telecom network fraud and online gambling, came into being and set off a movie-watching craze, with its box office continuously rising. The intense popularity of this film also, to a certain extent, reflects the in-depth concern and profound loathing of the general public towards telecom network fraud and online gambling. Therefore, it is necessary to conduct further research and analysis of these two types of crimes.

On the one hand, online gambling and telecom fraud have similarities in terms of their means. Both online gambling crimes and telecom fraud crimes

take advantage of the anonymity and convenience of the Internet. Similar to other cybercrimes, online gambling and telecom fraud usually occur in the virtual cyberspace. Criminals don't have to risk exposing themselves when carrying out criminal activities. Precisely because of this, the difficulty of relevant arrest operations and evidence collection work has been significantly increased compared with traditional crimes. Criminals can evade the review and supervision of the network department by means such as disguising IP addresses and using overseas servers. Criminals often also employ technologies such as secure and confidential communication, which makes their criminal acts extremely covert. As a result, a large number of black and gray industrial chains have emerged (Zhang & Deng, 2021).

On the other hand, there is a high degree of overlap and synergy between online gambling and telecom fraud in terms of their subjects and organizational structures. In numerous actual cases, the relevant criminals are not only involved in organizing online gambling but also engaged in telecom fraud activities. This overlap of criminal subjects causes gambling and fraud behaviors to interweave with each other, forming a complex

criminal network. Take the "pig butchering scam" (a type of telecom network fraud) as an example. This kind of crime has already formed a complete black industrial chain, and there is a clear division of labor within the organization. Generally, it is divided into the telephone operation group, the information supply group, the technical group, and the money laundering group (Bo, 2020). The division of labor within the organization is extremely clear. It involves tasks such as searching for potential victims of fraud, providing technical support, carrying out actual fraud activities, and laundering the ill-gotten gains, thus forming a complete chain of "gambling/fraud — money laundering". If not curbed, the scale of this gray industry is bound to expand further, and the safety of people's lives and property will suffer significant damage (Li, 2024).

In addition to the above mechanisms, the channels of fund transfer are also one of the common features of online gambling and telecom fraud. In online gambling crimes, the gambling funds are likely to be transferred via third-party platforms like WeChat Pay and Alipay. Similarly, in telecom fraud crimes, fraudsters generally make use of such payment methods to transfer the ill-gotten gains.

2 THE LEGAL DILEMMAS OF THE COMBINATION OF FRAUD AND GAMBLING

Broadly speaking, gambling crimes can generally be divided into three categories: the crime of gambling, the crime of operating a gambling den, and the crime of organizing and participating in gambling outside the country (territory). Gambling refers to the act of placing bets and other means to seek uncertain results in a probabilistic event that cannot be predicted by all parties, so as to win more gambling funds. Subjectively, the purpose of making profits is required, and objectively, there should be the acts of gathering people to gamble, making a living by gambling, or operating a gambling den. The crime of fraud has no subdivided charges. Subjectively, it requires criminal intent, and objectively, it requires the act of defrauding property, including both private property and public funds. The range of sentencing is determined according to the amount of money involved.

2.1 The Issue of Differentiating Between Crimes and Charges

As mentioned before, there are couplings in both internal and external characteristics between the crime of gambling and the crime of fraud in many aspects, which greatly increases the possibility of their concurrent occurrence. This also leads to the practical dilemma of distinguishing between these crimes and the possibility of different judgments for similar cases. The following are two cases with similar circumstances.

Case One: In May 2019, the defendants Cheng Moumou and others, in order to make money, discussed and decided to establish a gambling website of the lottery type. A part of the established gambling website was sold to customers. They were aware that the purpose for which the customers purchased these gambling websites was to carry out "pig butchering scam" to defraud money. By helping the customers with the gambling websites, they made a profit of more than 200,000 yuan. The other part was operated by Cheng and others themselves as the banker. They attracted others to participate in gambling in the forms of recharge rebates and betting rebates. Whether it was sold to customers or operated by themselves as the banker, Cheng and others could, in the capacity of administrators, manipulate functions such as recharging and cash withdrawal of the website at any time. They even pretended to be gamblers and participated in gambling with other gamblers. The business model was to attract more people to recharge money into the website for gambling by means of giving rebates based on "transaction volume". Once the gambling funds had accumulated to a certain extent, they would selectively block the cash withdrawal function of some gamblers on the grounds that there were abnormal "transaction volume brushing" behaviors in their accounts. They also informed the gamblers that it was possible for the accounts to be unblocked only after a three-day review. During these three days, the gamblers were required to continue placing bets and brushing the transaction volume, thus making the gamblers continue to gamble on the website. As long as the gamblers had a large amount of funds in their accounts, the cash withdrawal function would not be unblocked, preventing the gamblers from making withdrawals. Until the gamblers lost all the money in their accounts. By the time the cash withdrawal function of the gamblers' accounts was unblocked, the gamblers had no funds left to withdraw. They

defrauded all the funds of the gambling participants in this way. According to 2020 Gui 1103 No.14, the court finally ruled that all the defendants in this case were found guilty of the crime of operating a gambling den, and were sentenced to fixed-term imprisonments ranging from two to four years respectively.

Case Two: From November 21, 2018, to January 9, 2019, the defendants Xiao and others purchased tools such as the domain name of the "Instant Lottery" website used for fraud, accounts on dating websites, WeChat accounts, mobile phone cards, bank cards, etc. They pretended to be single men and selected single women on dating websites as the targets of fraud. After gaining the trust of the other party and establishing a certain relationship foundation, they fabricated the fact that recharging and betting on the false "Instant Lottery" website could make a profit, and induced the victims to recharge and bet on the website. After the victims such as Yang transferred funds through the recharge function of the "Instant Lottery" website into the bank accounts of others controlled by the defendant Xiao, then he contacted his accomplices to transfer the funds. In this way, Xiao and others defrauded Yang and others of a total of 408,000 yuan. According to 2019 Yu 0154 No. 523, the court finally ruled that the defendants Xiao and others were guilty of fraud and were sentenced to fixed - term imprisonments ranging from one to ten years respectively.

The situations in the above two cases are very similar. The criminals all used similar means, which conform to a certain persuasion technology model. They took the most urgent needs in the victims' hearts as bait to obtain improper benefits (Monica, 2013). However, the final judgment results are completely different. In Case One, the defendants were convicted of the crime of operating a gambling den, while in Case Two, the defendants were charged with the crime of fraud. Therefore, In similar cases where multiple factors are intertwined, how to determine the crime and what criteria to use to distinguish one crime from another have become one of the difficulties in the trial process.

2.2 The Issue of the Number of Crimes

In judicial practice, various criminal acts often appear intertwined. Especially for criminals in criminal gangs, their criminal acts usually may involve the constitutive elements of multiple charges. In cases where gambling and fraud are closely linked, and the

criminal acts simultaneously cover the constitutive elements of both the crime of gambling and the crime of fraud, it becomes another difficult problem in actual judicial judgments to determine what appropriate and practical theory should be used as the basis to reach a final judgment that is both reasonable and in line with the actual situation.

Studying the issue of the number of crimes essentially involves discussing the relationship between different numbers of crimes. Regarding the judgment criteria for distinguishing the number of crimes, numerous scholars have put forward a great many theories. Among them, the "doctrine of legal interest (result) standard" proposed by Professor Zhang Mingkai has a relatively high degree of acceptance in China. That is to say, the number of legal interests violated by an act, especially the number of harmful consequences caused, is taken as the judgment criterion (Zhang, 2020). According to this theory, offenders who only participate in some of the crimes in the criminal chain usually only commit a single charge. For example, the technical personnel in a criminal gang, their criminal acts are mainly reflected in establishing, operating and maintaining relevant websites. If other elements such as subjective intent are met, their acts mainly violate public social order, and they should be sentenced for the crime of operating a gambling establishment. However, for the members of the criminal gang who are responsible for deceiving the victims to gain their trust, then luring the victims to participate in gambling, providing false information, and defrauding funds, their acts mainly violate the victims' individual property rights and should be punished for the crime of fraud. In addition to the above two types of situations, the "higher-ranking" organizational members of the criminal gang usually do not limit their participation to just a part of the criminal activities. For this type of crime, there are different paths of theoretical analysis, and different theoretical paths also lead to completely different judgment results.

One way is to handle it in accordance with the principle of concurrent crimes. That is, in the case, an act of operating a gambling den simultaneously violates the crime of operating a gambling den and the crime of fraud. In other words, there is a relationship of inclusion between the act of operating a gambling den and the act of manipulating the gambling results, with the former encompassing the latter. According to the basic principle of imaginative joinder of offenses, an imaginative joinder of offenses should be recognized as multiple crimes. That is to

say, in the judgment document, the charges violated by the act should be listed one by one, but the punishment should be imposed according to the statutory penalty of the more serious crime (punishment according to the more serious offense). Secondly, it should be dealt with according to the principle of implicated offenses. That is to say, it is believed that the case is not constituted by one act, but by two acts. Since the main purpose of the criminal gang in establishing the gambling website is to commit the crime of telecommunication fraud, there is an implicated relationship between the means act and the purpose act of these two acts. According to the basic principle of implicated offenses, it should be clearly stated in the judgment that the act violates multiple crimes, but the punishment should be imposed according to the statutory penalty of the more serious crime (punishment is imposed in accordance with the heavier crime). Thirdly, deal with it according to the principle of combined punishment for several crimes. Combined punishment for several crimes means the situation where several crimes are first convicted and sentenced separately, and then the combined punishment is carried out in accordance with the provisions of the criminal law. The scheme of combined punishment for several crimes holds that if the perpetrator does not commit the act of manipulating the gambling results in the case, the act is still within the scope of the constitutive elements of the crime of operating a gambling establishment. However, if the act of manipulating the gambling results goes beyond the scope of the original crime and separately violates other independent charges, then combined punishment for several crimes should be imposed on this situation (Yuan, 2021).

2.3 Difficulties in Arrest and Recovery of Stolen Goods

The apprehension of the criminal suspect or the main criminal suspect is one of the important conditions for solving a case. Most online gambling fraud cases are organized group crimes. Therefore, it is necessary to arrest the main criminal suspect. Merely apprehending secondary accomplices or accomplices under duress does not meet the conditions for solving the case. The ringleaders of online gambling fraud groups usually carry out criminal manipulation overseas. Even if the ringleaders and their hiding places are identified through various means during the investigation process, there are still great

difficulties in pursuing and arresting them overseas. At present, extradition is an important form of international criminal judicial cooperation, which requires that an extradition treaty be signed between the requesting state and the requested state. Due to various reasons, China has not yet concluded bilateral extradition treaties with countries such as the United States and Italy, where criminals often flee. In judicial practice, the commonly used method by China's investigation organs is to adopt the strategy of persuading suspects to surrender. This approach makes the investigation organs not take the initiative, and it is also difficult to conduct a scientific evaluation of the results of persuading suspects to surrender. Moreover, in the cross-regional and cross-border crimes committed by online gambling fraud groups, once the fraud is successful, the funds will be remitted overseas through underground banks, or the illicit money will be dispersed and transferred to bank cards and then withdrawn, posing great difficulties for the seizure of criminal proceeds (Liu & Zhou, 2020).

3 SOLUTIONS

3.1 Clarify the "Organizing and Operating Acts" of the Crime of Gambling and the "Deceptive Acts" of the Crime of Fraud

First of all, the two can be distinguished from the perspective of the fundamental legislative purpose of protecting legal interests. China's Criminal Law places the crime of fraud in Chapter V "Crimes of Infringing upon Property", and places the crime of gambling in Chapter VI "Crimes of Impairing Social Administration Order", Section 1 "Crimes of Disrupting Public Order". It can be seen that the legal interests protected by the two crimes are completely different. At least, legislators believe that, in comparison with the protection of property rights, the crime of gambling is more established for the purpose of protecting the kind and good social customs.

Secondly, the two can be distinguished from the perspective of subjective elements. The prevailing view holds that the crime of fraud should be committed with the purpose of illegal possession. In addition, illegal possession can only lead to conviction when the amount reaches a relatively large level. According to the judicial interpretation issued

by the Supreme People's Court and the Supreme People's Procuratorate in 2011, the starting point for this relatively large amount is between 3,000 yuan and 10,000 yuan. The crime of gambling belongs to a crime with a specific criminal purpose, which requires the purpose of making a profit. Therefore, the crime of gambling and the crime of operating a gambling establishment are essentially the same. There are essentially two ways to make a profit: First, relying on one's own gambling skills, understanding of gambling laws, and luck to gain profits; Second, relying on "skimming off the top", that is, taking a percentage of the winnings from the participants, such as charging service fees, which is often achieved by operating a gambling establishment. Therefore, it has a larger scale and causes more serious harm (Feng, 2020).

3.2 Release Guiding Cases to Clarify the Internal Logic of the Issue of the Number of Crimes

In response to the three different theories, it is necessary to clarify their internal logical thinking and keep going back and forth between the theories and the facts of the case. First of all, from the perspective of the theory of concurrence, whether it is a concurrence of legal provisions or an imaginary concurrence is based on the fact that one criminal act may violate multiple charges. However, it is obvious that the coupled crimes of online gambling and telecommunication fraud discussed in this article are difficult to be committed by the same act. The single act of the offender is a precondition for discussing concurrent crimes. Therefore, in this regard, the theory of concurrence is inevitably inappropriate. Secondly, the second approach, which is based on the theory of implicated offender, is in line with the characteristics of multi - act crimes in practice, but it still deserves further consideration. This logical train of thought holds that the preceding act in the case is a means act, and the subsequent act constitutes the purpose act. The two have an implicated relationship, which is obviously from the standpoint of the subjective theory. The subjective theory holds that as long as the actor subjectively regards a certain act as a means act for the purpose act, there exists an implicated relationship (Ke, 2008). However, the subjective theory unreasonably expands the scope of the establishment of implicated offenders, leading to the result of an unduly lenient sentence, which is bound to violate the principle of correspondence

between crime and punishment. Whether there is an implicated relationship should be examined from aspects such as the commonality, connection, and typicality between the means act and the purpose act. Only when a certain means is commonly used for a certain crime, there is a close typical connection between the two, and imposing combined punishment for several crimes will lead to an obvious inappropriateness between the crime and the punishment, can it be recognized as an implicated offender (Yuan, 2021). In view of the fact that establishing a gambling website for fraud may be an occasional means in fraud crimes, and it is impossible to demonstrate a close connection between the two based solely on this, the logic of this judgment should be used with caution.

Overall, combining punishment for several crimes is a more appropriate judgment approach for adjudicating such cases. In such cases, the previous act and the subsequent act respectively violate two different legal interests. As mentioned above, the legal interests protected by the crime of running a gambling den are social management order and the danger of causing damage to others' property, while the legal interests protected by the crime of fraud are the property rights of others. Although the legal interests protected by both the crime of running a gambling den and the crime of fraud include the content of others' property rights, there are essential differences between the two. In terms of property legal interests, the crime of operating a gambling den is an abstract dangerous offense. As long as the act of operating a gambling den poses a danger of causing property losses to an unspecified number of others, the crime is established. On the other hand, the crime of fraud is a specific dangerous offense. The crime of fraud is only established when the perpetrator's fraudulent act poses an imminent danger or causes substantial damage to the victim's property. Secondly, the actions of such criminal gangs fully conform to the constitutions of the two crimes (the crime of running a gambling den and the crime of fraud). Moreover, the previous act and the subsequent act are two acts of completely different natures carried out under the domination of two kinds of criminal intents, which fully meet the criteria for multiple crimes. Most importantly, neither of the above - mentioned criminal constitutions includes the content of the other. During the process of committing the act of running a gambling den, the perpetrator also committed the act of fraud, and the fraud act exceeded the scope of the illegal act of running a gambling den.

That is to say, the two acts respectively conform to the criminal constitutions of the crime of running a gambling den and the crime of fraud, which belong to the typical heterogeneous multiple crimes (narrow-sense heterogeneous multiple crimes). Thirdly, apart from the subjective - theory - based judgment criterion which may identify this as a case of implicated offender, neither the objective theory, the compromise theory, nor the typological theory can recognize such a situation as constituting an implicated offender. The criminal gang first sets up a gambling website, then lures the victim to participate in online gambling, and finally defrauds the victim of property by manipulating the gambling results. There is no typological connection relationship, because setting up a gambling website is not a common means of the crime of fraud. Finally, when the perpetrator manipulates the gambling results to defraud property after running a gambling den, compared with the situation where the perpetrator wins property through the contingency of gambling wins and losses after running a gambling den, the former is significantly more serious in terms of both illegality and culpability. If it is only punished as the crime of running a gambling den or the crime of fraud, not only can the illegal facts of the case not be fully evaluated, but also it will lead to the result of an unduly lenient sentence (Yuan, 2021).

3.3 Establish An All-Round and Multi-Level Cooperation Model to Promote Cross-Border Collaborative Governance

Strengthen international cooperation and regional coordination, establish the concept of "global co-governance", and enhance international police cooperation. Firstly, establish a collaborative mechanism through the signing of multilateral agreements, and define specific matters in the cooperation through written provisions. For example, in the Joint Statement between the People's Republic of China and the Republic of the Philippines, China and the Philippines mentioned "jointly cracking down on telecommunication fraud crimes." The two sides implemented the concept of "global co-governance" through prior agreements, which has set a precedent and provided a demonstration for current global co-governance cooperation. Secondly, enhance cooperation and exchanges among police officers from various countries in multiple aspects such as mechanisms, intelligence, and communication. Build

a shared information database to achieve the sharing and exchange of intelligence resources. Meanwhile, strengthen the construction of international police platforms with neighboring countries and carry out relevant activities such as "International Police Forums", "Foreign Police Exchange and Training", and jointly building electronic forensics laboratories. By enhancing cooperation among police forces in different regions, it provides experience and references for the investigation and evidence-collection activities of more transnational cases. For example, in 2023, China and Laos carried out a joint operation to combat cross-border telecommunications network fraud. Under the diplomatic supervision of the Chinese Embassy in Laos, China dispatched a professional task force to Laos. The task force focused on the timely distribution of intelligence and the adoption of advanced surveillance methods to monitor fraud activities. China's technical expertise, especially in the fields of digital forensics and intellectual property tracking, helped identify the main suspects, while Lao officials were responsible for carrying out the search operations. This operation not only has achieved remarkable results in combating telecommunications fraud, but also enhanced regional security and trust, and improved technical and legal capabilities. (Namnouvong, 2024) Similarly, in 2016, the Ministry of Public Security of China cooperated with the police forces of countries such as Malaysia, Kenya and Cambodia to arrest criminal gangs involved in telecommunications fraud, which effectively deterred crimes and protected the rights and interests of the victims (Liu, 2021).

4 CONCLUSION

The existence of coupling makes online gambling and fraud face many dilemmas. These dilemmas not only exist at the abstract level, but also at the specific operational level. In the face of these dilemmas, making reasonable and accurate judgments depends on the precise distinction between the core elements of online gambling, namely the "organization and establishment behavior", and the core element of fraud, which is the "deceptive behavior", as well as the accurate understanding of the relationship between the two. The reasonable interpretive path for the coupled crimes described above should be regarded as a multi-act crime that violates different provisions and infringes upon different legal interests.

Imposing combined punishment for several crimes is a more appropriate solution. Arrest is a prerequisite for a genuine conviction, and the recovery of stolen goods is related to whether the losses of public and private property can be reduced. However, due to the collectivization and internationalization of criminal groups, it has become increasingly difficult. Therefore, it is urgently necessary to strengthen the concept of "global co-governance". It is of vital importance to enhance international and inter-regional cooperation, crack down on the outflow of funds and the flight of criminals, further combat cybercrimes, and fully safeguard the property rights and interests of citizens.

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