SPC Guiding Case No. 145: Case of Zhang Junjie et al. for Illegally Controlling Computer Information Systems

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 29, 2020.

Keywords

Criminal / crime of illegally controlling computer information systems / crime of destroying computer information systems / adoption of other technical means / modification and addition of data / Trojan horse program

Holding

1. Where a person, by implanting a Trojan horse program, illegally obtains control authority over a website server, and thereby, through modifying and adding data in the computer information system, uploads webpage link codes to the relevant computer information system, such conduct shall be determined as the act of "adopting other technical means" to illegally control a computer information system under Article 285, paragraph 2 of the Criminal Law.

2. Where a person, through modifying and adding data in a computer information system, illegally controls that computer information system, but does not cause substantive damage to the system's functions or render it unable to operate normally, the conduct shall not be determined as the crime of destroying computer information systems; where it satisfies the requirements of Article 285, paragraph 2 of the Criminal Law, it shall be determined as the crime of illegally controlling computer information systems.

Basic Facts

Beginning in July 2017, the defendants Zhang Junjie, Peng Linglong, Zhu Dong, and Jiang Yuhao, having conspired in advance, for the purpose of earning advertising fees from gambling websites, in Room 902, Building B of the Trillion apartment they rented in Kuala Lumpur, Malaysia, cooperated with one another. After searching and screening target servers that had protection vulnerabilities, they implanted Trojan horse programs (backdoor programs) into the target servers to control them, and then used software such as "Chopper" to connect to those Trojan horse programs, thereby obtaining the authority to browse, add, delete, and modify the backends of the target servers. They uploaded static web pages to which gambling keywords had been added and to which automatic redirection functions had been set, so as to increase the probability that advertisements for gambling websites would be matched by search engines. By the end of September 2017, the defendants had connected to a total of 113 target servers into which Trojan horse programs had been implanted, some of which had also been implanted with advertising web pages containing gambling keywords. Later, the public security authorities arrested the four defendants. The public prosecution authority charged the four with the crime of destroying computer information systems. At trial, the defendants and their defenders all admitted the principal facts charged. The defendants Zhang Junjie, Peng Linglong, and Zhu Dong, together with their defenders, submitted that the defendants' conduct was merely intrusion into or illegal control of the target servers rather than destruction, and should be characterized as the crime of illegally intruding into computer information systems or the crime of illegally controlling computer information systems, and did not constitute the crime of destroying computer information systems.

Judgment

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On July 29, 2019, the Gulou District People's Court of Nanjing, Jiangsu Province, rendered Criminal Judgment (2018) Su 0106 Xing Chu No. 487: (1) Defendant Zhang Junjie committed the crime of illegally controlling computer information systems and was sentenced to four years' fixed-term imprisonment and a fine of RMB 50,000; (2) Defendant Peng Linglong committed the crime of illegally controlling computer information systems and was sentenced to three years and nine months' fixed-term imprisonment and a fine of RMB 50,000; (3) Defendant Zhu Dong committed the crime of illegally controlling computer information systems and was sentenced to three years and six months' fixed-term imprisonment and a fine of RMB 40,000; and (4) Defendant Jiang Yuhao committed the crime of illegally controlling computer information systems and was sentenced to two years and three months' fixed-term imprisonment and a fine of RMB 20,000. After the first-instance judgment was pronounced, Defendant Jiang Yuhao appealed on the ground that the first-instance sentence was excessive, and his defender requested a suspended sentence for Jiang Yuhao. On September 16, 2019, the Nanjing Intermediate People's Court of Jiangsu Province rendered Criminal Ruling (2019) Su 01 Xing Zhong No. 768: dismissing the appeal and affirming the original judgment.

Reasoning

The court in its effective judgment held that the defendants Zhang Junjie, Peng Linglong, Zhu Dong, and Jiang Yuhao jointly violated state regulations and illegally controlled computer information systems within the territory of China, with especially serious circumstances, and that their conduct all constituted the crime of illegally controlling computer information systems, constituting a joint crime. The Gulou District People's Procuratorate of Nanjing charged the defendants with committing crimes against computer information systems, and the facts were clear and the evidence was reliable and sufficient, but it was improper to charge them with the crime of destroying computer information systems. Upon examination, although the defendants had committed acts of modifying and adding data on the target servers, they did not cause substantive damage to the functions of those information systems or render them unable to operate normally, nor did they add, delete, or modify valuable data in the information systems. Their conduct did not fall within the acts of deleting, modifying, or adding data stored, processed, or transmitted in a computer information system that constitute the crime of destroying computer information systems, and should be determined as the crime of illegally controlling computer information systems. The defense arguments of some defendants and their defenders submitting the same characterization were adopted. As to appellant Jiang Yuhao's ground of appeal that the "sentence was excessive" and the defense opinion requesting a suspended sentence, upon examination, the appellant and the other defendants had connected to a total of 113 target servers into which Trojan horse programs had been implanted, which constituted especially serious circumstances. The first-instance court, based on the criminal facts and the appellant's criminal circumstances, mitigated the appellant's punishment, and the sentence was appropriate and balanced with the sentences of the other defendants. Taking into account the nature of the appellant's criminal conduct, the consequences caused, and its social harmfulness, it was not appropriate to apply a suspended sentence to the appellant. Accordingly, the ground of appeal and the defense opinion were not adopted.

Relevant Legal Provisions

Article 285, paragraphs 1 and 2, of the Criminal Law of the People's Republic of China.

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