

Identification and Perfection of Justifiable Defense

Xiaowei Ji^{1*}

¹ Law School, Bohai University, Jinzhou, Liaoning, China

Email Address

2901839192@qq.com (Xiaowei Ji)

*Correspondence: 2901839192@qq.com

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Abstract:

Justifiable defense is an important means for citizens to protect their rights and interests. It is also an important standard for citizens to divide crime from non-crime. But in the judicial practice is really identified as the case of self-defense is very few. The main reason for this phenomenon is that judicial workers have cognitive deviation in the identification of justifiable defense. So how to form a unified understanding is very important.

Keywords:

Justifiable Defense, Justifiable Defense Recognition, Justifiable Defense Improvement

1. Introduction

Justifiable defense is an important legal system, which can not only safeguard the rights and interests of individuals, but also safeguard the long-term peace and order of the society. However, China does not play the real role of justifiable defense, because there is often a deviation between theory and practice. Until the occurrence of “Kunshan Yu Hailong Anti-Killing Bao Ma Ago case”, it promoted the direct progress of our justifiable defense system for 10 years, so that it does not only exist in books, but really put into practice. It corrected the wrong judgment concept of “who is dead and injured, who has reason” in China’s judicial practice for many years. Therefore, the judicial staff want to really use the legal concept of legitimate defense, judicial staff want to really realize the value of legitimate defense, then, how to accurately identify the theory of legitimate defense, how to improve the theory of legitimate defense, is forced to be urgent.

2. Identification of Justifiable Defence

In the determination of justifiable defense, the first and most important thing is to have a clear determination of the standards of the various elements that constitute justifiable defense.

2.1. Condition one: Cause condition

There are actual illegal and illegal acts. The following aspects should be noted for the cause conditions:

First of all, there are actual illegal and illegal acts. There is no illegal infringement in reality, but the actor mistakenly believes that the existence of illegal acts, belong to the imaginary defense. Popular understanding is equivalent to: “good intentions do bad things” for its treatment includes: (1) negligence crime, (2) accident (no criminal responsibility), these two kinds. The treatment for it could not include: intentional crime. This is because we in order to pass the “illusion” 2 words to judge the imaginary defense behavior person not intentional crime, but rather in a state of fault behavior, thus to implement the defense for their actions can cause a failure to recognize what kind of harm social consequences, its subjective is based on the idea of defense, not intentional crime. For example, Zhang SAN fled after killing, because Zhang SAN has an obvious chunk of blood, was off duty to buy food and dressed in civilian clothes police Li Si saw, Li Si stopped Zhang SAN and intend to take Zhang SAN to the nearest police station. Zhang SAN thought he had met a mugger, so he struggled with Li Si. Li Si resists while Shouting to Zhang SAN: “I’m a police officer, don’t mess around.” Zhang SAN think Li Si nonsense, that Li Si is pretending to be the police, still continue to beat Li Si, finally Li Si was Zhang SAN was lightly injured, a constitute imaginary defense. And police B has told A his true identity, A at least has the possibility of foreseeing B’s true identity, therefore, A’s behavior is at least subjectively negligent.

Secondly, the extension of unlawful infringement: that is, what are the behaviors included: (1) illegal acts, (2) criminal acts, as and omission crimes are included in criminal acts, also belong to the extension of unlawful infringement acts. But what is illegal? What is a criminal act? There is no clear-cut distinction in judicial practice. Sometimes in a “sometimes-complex mix-and-match I in you” a kind of fuzzy feeling, if stubbornly to clear distinction, the judicial personnel work will not only greatly increase the difficulty, and belong to the behavior of a behavior that a behavior, not only carried out it is difficult to distinguish, and distinguish the unlawful infringement without too much significance. Therefore, there is no need to specifically discuss whether a certain unlawful infringement is illegal or which one of the criminal acts, which has no substantial impact on the judgment of justifiable defense. For example, A stabbed B and tried to flee the scene. B said to A on the spot, “Take me to the hospital,” and violently assaulted him. Second beat A’s unlawful infringement act to establish legitimate defense. Because A’s non-rescue act (omission) belongs to the criminal act of omission.

Finally, the identification of unlawful infringement also needs to have “three characteristics”. These “THREE characteristics” specifically include: “offensive”, “destructive”, “urgency” these three unique legal properties. The unlawful infringement of others’ violation (personal or property) in principle must has the urgency, if you don’t have the three unique legal attribute, then the unlawful infringement, the harm caused by unlawful infringement results won’t produce close relations, the relation between because of imprecise, has not closely linked, So that we can take other relief way such as call 110 alarm or seek help from others in a way that benefits, as a result, the crime of corruption, bribery, bribery, such as, cannot be justifiable defence, and for when the report and expose, request the relevant departments to take corresponding measures, and can completely solve the problem. In other words, when the object of justifiable defense can be abstract state and public interests instead of specific victims, it is worth noting that, in view of this situation,

there should be some restrictions in the specific application of justifiable defense. This is because the state organs are the main body of concrete to protect national interests, public interests, private right to rule, this is because, if you will be fully commissioned this power to the people, so will cause everyone has the right to manage state interests, public interests, so everyone can become a policeman, contrary to the state interests and public interests can become an adverse impact. But, at the same time if one unlawful infringement losses to the interests of the state or the public interests and personal interests are violated, at the same time can belong to the justifiable defense situation, for example, a use set fire to the government office building, its behavior is endangering public security, and the possible infringement of personal rights, b to use violence to stop the violation armour, still set up justifiable defense.

2.2. Condition two: Time condition

The wrongful infringement is “ongoing”, that is, it has begun and has not yet ended. The following aspects should be paid attention to in view of the time conditions:

First of all, the wrongful act has already started, and the key criterion for determining whether the wrongful act has started is whether the wrongful act has started to commit the crime. It is generally believed that if the criminal act has not been “started”, so there is a lack of urgency, the actor can take other relief methods such as dialing 110, and do not need to take the so-called defense method caused by the infringement of illegal infringement.

Secondly, the unlawful infringement has not yet ended, and the judgment standard of whether it is over can determine whether the legal interest is still in the urgent and threat of being infringed. In other words, whether it is impossible for the victim's legal interest to continue to be persecuted by the unlawful infringement. It is worth noting that the specific determination of the conditions of unlawful infringement should be based on the situation at that time (empathy) and make a judgment in accordance with the organic unity of law, theory and emotion. For example, four big men surrounded A weak woman E and tried to rape her. Nervous and afraid, E picked up the fruit knife and stabbed the 4 people randomly, causing minor injury to 1 person and serious injury to 2 others. E's act constitutes self-defense.

Thirdly, if the unlawful infringement has been completed, but the loss can be further recovered or more serious damage can be avoided, the justifiable defense can still be carried out. For example, in the case of property crimes such as: Taxi driver Shen Jun was robbed at work by passengers Ma Hai, first stabbed the taxi driver Shen Jun with a knife, and then threatened the taxi driver Shen Jun hand over all the property after the escape, taxi driver Shen Jun immediately started the car to chase Ma Hai, taxi driver Shen Jun found Ma Hai after the crash into serious injuries and recover property, Taxi driver Shen Jun follow-up to Ma Hai hit into serious injury is justifiable defense. This is because although the robbery of Ma Hai has ended (accomplished), but the taxi driver Shen Jun in the “scene” chase can still recover the loss in time, so the taxi driver Shen Jun is the implementation of justifiable defense behavior is not inappropriate. Until the illegal offender Ma Hai, the taxi driver Shen Jun from the robbery of the property hidden in a safe place before the time period belongs to the defense. However, it should be noted that for this kind of property crime that can prolong the time of defense, the victim's personal rights will not be infringed by the illegal infringement again, so if the defense act carried out by the defender causes the “death” of the illegal infringer, it will be established as excessive

defense. For example, Zhang SAN found Li Si riding a motorcycle to rob property, so he immediately drove to chase, when the two cars in parallel, Li Si's motorcycle hit the fence, so that Li Si fell on the head and died on the spot, then Zhang SAN's behavior constituted excessive defense.

Finally, the act of installing lethal defensive devices in advance is also an act of defense. Although the defense device is set up earlier, the defense device will only take effect when the illegal infringement occurs, so it belongs to the time requirement of defense.

2.3. Condition three: subjective condition

Have a sense of defense. According to the subjective conditions, attention should be paid to the following aspects:

First of all, the actor must have: defense knowledge. That an unlawful infringement is in progress is recognized by the defender. Colloquially, it means seeing someone doing something bad.

Secondly, the actor must have the will to defend. The purpose of protecting the interests of the state, the public, oneself or others from infringement. Colloquially speaking, this means beating a bad guy to protect a specific interest rather than out of anger.

2.4. Condition four: Object condition

Against the wrongful infringer himself. The following aspects should be noted for object conditions:

First of all, self-defense must be directed against a specific person. It is worth noting that the illegal infringement of animals can not be the object of justifiable defense, which is not justified defense, but constitutes an emergency risk aversion. However, if a person instigates an animal or the owner fails to manage the animal properly, and the animal commits an act of aggression, it can be regarded as "unlawful infringement by human beings" and can become the object of justifiable defense.

Second, against the wrongful perpetrator himself, and not against anyone other than him.

Finally, an act of defense must be equal to a criminal act. If a certain act cannot be a criminal act at all, the establishment of a crime can be directly denied, and there is no need to use the illegal obstruction of justifiable defense. For example, ZHANG SAN one night into Li four burglary, Li FOUR heard movement, then shouted a "who", Zhang SAN was directly scared away, Li Four Shouting behavior can not constitute justifiable defense behavior.

For this problem. It should also be noted that the following categories are worthy of attention: 1. Whether we can act in self-defense against animals. To this question, academic circles have been controversial. However, the following conclusions can be drawn from the analysis. (1) When people respond to the infringement of wild animals, it does not constitute justifiable defense and may constitute an emergency hedge. Because the harm to wildlife, namely the infringement of innocent third party, namely the interests of the state, so the establishment of an emergency hedge. But if it is an ordinary ownerless dog bites a person, and the dog killed is not justifiable

defense, is not an emergency hedge, because the establishment of emergency hedge and justifiable defense. The act of beating an ownerless dog to death for biting a man cannot seem like a crime or an offence, so the criminal law does not ignore it.(2) People kill and injure animals that have owners of animals spontaneously encroaching on others, which belongs to the owner's justifiable defense. Because even if the owner is not negligent, it is also the result of his subjective negligence, so the owner can still be identified as the existence of non-invasive behavior. Therefore, for the owner of the intentional instigation, or the owner's negligence caused by the animal to harm others and kill or injure the animal's behavior, can also be identified as justifiable defense. 2. Whether the act of counteracting an act of aggression committed by a person without capacity for responsibility can constitute justifiable defense. In view of this problem, the views of criminal law theory are not the same. However, through analysis, it can be concluded that the act of counterattack against the encroachment carried out by the person without responsibility capacity constitutes justifiable defense. This is because, although the person without capacity for responsibility does not bear criminal responsibility for the act of aggression, but its behavior is still harmful to the society, so it can not be completely excluded from the condition of the object of justifiable defense. However, there should be some restrictions on the legitimate defense of the practice community against the encroachment of the person without the capacity for responsibility. From the legislative spirit of criminal law, the encroachment of persons without capacity for responsibility cannot be completely equated with the encroachment of persons with capacity for responsibility. Morally speaking, everyone should make every effort to avoid causing undue physical or mental harm to the mentally ill or minors. Therefore, only when he knows that the illegal infringer belongs to the person without capacity for responsibility, and there is no other way to avoid the encroachment of the person without capacity for responsibility when defending against the encroachment of the person without capacity for responsibility, can he carry out justifiable defense. Otherwise, if there are other ways to avoid the unlawful infringement of persons without capacity for responsibility, justifiable defence cannot be carried out.

2.5. Condition five: limit condition

There is no “significant” excess of the necessary limit to cause significant harm. This is the distinction between legal and illegal acts of defense, justifiable and improper important symbol. The following aspects should be noted for object conditions:

First of all, the “limit” requirement of justifiable defense is wider than the “limit” requirement of emergency hedging. There is no particularly strict limit on its limit in legislation. However, it can be seen from the object condition that the former is the “illegal infringer” and the latter is the “innocent third party's interest”. Therefore, the legislation is more stringent on the latter limits.

Secondly, whether the defense act is excessive or not should be judged from the standpoint of the defender at that time, rather than from the standpoint of a calm third person after the event. Therefore, whether a person's defense act is excessive or not, the two (unlawful infringement act and defense act) should be placed in a specific and specific environment for further investigation, and the number and strength of the two sides, as well as the means, intensity and consequences of defense, should be analyzed. The whole process of the case for comprehensive consideration, so as to accurately grasp the limit and other conditions. In judicial practice, there is often a big deviation

between the judge's processing results and the general people's cognition, which is probably due to the judge's post-hoc judgment out of reality. Therefore, we should not only think about how to deal with the "general people who have not systematically learned legal knowledge". In addition, I should immerse myself in the specific environment of the defender at that time and think about how I would deal with the illegal infringement if I was the defender at that time. At the same time, the judge should also consider various factors to make a comprehensive judgment.

Thirdly, whether defensive acts are excessive or not should be judged as a whole. The defensive behavior is significantly more than limits of necessity and causes serious damage, not only the result of the defensive behavior as the judging criterion of excessive defense behavior, not only the defense behavior caused the final result as the only evaluation standard, to establishment of excessive defense, requires the defense behavior and the result of excessive, constitutes excessive defense, If only one of the two is excessive, the overall defense is not excessive. For example: Zhang SAN is implementing a general injury, Li SAN implemented a justifiable defense to Zhang SAN, resulting in serious injury (still within the limits of defense), Zhang SAN at this time has no ability to harm, so ask Li Si to send himself to the hospital, but Li Si did not ignore Zhang SAN and leave the scene. Zhang SAN bled to death because he did not get help in time. In the case, although only serious injury was caused at that time, which seemed to be within the limit, Li Si's inaction (non-rescue) ultimately contributed to the death result, so Li Si's inaction (non-rescue) should be evaluated as excessive defensive behavior.

Finally, if it obviously exceeds the necessary limit and causes significant damage, both of them can be considered as excessive defense. The identification of excessive defense should have both "obviously exceeding the necessary limit" and "causing significant damage", neither of which is indispensable; "Clearly exceeds the necessary limit" How does the judge determine? Consider how "an average person who has never systematically studied the law" would handle it. Also think about how you would deal with the wrongful act if you were the defender, so as to make a further judgment. "Cause significant harm" How does the judge determine? That is, caused the illegal infringer "serious injury, death" serious consequences, if only caused light injury and the following damage, not considered to be significant damage. In other words, whether defensive acts are excessive or not cannot be justified only by results. In this case, only when both the behavior and the result of defense are excessive can defense be constituted as excessive. If only one of the two is excessive, then there is no excessive defense on the whole. Therefore, (1) the act is excessive, but the result is not appropriate, it is still justifiable defense. For example, A is beating B with his bare hands, and B can beat A completely, but B takes out a pistol and shoots at A, fails to hit A, and A runs away. B's actions were not in excess of self-defense. (2) If the act is appropriate but the result is excessive, it is still justifiable defense. For example, on a busy street, A grabbed B and tried to beat him. B pushed A, causing A to fall to the ground and crash into traffic, killing him. B's behavior is not excessive, but the result seems excessive, still establish justifiable defense. (3) Excessive behavior and excessive results belong to excessive defense. For example, if A beats B with a stick, and B is perfectly capable of beating A, but B pulls out a pistol and shoots A directly, B's behavior is excessive defense. (4) For non-violent crimes, but belong to the continuous infringement (such as the continuous detention of others by pyramid selling organization), which has caused great mental pressure to the victim, even if it causes the death of the perpetrator and runs away, still establish justifiable defense.

For example, a member of the pyramid selling organization, A, imprisoned a college student, B, for two months. B nearly broke down in spirit. After killing A, he fled from the place of detention. B still has room for legitimate defense.

China's Criminal Law also clearly stipulates the system of "special defense", which is also called "absolute defense" or "no defense is excessive". It can also be said that any casualties caused by such circumstances will not be subject to criminal responsibility. However, the absence of defense limits does not mean that the right to justifiable defense is without limits. So for the special defense of our country "criminal law" also made clear rules, which can only be aimed at "the ongoing seriously endanger the personal safety of violent crime", constitutes the special defense, can be seen from its concept, constitute a special defense requirement is very strict, not only to satisfy, general constitutive requirements of justifiable defense, in addition to the limit, also to meet, (1) Serious danger. (2) Personal safety, excluding property safety. (3) Violent crimes, excluding non-violent crimes. (4) must be a "criminal act", excluding "illegal act".

3. Suggestions on Perfecting Justifiable Defense

3.1. Legislative

The concept of self-defense should be clarified, and relevant judicial interpretations should be issued immediately for controversial issues. For example, there are different opinions on whether "accidental defense" is justifiable defense. Point of view one: The result has no value: think accidental defense does not establish a crime. Reason: The result of accidental defense is allowed by law, because it actually protects another legal interest, so it does not constitute a crime. Viewpoint 2: Behavior has no value: consider accidental defense to establish intentional crime (general view). Reason: If the similar behavior is repeated, it is not so lucky. The good result is completely accidental. This kind of behavior should be regulated. There is still no relevant judicial interpretation on this issue.

On September 3, 2022, the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued a guideline on how to apply "justifiable defense", which has puzzled theoretical and practical circles for many years. Four in particular deserve our attention. First of all, the wrong tendency of "who can blame who is right" and "who is killed or injured who is right" was clearly corrected, and the bad social habit of the dead being the biggest was ended. Secondly, justifiable defense can not only target the defender himself, but also include others who are present to commit the offense. Thirdly, when determining whether justifiable defense is constituted, the "urgent state and nervous mental state" of the defender at that time should be fully taken into account, and the rational, objective and accurate standards should not be used to judge the defender from the perspective of normal people afterwards. Finally, defense can be used against criminal acts as well as against general violations of the law, that is, we can also defend ourselves against name-calling. The guideline has a milestone significance for the identification of justifiable defense, which is a big step forward in China's justifiable defense system. However, the law has a "lag", and the legal provisions still cannot keep up with the development and change of society. Still need the legislator legitimate defense system to carry on the constant supplement and the consummation.

3.2. Judicial

Judicial staff must abandon the wrong trial mode oriented by “results”, and should not simply think that “who is injured or injured, who is right”, because the result is often one-sided and unreasonable. Judicial staff should be based on the case itself, the fact as the basis, not only to the result as the basis, the general understanding of “the general people of the society” as the standard of measurement. In determining the limit conditions, in addition to considering the actor's own conditions, the objective environment should also be considered. Judicial workers should accurately understand the legislative spirit of legislators in formulating justifiable defense, abandon old ideas, establish new ideas, judge cases from the perspective of defenders, and achieve the organic unity of law, reason and emotion.

4. Conclusions

“The law should be within the nature of human beings in”, judicial workers in the determination of “justifiable defense” cases, should think of ways to be able to personally experience. Because you can't make a good judgment without experiencing it. Just because you sit on a pedestal, wearing a robe and holding the power of life and death, does not erase the insight and judgment of the good. For our purpose is not to avenge evil, but to avenge this good. While we follow the law, we should also follow the reason.

Conflicts of Interest

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