

Research on the Identification of Justifiable Defense Based on Urgency Judgment

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ABSTRACT

Justifiable defense is the right granted by the state to citizens to use force to protect themselves in an emergency, which provides a legitimate reason and legal basis for victims to protect themselves and fight back forcefully in a critical moment. However, in the specific judicial practice, the judgment of justifiable defense is particularly difficult, and the main limiting factor is the identification of the urgency of the defensive act. Since the "Kunshan Stabbing Case" was identified as justifiable defense, Chinese citizens have paid closer attention to the right of justifiable defense, and the voice of "loosening" the right of justifiable defense and safeguarding judicial justice is also rising. Based on this, this paper will study the determination of justifiable defense based on urgency judgment, in order to put forward the judgment methods to improve the urgency of justifiable defense from different links, and provide effective reference for judicial personnel.

KEYWORDS

Urgency judgment; Justifiable defense; Unlawful infringement

1 Judgment on the urgency of justifiable defense in China

In the trial of justifiable defense cases, the standard adopted is the theory of post judgment. The judgment standard of this theory is mainly based on the final investigation results to analyze whether there are urgent elements and the size of them in the occurrence of unlawful infringement.

Urgency elements can generally be divided into two types. The first is immaterial harm. If A is suddenly confronted by an enemy B on his way to work, and B is about to shoot A with his gun, but there are no bullets in B's gun. A strikes back at B before B has actually harmed himself. Is B's act justifiable defense? In previous judicial cases, this situation was generally referred to as imaginary defense. In other words, B does not cause actual harm to A and society, and A's counterattack is due to his own wrong judgment, so A should bear the criminal responsibility. However, this method of post judgment is too "calm", and the judicial personnel judge the case from the "perspective of God" after the fact. It is known that B's gun has no bullets and cannot cause substantial harm to A and society, so it is believed that A's behavior does not have an urgent element, and naturally cannot be identified as justifiable defense. However, from the perspective of defender A, when B raises his gun, A has no way to know whether there are bullets in B's gun, and it is naturally impossible for A to predict whether B will cause harm to himself. Therefore, the counterattack of A is the only way to protect himself and stop unlawful infringement under the consideration of advantages and disadvantages, and should be identified as justifiable defense^[1].

The second is substantive harm. In February 2017, the Liaocheng Intermediate People's Court made a first-instance judgment on Yu Huan Case, which clearly pointed out that Yu Huan's behavior was a crime of intentional injury. The reason was that the unlawful infringement faced by Yu Huan in the act of defense was not urgent. The judge held that Yu Huan was restricted in personal freedom, and Du and others beat, scolded and pushed Yu Huan and his mother, but they did not use tools, which was not enough to cause fatal injuries to Yu Huan and his mother. Moreover, Yu Huan still carried out the act of injury while knowing that the police had already treated the case, so the behavior should not be identified as justifiable defense. However, the judgment of second instance pointed out that Yu Huan's situation at that time had certain urgency and belonged to justifiable defense. The reason was that on the day of the incident, Du and others illegally detained Yu Huan and his mother, and conducted verbal insults, beating and scolding, pushing and other behaviors. After the police arrived at the scene, when Yu Huan and his mother were ready to walk out of the reception room, Du and others carried out a push and pull, containment and other behaviors on Yu Huan and his mother, and were still provocative and approaching despite Yu Huan's warning, so it had the elements of the urgency of defense. In addition, from the humanitarian point of view, Du and others insulted Yu Huan and his mother, which caused great psychological damage to Yu Huan himself, and resulted in his emotional breakdown. When the police arrived at the scene, the personal safety of Yu Huan and his mother could be guaranteed for the time being. But when the police learned that the case was a civil dispute, they were ready to leave. This behavior undoubtedly caused a huge psychological stimulation to Yu Huan, and finally made him begin to fight back. Therefore, the judge of the second instance held that Yu Huan's behavior at that time had the urgency of defense^[2].

From the analysis of the above two situations, it can be concluded that when judging whether the defensive act is

urgent, considering from the perspective of the defender will have a considerable impact on the final trial result, and even may make the judgment result of the case “reverse”. In the past judicial practice in China, the judicial personnel are more standing in the third perspective to try the case, and the “defender” is also identified as “infringer”. This trial method is too strict for the defender. Because the judicial personnel can only analyze and infer the occurrence process of the entire case from the result, they can not really judge the danger encountered at that time from the perspective of the defender, which is known only by the parties themselves. But in fact, this paper holds that it is extremely important to consider the urgency of defensive behavior from the perspective of the parties, which can effectively encourage Chinese citizens to have the courage to fight against illegal acts when they encounter dangerous situations, and is of great significance to promote the judicial progress in China. The process must be extremely strict to analyze the case from the perspective of the defender, and to judge the act whether it is urgent. Otherwise it is easy to lead to many criminal suspects want to escape the punishment of the law and deliberately exaggerate their predicament. Based on this, this paper will further discuss how to judge the urgency of defensive behavior from the perspective of the parties in the next section.

2 Proposal “based on the standard of defender reasonable belief”

This paper holds that to judge whether the defensive behavior is urgent from the perspective of the defender, the standard of defender reasonable belief should be adopted. In other words, a scientific and reasonable analysis of the case should be conducted combined with the facts of the case and the statement of the defender. This approach of combining objective facts with subjective thoughts of the parties has certain rationality. So how to determine whether the defender constitutes justifiable defense? This article believes that judicial personnel can consider the following aspects when trying related cases.

2.1 Components of the standard of defender reasonable belief

2.1.1 Time judgment

It is very important to judge whether the defensive behavior of the defender is urgent according to the time point. Generally speaking, in the judicial trial, the defensive behavior can be divided into “present infringement” and “future infringement” according to the time point. If the two sides are in the situation of adversarial defense, where the infringement and the defense of both sides occur in a short period of time, the difference between the two is not obvious. If it is in the opposite situation, which is assumed that after A has violated B for a period of time, B’s counterattack will easily cause judicial conflicts, there will be two kinds of disputes: “justifiable defense” and “deliberate retaliation”. For example, in the judgment of the first instance of Yu Huan Case, the judge held that Yu Huan’s counterattack was carried out after Du and others had attacked Yu Huan and his mother and the police had arrived at the scene for a period of time, which was a “future infringement” at the point of time, so it should not be identified as justifiable defense. However, in the judgment of the second instance, the judge held that for a long period of time, the harm caused by Du and others to Yu Huan and his mother had not stopped, and the counterattack conducted by Yu Huan was aimed at preventing future violations, so it could be regarded as justifiable defense. Based on this, in the future judicial practice, judicial personnel must focus on the time point of justifiable defense, so as to make a fair judicial decision.

2.1.2 Space judgment

In addition to the time dimension, the space dimension is also one of the important criteria to judge whether the infringement is urgent, and its measurement standard is to pay attention to whether the defender has a choice to avoid the illegal act except counterattack in the space he is in at that time. For example, when A is facing the unlawful infringement of B, A is in the busy street, and there are many pedestrians around. There are many ways for A to stop B’s infringement, so the urgency of A is relatively low. If A is illegally detained in a small space by B for a long time, although B does not cause fatal injury to A, it may cause huge psychological stimulation to A, which causes A to make irrational judgments on his personal safety. For example, in the “Laiyuan Anti-murder Case” that caused a social sensation in 2018, the victim Wang Lei broke into the home of female college student Wang late at night with the lethal weapon, and in the case of only a disabled father and an elderly mother in the home, Wang killed him. At that time, the urgency of the infringement faced by in a small space was stronger than that of ordinary infringement, so it should be identified as justifiable defense^[3]. It is thus clear that when judicial personnel judge whether there is urgency in the defender’s counterattack behavior from the space dimension, they should judge the urgency of the defensive behavior according to the specific occasions where the infringement occurs.

2.1.3 Result judgment

The difference between “infringement behavior” and “infringement result” is as follows. The infringement behavior is ongoing and persistent, and the counterattack by the defender to prevent the infringer’s possible violence against him in the future belongs to justifiable defense. The infringement result refers to the fact that one party has caused substantial infringement to the other party, resulting in an infringement result, and the behavior of the victim after a period of time should be ex-post retaliation. The determination of the difference between the two lies in whether the defensive act occurs before the infringement result. In the trial of a case, judicial personnel can also judge whether the defensive act is urgent according to this standard.

2.1.4 Standard judgment

The reason why the “infringer standard” and the “defense standard” have different interpretations of the object of judgment is mainly due to which “standard” the judge starts from when trying the case. For example, in the past Chinese judicial judgments, most of them are based on the infringer standard, which holds that even in the process of defense, the defender should avoid causing excessive harm to the infringer, otherwise it can be considered as excessive defense. This judgment method is likely to cause the defense personnel to worry about whether their defense behavior will bring the corresponding legal responsibility. Correspondingly, the incomplete defense behavior carried out by the defender may also lead to additional retaliation by the infringer, which will bring more serious violence to the defender, and violates the principle of judicial judgement in China. This paper holds that although the defender’s defensive behavior may cause serious harm to the infringer, the fundamental reason is that the infringer’s offensive behavior leads to the defender’s defensive behavior. From the perspective of “causality”, the infringer himself should also bear certain responsibilities for the defender’s counterattack. Therefore, it is necessary for the judicial personnel to think about the whole process of the case from the perspective of the defender when trying such cases.

2.2 Limited applicability of the standard of defender reasonable belief

It is clear that not all cases can be included in the discussion of justifiable defense cases. Judicial personnel should limit the standard of defender reasonable belief when trying the case. Generally speaking, the defender’s subjective judgment must reach a degree that can be trusted. For example, in the discussion of the above-mentioned “A and B Shooting” Case, B does not carry a gun, but after meeting A, he carried out intimidation and threats to A, and A directly kills B with a gun. Although A later argues that he is justifiable defense, B’s behavior is not enough to pose a threat to A’s life, and at this time A can also use a variety of ways to prevent the harm A may cause to him, rather than killing him directly. For another example, after drinking, Wang thinks that Li closely followed him wants to kidnap him, so he stabs him directly with a knife, but Li does not have this intention. Although Wang may have lost his rational judgment after being drunk, according to normal thinking, a normal person will not stab others without asking the reason when encountering a stalking incident. Even if Wang is drunk, he can resolve the infringement through other ways, so Wang is an imaginary defense, and is not enough to be identified as justifiable defense^[4].

Thus, when judging whether the infringement is urgent, although the situation should be considered from the defender’s point of view, it should still be rational and analyze the defender’s behavior from an objective point of view. In other words, when trying a case, it is necessary to analyze the defender’s defensive behavior according to common sense, and at the same time to consider the defender’s personal situation, such as age, legal cultivation, social life experience, so as to be able to make fair and reasonable judgments.

3 Conclusion

To sum up, with the continuous acceleration of the law construction in China, the judgment standard of justifiable defense based on the principle of defense reasonable belief is becoming the mainstream view of judicial trials in China, which can not only avoid the influence of “consequentialism” on the judgment of the urgency of defense in the past judicial practice, but also fully respect the legitimate rights and interests of multiple parties including defenders. In the future judicial trial, the judicial personnel should also think about the whole process of the case from the perspective of the defender, only in this way can we effectively safeguard the judicial justice and promote the judicial progress in China.

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