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The Boundary Between Extortion and Excessive Vigilance

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ABSTRACT
The issue of the boundary between the crime of extortion and excessive rights defense is an important topic in the current legal practice. This paper discusses the difference between extortion and over-vigilance and their boundaries through the analysis of extortion and over-vigilance as well as both of them at the practical level, and further, through comparing the cases and relevant legal provisions, it discusses the criteria and judgment basis of how to distinguish between the crime of extortion and over-vigilance in a specific case. Finally, suggestions are made on how to better deal with and define this boundary in judicial practice, so as to safeguard fairness and justice and maintain the stability of the legal order.

KEYWORDS
Extortion Crime; Excessive Rights Defense; Legal Boundary

1 The concept of the Crime of Extortion and Over-vigilance and the distinction between them at the practical level

1.1 The concept of the Crime of Extortion and Blackmail

Article 274 of the Criminal Law of the People's Republic of China provides that anyone who extorts or blackmails public or private property in a relatively large amount or repeatedly does so shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or control, and shall be fined concurrently or singly; if the amount is huge or there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and fined; if the amount is particularly huge or there are other particularly serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than ten years and fined. shall be sentenced to fixed-term imprisonment of ten years or more and fined.

The subjective aspect of this crime manifests direct intent, and must have the purpose of illegally extorting other people's property.

1.2 The concept of Excessive Rights Defense

Excessive rights refers to the actor in the rights and interests have been infringed upon, to take the means of over-aggressive or demanding too high rights and interests of the other party's property behavior. Excessive rights defense behavior belongs to the interference and infringement of the legitimate rights and interests of others, [1] which is characterized by behavior beyond the scope of reasonable rights defense, causing undue distress or damage to others.

1.3 Distinction between Extortion and Over-vigilance at the practical level

In practice, the court decides whether a certain behavior belongs to extortion or excessive rights defense behavior is often determined by the following points:

First, whether the disputed “right” is legal, reasonable and necessary. Determine the legitimacy and necessity of the right is the key to defend the right is essentially in the recovery of debt, where the debt refers to the civil law sense of the debt recognized. If there is no real and legal civil law relationship between the parties to the dispute, the actor's claim has no factual and legal basis, then can not be regarded as a legitimate right.

Secondly, whether the means of defending the right is legal, whether the behavior can be accepted by common people, and whether it is against the usual concepts of the society. “The law does not force people to make things difficult”, in certain circumstances, when the actor's behavior is considered, the law can not expect the actor to a legal person's point of view to understand the ‘rights’ way, and the actor's behavior is beyond the capacity of the general public, the need for the general values of the general public. Instead, it needs to be linked to the general values of the general public.

Thirdly, whether the amount of money claimed far exceeds the legal requirements, and whether the crime of extortion can be punished? A large body of jurisprudence holds that this issue falls within the scope of civil autonomy of the parties to freely express their claims in resolving civil disputes on their own, and that it is not appropriate to regulate the “unlawful appropriation of other people's property” in criminal law even if the defense of rights is excessive. The judgment of the purpose of unlawful appropriation is a qualitative analysis rather than a quantitative analysis. [2] To determine whether there is illegal possession in a claim, the first step should be to determine whether the right basis of the right to compensation is justified. A claim for compensation at a sky-high price may seem to exceed the reasonable scope of compensation, but it is justified from the perspective of ethics as well as spiritual comfort.[3]

Although the above three points for the judge to deal with similar cases of common practice, but for the determination of the above three points, different judges have different determination standards, we have not found a theory can distinguish between the crime of extortion and affirmative acts of human rights, the same case with different judgments or similar cases with different judgments of the phenomenon continues to exist.[4]

2 Analyzing the Causes of the Blurring of the Line between Extortion and Excessive Rights Defense Cases through typical cases

Case 1: Guo Li's "extortion" of Yashili milk powder case

After the Sanlu incident broke out in 2008, Guo Li suspected that there was something wrong with the Yashili milk powder he ate because of his daughter's poor health, and found that the melamine in the milk powder exceeded the standard by more than 200 times. He thought that his daughter's nephritis had something to do with it, and then he made a demand for compensation of 2 million yuan to Yashili. Yashley, however, believed that Guo Li was extortionate and called the police. A court in Guangdong sentenced Guo Li to five years in the first instance for extortion and racketeering, Guo Li appealed and the sentence was upheld in the second instance.

Guo Li was sentenced to 5 years for extortion, and the sentence was upheld in the second trial. Guo Li was not satisfied with the sentence, and has been appealing, and in 2016, the Guangdong Higher People's Court announced that it would reopen the case, and after a series of investigations, the court acquitted Guo Li of the charge.

Case 2: Huang Mou's "extortion" of ASUS laptops

On February 9, 2006, Huang purchased an ASUS laptop and used it for a number of abnormalities. His agent and ASUS settlement negotiation put forward 5 million U.S. dollars in compensation requirements, ASUS reported that extortion and blackmail. March 7, Huang and his agent was criminally detained and approved arrest. On November 9, 2007, the Haidian District People's Procuratorate made a decision not to prosecute Huang for lack of evidence. Huang then further sued ASUS and applied for state compensation.

Case 3: Chen Xucheng et al. Extortion and Racketeering Case

Defendants Chen Xucheng and Wu Yingbin went to a jewelry store to buy a necklace. They knew that they were purchasing a gold necklace of the Bai Tai brand, but they falsely claimed that they were looking for the name of the store and its brand name, and demanded that the jewelry store provide invoices with the words "Jing Eternity". Subsequently, Chen Xiu Cheng and other people to the jewelry store falsely claimed that the "Bai Tai" brand gold necklace for the "Jing Eternity" brand to deceive consumers for the reason that the jewelry store to return a compensation.[5]

The court finally found that Patrick Chen and others were guilty of extortion and the court of second instance upheld the judgment of the first instance. [6]

Case 4: The Case of Liu Mou's Purchase of Cooking Oil

After discovering the presence of foreign substances in the edible oil he purchased, the suspect Liu contacted the manufacturer and demanded high compensation under the threat of making the product stagnant by exposing it in the online media, and provided the merchant with his own bank account number to ask the manufacturer to make a direct payment. The manufacturer pretended to agree to his request and quickly called the police. Liu was eventually found guilty of extortion (attempted) and sentenced to 2 years' imprisonment, while 2 years' probation was declared.[7]

Through the above four cases can be seen for extortion and excessive rights cases, the judicial organs of our country to deal with its results are not the same, and often appear "the same case different sentences" phenomenon, this situation is mainly due to the following reasons:

First, the judicial practice of "excessive rights defense" behavior cautious attitude. In the generally weak position of human rights defenders, the occasional case of overpriced claims will be prosecuted or convicted for the crime of extortion and racketeering. The reason for this situation is mainly that this attitude in judicial practice reflects the defense of legal justice and social equity.[8] Although defending one's rights is a manifestation of one's rights, if the compensation sought exceeds the amount of claims that can be made by the general public, it will jeopardize the social order and public interest.

Second, the vagueness of the legal provisions and the differences in application in judicial practice. The law does not clearly define specific criteria for extortion or excessive rights defense, so in specific cases, judicial officers and judges often need to make decisions based on the specifics of the case, and this ambiguity makes it possible for the same behavior to be defined as reasonable rights defense or extortion depending on the context. Because of the lack of clarity of the legal provisions, judges have a certain amount of subjective judgment in interpreting and applying the law, which may lead to different judges making different judgments in similar cases.

Thirdly, there is a conflict of rights between the defender and the person against whom the right is being defended. Defenders often seek compensation for damage to their rights, but at the same time, they may demand excessive compensation because of conflicts of interest or emotion,[9] as in case 1 cited earlier. In this case, the defenders' behavior is often regarded as extortion by the target of the defense and filed a lawsuit to the People's Court. Some judges believe that taking advantage of the Sanlu milk powder incident outbreak and demand high compensation to the corresponding company's behavior is to add fuel to the incident, seriously disrupting the social order, should be sentenced to extortion and blackmail; some courts believe that the behavior is the rightful rights of Guo Mou, due to the seriousness of the situation, Guo Mou over-excited to demand high compensation and has no unlawful possession of the purpose of the act does not belong to the act of extortion and blackmail. To sum up, the rights of the defender and the rights of the object of the conflict is also caused by "the same case is different" an important reason.

3 Drawing the line between Extortion and Excessive Rights Defense

3.1 Laws and regulations make corresponding provisions, and the Supreme People's Court makes corresponding responses

First of all, the law should distinguish between legal rights defense behavior and illegal extortion and racketeering behavior, and for excessive or improper behavior in rights defense behavior that exceeds the legal boundaries, the law should make clear its legal consequences, including possible civil or criminal liability; secondly, China's authority can also explain in detail the difference between extortion and racketeering and excessive rights defense behavior in the form of judicial interpretation, to reduce the probability of different verdicts on the same case due to the court judge's subjective factors that lead to the probability of different judgments in the same case;[10] in addition, the Supreme People's Court should also issue corresponding guiding cases to make clear how to judge whether or not a rights defense act is excessive in a specific case, so that the judgments in that kind of case can move toward uniformity.

3.2 Improving the professional training of judges and enhancing the transparency of case processing

Improving the professional training of judges is one of the key measures to ensure judicial impartiality and uniform application of the law. Through case seminars, judges can analyze and discuss in-depth typical cases of extortion and excessive rights defense, extract lessons from them, and improve their ability to judge and handle complex cases such as extortion and excessive rights defense.

In order to effectively resolve the phenomenon of different judgments in the same case in extortion and excessive rights defense cases, judicial openness and fairness can be enhanced by strengthening the transparency of the trial. As many public hearings as possible can be held during the trial of the relevant cases, so that the public has the opportunity to fully understand the trial process, court debates, and the basis and reasons for the court's final decision, which is conducive to the timely resolution of the issue of the public's clamor in the process of the court hearing, and to improve the credibility of the judiciary.

3.3 Promoting Legal Popularization and Education

In order to clearly distinguish the boundaries between extortion and legitimate rights defense, there is an urgent need to strengthen the popularization of legal knowledge to the public, especially in the education of laws related to the protection of consumer rights and interests. Through systematic and extensive publicity and education, improve the public's legal awareness and rights protection ability, so that they can distinguish between right and wrong in the process of safeguarding their legitimate rights and interests, to prevent the occurrence of excessive rights protection or even violate the law. Through the popularization of legal knowledge and education, not only can the public's legal awareness and ability to defend their rights be raised, but also society can gradually form a good atmosphere of respecting, abiding by, and using the law, fundamentally reducing the phenomena of extortion and excessive defense of rights, and safeguarding social fairness and justice as well as harmony and stability.

4 Summary

Against the backdrop of continued social progress and rising awareness of citizens' rights, the act of defending rights has become a common phenomenon in social life. This not only highlights the importance that citizens attach to their rights and interests, but also reflects the enhancement of the social concept of the rule of law. However, in this wave of rights defense, the boundaries of the crime of extortion and excessive rights defense has become a thorny and can not be ignored. The blurring of this boundary not only brings many challenges to judicial practice, but also may affect the protection of the legitimate rights and interests of citizens and the stability of social order. This paper centers on this complex issue, in-depth study of relevant laws and regulations and typical cases, a comprehensive analysis of the differences between the crime of extortion and excessive rights. To accurately identify and deal with such issues to provide theoretical support, with the aim of rationally distinguishing between the legitimate rights of citizens and extortion and blackmail, to maintain social justice and establish long-term stable social relations.

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