

The understanding and application of legitimate defense

——the Kunshan murder case as the explanation material

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Abstract: Our country's legitimate defense is divided into ordinary justifiable defence and Special justifiable defence. According to the normative analysis of the legitimate defense clauses, special legitimate defense is not independent of the general existence of legitimate defense, it also needs to consider the issue of defense limits. Compared with the general legitimate defense, the limit of special legitimate defense appears to be more broad. The "Kunshan murder case" is actually an explanation of the problem of special legitimate defense limits. "Significantly exceeding the necessary limit" becomes an important criterion for judging "excessive defence", and comprehensive judgment should be made from the degree of danger faced by the defender in behavior. In order to activate the gradually rigid and justifiable defense system, judicial practice should establish the core value of protecting individual rights, play the proper function of legitimate defense, demonstrate the rule of law, and safeguard social fairness and justice.

1. Introduction

The "Kunshan murder case" was a case in which a traffic accident occurred in Kunshan City, Jiangsu Province on August 27, 2018, and the infringed person counterattacked because of the slashing, resulting in the death of the person. On September 1, the Public Security Bureau of Kunshan City and the Procuratorate issued a notice successively, arguing that the "anti-killing" behavior of the defender Yu Haiming in the "Kunshan murder case" is a legitimate defense and does not bear criminal responsibility. Although some scholars have suggested that it is inappropriate for the public security organs to legally determine the incident, there is a procedural flaw, but it is undeniable that the "Kunshan murder case" reflects the rational return and active application of the gradually rigidified legitimate defense system. .

2. Standardized analysis of legitimate defense clauses

As a criminal law, it is a crime, and legitimate defense consists of general legitimate defense and special legitimate defense.

2.1 Conditions for the establishment of general legitimate defense

According to the provisions of Article 20, paragraphs 1 and 2 of the Criminal Law of China, the conditions for the establishment of general legitimate defense in China should be determined from five aspects: (1) The precondition is the existence of a realistic unlawful aggression; (2) The time condition is that the unlawful aggression is going on; (3) the subjective condition is that the defender should have a sense of defense, that is, to protect the state, the public interest, the person, property and other rights of the person or others from the ongoing illegal infringement. (4) The object of defense is to defend against unlawful infringers; (5) The limit of defense is that the defense behavior does not significantly exceed the necessary limit and causes significant damage. These five conditions are indispensable, otherwise the behavior of the defender will either constitute a imaginary defense or constitute a defense.

2.2 Conditions for the establishment of special legitimate defense

According to the provisions of paragraph 3 of article 20 of the criminal law, when the wrongdoer is committing an act of physical assault, murder, robbery, rape, kidnapping or other violent crimes that seriously endangers the personal safety of the wrongdoer, if the act of defense carried out by a defender results in the injury or death of the wrongdoer, it is not excessive defense and shall not bear criminal responsibility. This paragraph is what academics call "special justifiable defence". Compared with general justifiable defense, the "particularity" of special justifiable defense is reflected in the following aspects: first, the particularity of the cause of defense, that is, it must be aimed at the existing criminal ACTS, rather than other non-criminal illegal ACTS. Second, the particularity of defense purpose, which can only be for the purpose of protecting personal security and other rights. Third, the particularity of the object of defense, which means that only violent crimes can be committed rather than non-violent ACTS. Fourth, the particularity of the defense limit, compared with the general justifiable defense necessity and the equivalent limit requirements, the special justifiable defense limit requirements appear broader, in the case of causing serious injury or death of the infringer, can also establish the special justifiable defense.

The reason why the behavior of the defender *yu haiming* was recognized as "justifiable defense" lies in that *kunshan* public security bureau and the procuratorate determined that the behavior of *yu haiming* accords with the establishment requirements of special defense. Because the infringer to Mr. Liu's constant violence "crime", to defend people *hai-ming yu* too urgency, sustainability, a serious violation, therefore, *hai-ming yu* out of defense to protect their safety, even cause the infringer to the death of Mr. Liu, but also to stop the violence crime behavior necessary defense limit, not "significantly more than necessary to limit", not excessive defense, is still of justifiable defense. Therefore, the special justifiable defense also has the defense limit consideration, is not separates from the general justifiable defense special existence.

2.3 Interpretation of the relationship between general legitimate defense and special legitimate defense

In terms of the order of article setting, the "special justifiable defense" in article 20, paragraph 3 of the criminal law is independent of the "general justifiable defense" in paragraph 1, which seems to have little connection with the "excessive defense" in paragraph 2 of the criminal law, but in fact it is not. Under the circumstance of "special justifiable defense", the problem of excessive defense may also exist. For example, according to the standards for the identification of the degree of human injury, "a person's body is disabled, his appearance is destroyed, his hearing is lost, his vision is lost, his other organ functions are lost or he suffers other injuries that are of great harm to his health, including grade 1 and grade 2 serious injuries." Among them, if the appearance is deformed (spend gently), one eye is serious eyesight is damaged, another eye is medium eyesight is damaged, index finger and middle finger all leave break or be absent belong to serious injury 2 class. When the violence that the infringer intends to cause is limited to the infraction within the second level of serious injury, if the defender causes the infringer's death, it may constitute excessive defense, so that the provisions of special justifiable defense are not applicable. Under paragraph 3 of this means that the "criminal law" of "special justifiable defense" should be can be include to paragraph 1 of the provisions of the "general justifiable defense", "special justifiable defense" as generally justifiable defense so restricted by the defense limit, in order to "need to say" as a standard defines the limits of necessity, namely defensive behavior and violation does not exist too obvious, the differences between the disparity, and stop illegal violation and protection should be based on reasonably necessary for the standard.

Of course, for some targeted violent crimes that seriously endanger personal safety in an emergency, defense under the guidance of panic, fear or fright will cause serious injury or even death of the offender, which is within the necessity of special justifiable defense and still constitutes justifiable defense. The explanation of the reason of *kunshan* murder case specially emphasizes that "it is not demanding that the defender make rational judgment under the emergency response, let

alone take the actual injury of the defender as the premise", which is the legitimate interpretation of the special justifiable defense limit requirements.

3. Understanding and application beyond the necessary limits

As "degree" is a difficult index to be accurately quantified, the "limit problem" of justifiable defense is often a difficult problem to grasp and identify in criminal trials, which is an important reason why the provisions of "justifiable defense" are rigid due to the prudent application of the provisions in my judicial practice. Compared with the criminal law of 1979, in 1997, China's criminal law amended the defense limit from "over the necessary limit" to "significantly over the necessary limit", adding the word "obviously" is an improvement of the standard of excessive defense, intended to encourage citizens to use legal weapons for legitimate defense, in order to protect the legitimate rights and interests of the state, society and individuals. According to the "measurement of legal interests", since the legal interests protected by defensive ACTS are superior to the legal interests of infringement, according to the provisions of article 20, paragraph 2, of the criminal law of our country, only when justifiable defense obviously exceeds the necessary limit and causes significant losses, can excessive defense be established. This means that the defense intensity of the defending person may be greater than the aggression intensity, but the intensity limit shall be "no obvious exceeding the necessary limit". Therefore, the understanding of "obviously exceeding the necessary limit" becomes the key to how to characterize defensive behavior.

How to determine whether a defensive act "obviously exceeds the necessary limit" shall be based on the reasonable necessity sufficient to stop and protect the defender from unlawful infringement. Whether it is "necessary" should be judged comprehensively through a comprehensive analysis of the case. To domestic violence in "against violence means and strength" as an example, in 2015 on the deal with family violence crimes in accordance with the opinion "pointed out that in the defence of domestic violence in defensive behavior is" clearly more than necessary to limit ", should be according to the severity of the person responsible is the implementation of domestic violence, brutality, defence of people's environment, the degree of danger, taken to stop the violence, the person responsible major damage degree, and always the severity of the domestic violence and other comprehensive judgment. If the attacker is only slightly abusive and the defender causes serious injury or death to the attacker, this is an excessive act of defense that "clearly exceeds the necessary limit." In the "kunshan murder case", the defender yu heming's defense behavior resulted in the significant result of the victim's death, and justifiable defense was still established. The reason was that after the public security organ made a comprehensive evaluation of the facts of the case, it was determined that the defense limit of heming did not obviously exceed the necessary limit.

4. Reflection on the system of justifiable defense

Due to the influence of the traditional concept of "killing for life", in China's criminal trial practice, once the defense ACTS cause the death of the victim, the defender will basically face the criminal conviction situation, such as "deng yujiao case" in 2009, "yu huan case" in 2016. However, in the "kunshan murder case", there is also the result of the victim's death due to the defensive act, the consistent similar processing result has been weird change here, the defensive act of the defender yu heming was identified by kunshan public security bureau as constituting "justifiable defense", not criminal responsibility. The reason lies in the fact that the public security organs dare to activate the dormant system of justifiable defense by using the "special justifiable defense" clause. Of course, the functions of public security organs and procuratorial organs focus on investigation and prosecution, and criminal trial tasks such as conviction and sentencing should be the primary duties of the people's court. Knowing that there may be defects in the procedure, kunshan public inspection authorities still overstep their authority, which shows that the establishment of China's justifiable defense system itself and the current situation of judicial application should introspect.

Some authoritative scholars point out that for every thousand defendants who advocate justifiable

defense in public prosecution cases, only about one person can succeed. This very low rate of judicial recognition is not in line with the expected purpose of justifiable defense in China's criminal law. The reason may be the system defect left at the beginning of justifiable defense design. The mainland and the Anglo-American law system countries will be the primary function of justifiable defense to protect individual rights, and the justifiable defense system in China is emphasized the value of defense from the perspective of social effect, paragraph 1 of this from its articles will state interests, social interests to protect himself or others can see before. Therefore, justifiable defense with the nature of private relief right can only be a necessary supplement to the power of national penalty in our country, and play a limited value in the whole criminal law system, so as to prevent the justifiable right from becoming a tool to satisfy the defender's revenge or vent anger. Therefore, in order to activate the justifiable defense system, the promotion of "self-defense" judicial application ratio, our criminal judicial officers shall be to protect citizens' personal rights for important considerations basis, starting from the natural justice applicable to theory, break the conservative ideas, with a more open and bold attitude to using the justifiable defense system, obtain the essence of legal effect and social effect is unified, kunshan kills may be to promote the system of justifiable defense has rational return and active of opportunity.

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