

Research on the Judicial Judgement Standard of Midway Excessive Defense

Jiayi Zheng

Graduate School of Law, Nihon university, Tokyo, 101-8375, Japan

*Corresponding author. Email: ekilalalulu@yahoo.com

ABSTRACT

The law of self-defense is the most controversial and confusing area of judicial practice. The current system of self-defense is unclear, vague judgment elements, judicial recognition standards, should be combined with the theory of subjective and objective unity of compromise, scientific construction of the scientific criteria for the determination of self-defense, from the optimization of the determination of self-defense, the measurement of the comprehensive intensity of the act of self-defense, the avoidability of the consequences of damage beyond the limit, and other three aspects. The judicial recognition standard of excessive self-defense in the middle is correctly understood and absorbed into China's criminal law standard system in the form of judicial interpretation or judicial normative documents in due course.

Keywords: *Legitimate defense; Midway excessive defense; Compromise theory; Unity of subjective and objective; Defense limits*

1. INTRODUCTION

Legitimate defense system is the key system in the criminal law system of China and other countries in the world, and it is also one of the most important non-crime justifications given to citizens by criminal law. [1]Legitimate defense system originates from the ancient justice concept of self-help, and its main value presupposition is to encourage citizens to actively and bravely act for a just cause, fight against illegal activities and crimes, and safeguard their own or others' major personal and property rights and interests according to law. [2]Since its birth, the legitimate defense system has been constantly developing and progressing around the confrontation and conflict between citizens' simple justice values and the basic principle of a legally prescribed punishment for a specified crime and a legally prescribed punishment. In judicial practice, controversial issues are very common, such as the substantive issue of excessive legitimate defense and the connection between the legitimate defense behavior and the lenient system of confession and punishment, etc. However, at present, through the problems and conflicts reflected in the cases of domestic and foreign mainstream jurisdictions, it can be seen that whether the defense behavior is excessive or not has become an eternal topic that puzzles legal practitioners and theoretical researchers. Among the

determination of defense limits, the most difficult and controversial problem is the judgment of whether a special kind of defense behavior, that is, midway defense behavior is excessive, or how to correctly understand the limits of midway defense behavior. The judicial identification of midway excessive defense is related to the fundamental human rights and social evaluation of the accused person, which must be carefully studied and analyzed. Accordingly, the purpose of this paper is to seek a clear definition of the criteria for determining the act of self-defense in the middle of the process through theoretical and practical analysis and exploration. The significance of this paper is to contribute to the modernization of the criminal justice system and trial capacity by scientifically solving the difficult problems of judicial determination of justified self-defense.

2. THEORETICAL DISPUTE AND PRACTICAL DILEMMA OF MIDWAY EXCESSIVE DEFENSE

2.1. Concept and characteristics of midway excessive defense behavior

Midway excessive defensive behavior is a special manifestation of excessive defensive behavior. According to the general theory of academic circles, the

midway excessive defensive behavior is transformed from legitimate defense to excessive defense behavior when the intensity and means of defense behavior exceed the necessary limits required by legitimate defense. Therefore, its constitutive requirements and applicable theory are special compared with the crime of ordinary excessive defense behavior pattern. Its particularity is mainly reflected in two aspects: First, unlike the general excessive defense, the midway excessive defense is completely legal at the initial stage, while the excessive defense in dissent usually has the basic characteristics of being illegal from the beginning, so in principle, the midway excessive defense should be discussed and analyzed in sections; Secondly, on the whole, the subjective viciousness and objective harmfulness of midway excessive defense are relatively mild compared with the general excessive defense which has been a criminal act since the beginning. Therefore, in terms of sentencing, according to the basic principle of criminal law "suiting responsibility and punishment to crime", we should further lighten or mitigate the punishment according to the negligent crime caused by the ordinary excessive defense. Therefore, around the above two characteristics, there are still many controversies in the theoretical research of midway excessive defense.

2.2. Theoretical controversy on midway excessive defensive behavior

At present, the main theoretical dispute about the standard of judicial identification of midway excessive defense refers to the main theoretical model applicable to it. As a matter of fact, there are three main theories on the identification criteria of midway excessive defense: The objective standard theory, the subjective standard theory and the compromise theory. First, the objective standard theory: The objective standard theory occupies the dominant position in China's long-term judicial practice, especially before the 11th Amendment to Criminal Law was promulgated. According to the objective standard theory, the only criterion to judge the midway excessive defense is whether the defense carried out by the defender objectively exceeds the necessary limit; As for how the defenders subjectively know their own defensive behavior, they don't care. [4]Second, the subjective standard theory: Scholars who hold this view believe that in the face of the same illegal infringement, different evaluation conclusions will appear when different actors defend with the same strength and means, which shows that whether legitimate defense is justified or not is not a simple objective judgment, but a universal value identification problem. [5]Accordingly, the subjective theory tends to discuss the essence of excessive defensive behavior from the social evaluation and value identification level, and holds that the standard of midway excessive defense behavior is whether the defender has subjective malicious or negligent behavior when defending. If there is subjective malicious harm or

objective fault, it should be considered as an midway excessive defense. Third, compromise theory: According to the compromise theory, both subjective standards and objective standards have defects to a certain extent, so we should scientifically define the judicial identification standard of midway defense behavior by combining the basic principle of the unity of subjectivity and objectivity.

2.3. The practical dilemma of midway excessive defense

As above mentioned, due to the incompleteness of the provisions of the criminal law, the above theoretical disputes have caused confusion in judicial practice. At present, people in judicial practice generally hold the objective standard theory, because the above objective standard theory is feasible and convenient in operation when dealing with and identifying criminal acts compared with other theoretical bases. In other words, when determining whether there is an midway excessive defense behavior, it is only necessary to compare the intensity of the upgraded defense behavior with the degree of illegal infringement. If the former is obviously higher than the latter, it should be considered as an midway excessive defense behavior. However, the above-mentioned common practice in judicial practice neglects the unity of the subjective and objective of criminal acts, resulting in an over-absolute dilemma of judicial application, a large number of situations that should have been deemed as legitimate defense punished and cracked down as excessive defense criminal acts, and a realistic dilemma that the scope of attack is too wide and the judicial application scale of legitimate defense is too narrow. Under the mode of objective standard theory, the defensive actors "Get blamed at every turn", which makes the value presupposition and system function of legitimate defense system unable to be fully exerted, and not conducive to the cultivation and formation of good social values. In other words, the objective standard theory only focuses on how to effectively crack down on and control crimes and effectively detect and punish the accused person, which is a typical concept of "retribution punishment", while ignoring the governance function and guidance function of criminal law as an important social norm in the process of social governance. Therefore, the above-mentioned theories and practices in judicial practice are also the reasons why people are often unwilling to meddle in practice, which eventually leads to the practical dilemma that the legitimate defense system is ignored.

3. OPTIMIZATION AND PERFECTION OF MIDWAY LEGITIMATE DEFENSE SYSTEM

3.1. Theory: Implement the compromise standard of the unity of subjectivity and objectivity

As mentioned above, the most important problem in the current judicial identification of midway excessive defense can be understood as the difficult application of law caused by unclear identification standard. In view of many problems of the objective standard theory, the author thinks that the compromise standard of the unity of subjectivity and objectivity should be implemented at the level of constituent elements. This standard not only belongs to the main circulation theory of civil law system when judging legitimate defense behavior, but also is the main viewpoint adopted in the latest judicial interpretation of legitimate defense in China. [6]According to the compromise theory of the unity of subjectivity and objectivity, the subjective thinking state and psychological activity of the actor should be considered first when judging whether the legitimate defense behavior is midway excessive defense, that is, by judging whether there is subjective intention or fault, study whether the actor has subjective intention or fault for the damage caused by excessive defense, that is, subjective penability or culpability. In principle, it should not be regarded as meeting the subjective standard of excessive defense behavior, if the actor is only in the original intention of fear, worry or self-protection, and does not have any possibility of intention or negligence. After the actor's defense behavior meets the subjective standard, the objective standard should be considered, that is, the behavior carrier must objectively have both the defense behavior "Obviously exceeding the necessary limit" and the defense result "Causing great damage". Among them, "Obviously exceeding the necessary limit" is a limitation from the perspective of the behavior itself, that is, the defense behavior and the infringement behavior are obviously unequal and not comparable. Therefore, the compromise theory, as a standard for identifying excessive defense, is not only the natural requirement of the scientific theory, but also the practical position of the guidance case. Besides, causing significant damage is defined from the result point of view, that is, acts exceeding the necessary limit cause significant damage results, so if the damage consequences caused by defensive actions do not obviously exceed the damage consequences that may be caused by infringement actions, it cannot be considered as excessive defense actions.[7]

3.2. Practice: Scientifically defined elements of midway excessive defense

According to the above-mentioned compromise standard of the unity of subjectivity and objectivity, it is necessary to fully define and clarify the constitutive requirements in judicial practice to identify the midway excessive defense behavior. According to the general theory, that is, the theory of four elements, there is nothing special about the crime subject: The attribute of the criminal, and the crime object: The types of infringed legal interests, so I won't repeat them here. There is no doubt that the two most controversial elements are the subjective aspect of the midway excessive defense behavior, that is, the psychological state during defense, and the objective aspect, roughly speaking, the behavior itself during defense. According to the compromise theory, on the one hand, the subjective aspect of midway excessive defense should be defined as including intention and negligence, that is to say, if the public prosecution agency can't prove that the actor has the intention to harm others maliciously or negligently or is overconfident that he has a negligent understanding of the defense limit, he should not be accused of excessive defense, but should be treated as a question of legitimate defense without prosecution, so as to realize the basic logic of the principle of a legally prescribed punishment for a specified crime; On the other hand, when evaluating the objective aspects of the midway excessive defense, because it is obvious that the midway excessive defense belongs to the behavioral offense rather than the dangerous offense, under the above premise, the objective standard of the midway excessive defense should be defined as "The unnecessary defense behavior that obviously exceeds the necessary limit", that is, when judging the defense limit, we should mainly refer to whether the defense limit is necessary for full defense, instead of simply referring to the objective standard mechanically to say that the so-called defense behavior exceeds the limit of the infringement behavior. Although the latter is easy to judge in hindsight, it is obviously impossible for the actor to make a calm, rational and sufficient judgment on the above problems in the process of implementing defense behavior. To sum up, the principle of necessity should be taken as the main logical line to judge the objective standard, so that it can be more scientific and reasonable. Finally, it should be emphasized that the above elements are not applicable to the situation of unlimited defense right; In the case of unlimited defense right, no matter what intensity of defense behavior is applied, it is justified.

4. CONCLUSION

General Secretary Xi Jinping has repeatedly stressed on different occasions that the value concept of justice for the people lies in making the masses feel fair and just in every judicial case. Under the background of promoting

the rule of law in an all-round way, the midway excessive defense in criminal law may be the key area of the justifiable defense system with the most prominent theoretical disputes and chaotic judicial practice. By analyzing and observing the judicial cases in China and mainstream jurisdictions in recent years, such as “Yu Huan case”, “Lai Yuan anti-killing case” and “Kunshan anti-killing case”, we can see that there are some judicial problems in the system of midway excessive defense, such as unclear applicable theory, vague judgment elements and different standards of judicial identification, which seriously restrict the function of justifiable defense system and are not conducive to the cultivation and formation of good social customs. Therefore, first of all, we should make it clear theoretically that for the limitation of legitimate defense, we should combine the compromise theory of the unity of subjectivity and objectivity, scientifically construct the scientific identification standard for midway excessive defense, and correctly understand the judicial identification standard for midway excessive defense from three aspects: Optimizing and perfecting the judgment point of midway excessive defense, measuring the comprehensive strength of defense behavior, and avoiding the consequences of over-limit damage. We should take the above theoretical research results as the premise and guidance, and absorb them into the criminal legal norm system in China in the form of judicial interpretation or judicial normative documents at the right time, so as to promote the further objective and rational understanding of defense behavior in judicial practice, the modernization of criminal trial capacity and trial system, and truly activate the long-dormant legitimate defense system.

The significance of this paper can be reflected from two aspects: first, in the theoretical value level, the author clarifies the theoretical myth of the midway self-defense issue by analyzing and examining the theory of compromise; second, in the practical significance level, the author deduces the important position of compromise in criminal litigation activities by arguing the suitability of compromise with judicial practice, so as to provide ideas and references for the practical community to handle similar cases.

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