

Review of Defense Facts in Public Security Cases

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Abstract

This article centers on the newly added system of justifiable defense after the revision of the "Law of the People's Republic of China on Administrative Penalties for Public Security", systematically expounding on the background of review, identification standards, practical errors, and key points of review regarding defense facts in public security cases. The article points out that the new law clarifies that justifiable defense is not illegal, emphasizing that "the law cannot compromise with illegality", reversing the previous inertia in identifying "mutual assault". The identification of defense requires comprehensive consideration of the five major elements: the cause, time, object, subjective intention, and limits of defense, combined with analysis of typical cases. At the same time, it points out the misunderstandings in practice such as "vague identification of mutual assault" and "result-oriented approach", proposing to establish a judgment standard of "unity of subjectivity and objectivity", comprehensively review evidence, objectively restore the defense situation, and ensure citizens exercise their defense rights according to law.

Keywords

Public security cases, justifiable defense, identification criteria.

1. Background of Fact Review in Defense of Public Security Cases

On June 27, 2025, the "Public Security Administration Punishment Law" underwent significant revisions, with Article 19 explicitly stipulating the system of justifiable defense for the first time in legal terms. This revision marks a major breakthrough in China's public security law enforcement philosophy, particularly in daily scenarios prone to conflicts, such as medical disputes. This provision has fundamentally changed the previous law enforcement inertia of "fighting back when being hit is considered as a mutual assault." The rigid law enforcement logic of "whoever is injured is in the right," "making peace," and "giving equal punishment to both sides" has been clarified, and the spirit of the rule of law, which states that "the law cannot compromise with illegality," has been established. In this legal context, the examination of defense facts becomes particularly crucial. Case handlers must accurately identify whether the illegal infringement is "ongoing", whether the defense measures "clearly exceed the necessary limits", and whether the damage caused is "significant damage". The amendment to this provision grants citizens a clearer right to defense, encouraging them to protect their legitimate rights and interests in accordance with the law. At the same time, it urges law enforcement agencies to break away from outdated misconceptions and truly build a public security management environment that encourages righteousness, curbs illegality, and demonstrates fairness.

2. Standard for Determining The Facts of Defense in Public Security Cases

2.1. Identification of essential elements of defense cause

The objective existence of unlawful infringement is a prerequisite for the establishment of justifiable defense in the Public Security Administration Punishment Law. The following two

points should be primarily noted: First, the unlawful infringement should be objectively existing and cannot be subjective imagination. Second, the unlawful infringement includes both general illegal acts and criminal acts. The act sufficient to stop the unlawful infringement has no necessary relationship with the degree of illegality of the unlawful infringement. It should be noted that there is no "special defense" situation in public security administration punishment as in criminal law. Because the degree of social harm caused by public security violations is far lower than that of criminal acts, violent acts that seriously endanger personal safety will not occur, so there is no room for the application of special defense.

For instance, in the Guo Moulán case [1], the plaintiff Guo Moulán entered a shop to buy milk tea. Suspecting that Guo Moulán had secretly filmed the scene when she entered the shop, Huang Moudong clashed with the plaintiff. In this case, the initiating conditions for justifiable defense were fully manifested. According to the facts determined by the court, the conflict arose from the third party Huang Moudong's unreasonable suspicion, without any evidence, that the plaintiff Guo Moulán had secretly recorded a video and demanded her to hand over her phone. When she refused, Huang Moudong took the initiative to commit violent acts - pushing her head, slapping her face, and further hugging her for further assault. Huang Moudong's actions constituted a real and imminent unlawful infringement of the plaintiff's personal rights, and this infringement was not initiated by the plaintiff. Throughout the process, the plaintiff was always in a passive defensive state and did not actively escalate the conflict. Her subsequent actions, such as throwing milk tea and biting her fingers, were all immediate reactions taken to protect herself from being harmed under Huang Moudong's continuous attacks. Therefore, the circumstances of this case meet the initiating conditions for justifiable defense, that is, there was an "ongoing unlawful infringement". The plaintiff's actions were a reasonable counterattack against the unlawful infringement, rather than a mutual assault.

2.2. Identification of the essential element of defense time

In public security cases, the determination of the time element of defense specifically refers to the ongoing state of an unlawful infringement that has already begun and has not yet ended. Regarding the commencement time of an unlawful infringement, there are views such as the "commencement theory," the "on-site theory," and the "danger theory"[2] in criminal law theory. Based on the practice of public security cases, it is more appropriate to use the "danger theory" as the main criterion for judgment, that is, when legitimate rights and interests face real and imminent danger, it can be determined that an unlawful infringement has begun. This position is more conducive to fully safeguarding citizens' rights. Regarding the end time of an unlawful infringement, there are various theories such as the "result formation theory," the "infringement cessation theory," the "escape from the scene theory," and the "danger elimination theory." [3] From the perspective of public security management practice, it is recommended to use "whether the danger has been eliminated" as the judgment basis as well. As long as the dangerous state caused by the unlawful infringement still exists, or there is still a possibility of continuation or intensification, it should be determined that the infringement has not ended yet, and the countermeasures taken by the infringed party at this time can still constitute justifiable defense. At the same time, the determination of the time element of justifiable defense should not be too strict. Defense behaviors in public security cases often occur in sudden and continuous confrontations. As long as it is comprehensively judged that the danger has not been completely eliminated, the defense behavior is still timely and does not belong to post-event retaliation.

2.3. Identification of essential elements of the defense target

Justifiable defense must be directed against unlawful infringement. It is only against the person who commits the unlawful infringement that justifiable defense is established under the Public Security Administration Punishment Law. In cases where multiple individuals jointly commit

unlawful infringement, defense can be directed against either the individual who directly commits the infringement or the individuals who jointly commit the infringement on the scene. Regarding the question of whether minors under the age of fourteen and mentally ill individuals can be the targets of defense. [4] In China's public security administration punishment system, although these two types of subjects may receive mitigated or exempted punishment due to their lack of responsibility capacity after committing illegal infringements, their actions themselves are still illegal, and their nature does not change because of the special nature of the subjects. Therefore, from a legal perspective, it is allowed to retaliate against them. However, necessary restrictions must be imposed on such defensive actions. Specifically, the defender should first attempt to avoid or stop the infringement through non-confrontational means such as warning and appeasement; only when there is no other way and the situation is urgent, can lower-intensity retaliatory measures be considered.

2.4. Identification of subjective elements of defense

Regarding the determination of subjective elements of defense in public security cases, protecting legitimate rights and interests from ongoing illegal infringement is the subjective condition for justifiable defense to be established under the Public Security Administration Punishment Law. Firstly, defense provocation, where one intentionally provokes the other party to infringe upon oneself through words, actions, etc., and then retaliates, should not be recognized as a defensive act. Secondly, in cases of mutual assault where both parties have the intention of illegal infringement, it cannot be recognized as justifiable defense.

For example, in the case of Huang [5], a civil dispute over the removal of a smoke exhaust pipe in the shop leased by the plaintiff Huang led to a violent conflict. Landlord Yan Miaofang and more than ten others broke into the shop, first smashing and beating Huang's kitchen. According to the surveillance video from the crime scene, although the landlord side assaulted the plaintiff, the assault was not continuous and uninterrupted. Moreover, despite the significant numerical disadvantage, Huang was not always passively beaten during the conflict. At multiple points in time, the plaintiff Huang also took obvious initiative to attack. This case was triggered by a civil dispute, and the plaintiff also bore some responsibility for the escalation of the conflict. Furthermore, he repeatedly initiated the attack, and his behavior did not constitute legitimate defense to stop an ongoing illegal infringement.

2.5. Identification of the essential elements of defense limits

The condition for justifiable defense to be established under the Public Security Administration Punishment Law is that the act of stopping the illegal infringement does not significantly exceed the necessary limits and cause substantial damage. Referring to the relevant provisions of the "Opinions", whether the defense "significantly exceeds the necessary limits" should be judged based on a comprehensive consideration of the nature, means, intensity, and harmfulness of the illegal infringement, as well as the timing, means, intensity, and damage consequences of the defense, taking into account the balance of power between the two parties, the situation in which the defender is located at the time of defense, and the general perception of the public.

In the case of Zhang, for example, [6] Liu, a young man with a strong physique, arrived at the restaurant for a meal after drinking alcohol. He used a beer bottle to tap against the edge of the table to open the cap, but the owner, Zhang, stopped him for fear of damaging the tabletop, which led to Liu's dissatisfaction. Liu threw the bottle, insulted, and pushed Zhang, and the two sides scuffled. During the scuffle, Zhang twice threw empty beer bottles to retaliate. In this case, Zhang's behavior met the requirements of necessity and proportionality for justifiable defense and did not exceed reasonable limits. Liu, as a young man with a strong physique, took the initiative to commit illegal infringements such as pushing and insulting after drinking alcohol, posing a real threat to Zhang's personal safety. Zhang, as a middle-aged woman, was physically

and strength-wise at a disadvantage. She picked up an empty beer bottle to retaliate, aiming to prevent the infringement from continuing. Moreover, the bottle did not break and did not cause serious injury, and the means used were basically commensurate with the intensity of the infringement.

3. Practical Errors in The Determination of Facts of Justifiable Defense in Public Security Cases

3.1. The boundary between mutual assault and justifiable defense is blurred among the "top fifty major boards"

In grassroots practice, there is a significant number of cases involving mutual assaults. In reality, there are numerous situations where one party initiates an attack or commits other illegal acts, and the other party then defends themselves. Such situations should be legally recognized as justifiable defense. However, due to the often unclear division of responsibility between the two parties, many cases are simply classified as "mutual assaults" and punished under Article 43 of the Public Security Administration Punishment Law for "beating others" or "intentional bodily harm." If neither party causes serious injuries, the case is usually handled through mediation, which in practice often leads to a "muddling through" phenomenon. Furthermore, some grassroots law enforcement personnel often use whether the defender "actively avoided" as a premise for judgment, criticizing the defender from the perspective of a reasonable person after the fact. If the defender does not take avoidance measures and directly retaliates, they are often directly identified as engaging in mutual assaults, resulting in a "both sides get fifty lashes" outcome.

3.2. "Whoever is more injured has the right" - a result-oriented view

In practice, many case handlers are still deeply influenced by the concept of "whoever is more injured is in the right." This mindset, to some extent, hinders the objective determination of justifiable defense cases. By failing to fully adopt the perspective of the defender and examine the case process based on the specific circumstances at the time of the act, the judgment tends to deviate from the legislative intent of the justifiable defense system. From the perspective of the public's simple emotions, people often tend to sympathize with the party with more severe injuries, even if that party is the one who initiated the illegal act first. This sympathy based on the damage results inadvertently obscures a key issue: if no defensive measures are taken, the defender may suffer more serious harm.

4. Several Aspects to Consider in The Factual Examination of Justifiable Defense in Public Security Cases

4.1. Establish and implement the comprehensive judgment criterion of "unity of subjectivity and objectivity"

Establishing and implementing the comprehensive judgment standard of "unity of subjective and objective elements" is a key measure to correct the deviation in the identification of justifiable defense, avoid "giving equal blame to both sides" and "result-oriented thinking". This standard requires law enforcement and judicial personnel to break away from the one-sided thinking based solely on the consequences of damage or mechanical comparison of the appearance of the behavior, and instead engage in a comprehensive understanding of the cause, conflict process, behavioral intention, and other dimensions. Specifically, objective circumstances such as the initial cause of the incident, whether the parties involved are at fault for escalating the conflict, whether weapons were used or prepared to be used, whether the degree of violence is obviously imbalanced, and whether others were gathered to participate

should be comprehensively considered. Based on this, a deep analysis of the perpetrator's subjective psychological state should be conducted to determine whether they have a genuine intention of defense. In particular, the erroneous concept of regarding "prior avoidance" or "calling for help" as a necessary prerequisite should be abandoned, and it should be fully recognized that citizens have no obligation to retreat or endure when facing illegal infringement. The right to defense itself contains the positive attribute of confronting infringement. Judgment should be based on the specific situation at the time of the defensive behavior, using the possible reaction of an ordinary person in the same emergency situation as a benchmark, to empathize with the defender's psychological state and behavioral choices in their instantaneous decision-making, rather than demanding the most moderate and precise response from a rational perspective after the event. Only through this examination method that deeply integrates subjective and objective elements can we accurately distinguish between mutual assault and defense, truly embody the spirit of the rule of law that "the law cannot compromise with illegality", and ensure that citizens exercise their right to defense in accordance with the law.

4.2. Comprehensively and accurately examine the evidence of justifiable defense

To address practical deviations in the determination of justifiable defense, administrative law enforcement personnel need to conduct a comprehensive and accurate review of the evidence of justifiable defense. Firstly, it is necessary to thoroughly examine audio-visual materials such as surveillance videos to ensure that they fully reflect the causes, consequences, and details of the case, avoiding partial extraction. The focus should be on analyzing the impact of the temporal and spatial environment on the defender's psychology, as well as details such as the duration and location of the counterattack. Secondly, the testimony of on-site eyewitnesses needs to be carefully examined, including the witness's ability to testify, their relationship with the parties involved, and speculative content in the testimony. At the same time, attention should be paid to their objective description of the scene. Thirdly, expert opinions should be reviewed, focusing on the correlation between the cause of injury or death and the defensive action, the consistency between trauma characteristics and defensive tools, as well as the corroborative relationship between the defender's injuries and the illegal infringement. Fourthly, the defender's defense needs to be examined in conjunction with the overall evidence of the case to assess the consistency and reasonableness of their statements. Emphasis should be placed on using empirical rules to infer the authenticity of the defense, and distinguishing between truth and falsehood through mutual corroboration of evidence. Only through this systematic evidence review model can the defensive situation be accurately reconstructed, providing solid support for the determination of justifiable defense.

5. Summarize

The "Public Security Administration Punishment Law" clarifies the system of justifiable defense, marking a significant advancement in China's law enforcement philosophy in public security. The facts of defense should be accurately identified through comprehensive judgment based on five aspects: the cause, time, target, subjective intent, and limits of the defense. In practice, we should resolutely abandon mindsets such as "giving equal blame to both sides" and "emphasizing only the outcome", and correctly identify the facts of justifiable defense through methods such as unifying subjective and objective elements and comprehensively reviewing evidence. Only in this way can we effectively safeguard citizens' rights to defend themselves according to the law and truly realize the legal value of "the law cannot compromise with illegality".

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