

Прокурорский надзор. Судебная система

Судебное определение преступления, связанного с причинением ущерба от бросания предмета с большой высоты Judicial determination of high-altitude object throwing crime

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Аннотация. Поправка к Уголовному законодательству (XI) предусматривает отдельное уголовное наказание за бросание предметов с высотных зданий и направлена на обеспечение безопасности людей. Для дальнейшего точного определения состава преступления, связанного с бросанием предметов с высотных зданий, и более эффективного использования функций уголовного права по наказанию за совершение таких преступлений и их предотвращение, необходимо исследовать и обобщить опыт судебных разбирательств, усилить толкование норм о защите законных интересов и исследование элементов преступлений, связанных с киданием предметов с высоты, расследовать их связь с другими правонарушениями. Это поможет сформировать правила судебного признания, которые можно использовать для практических целей.

Ключевые слова: кидание предметов с большой высоты, поправка к уголовному законодательству (XI), судебное определение.

Abstract. The Amendment to the Criminal Law (XI) has separately criminally punished the act of throwing objects from high-rise buildings, effectively safeguarding the safety of the people's «overhead». In order to further accurately define the offense of throwing objects from high-rise buildings and better

utilize the punishment, regulation, and prevention functions of criminal law, it is necessary to research and summarize trial experience, strengthen the normative interpretation of the legal interest protection and constituent elements of high-altitude throwing crimes, and investigate the relationship with other offenses. This will help to form judicial recognition rules that can be used for practical reference.

Keywords: *throwing objects at high altitude; the amendment to the criminal law (xi); judicial determination.*

Introduction

In recent years, there has been a gradual increase in cases related to high-altitude littering, which has attracted wide attention from the entire society. Against this background, in October 2019, the Supreme People's Court issued the «Opinions on the Proper Handling of Cases of High-altitude Littering and Falling Objects According to Law»¹ (Law No. 25 issued in 2019, hereinafter referred to as the «Opinions on the Trial of High-altitude Throwing»). The document outlined that the courts need to attach great importance to the real harm caused by high-altitude littering and falling object behaviors, deeply understand the necessity and importance of using criminal punishment to address behaviors that pose severe consequences resulting from high-altitude littering and falling objects, and punish such criminal behaviors according to law. Effective prevention and resolute deterrence of these activities shall be taken. The Amendment XI of the Criminal Law of the People's Republic of China,² which came into effect on March 1st, 2021 (hereinafter referred to as the «Amendment to the Criminal Law (XI)»), includes a separate provision that criminalizes the act of throwing objects from buildings or other high places. The provision states that for serious offenses, the offender may be sentenced to a maximum of one year of imprisonment, detention, or surveillance, and may also be fined. If the same act also constitutes another offense, the heaviest punishment prescribed by law shall be applied.³ According to the «Supplementary Provisions (VII) of the Supreme People's Court and Supreme People's Procuratorate on the Enforcement of the Criminal Law of the People's Republic of China»⁴, the offense of throwing objects from high places has been defined

as the «high-altitude object throwing crime». Since the implementation of the «Amendment to the Criminal Law (XI),» the people's courts have lawfully tried a number of criminal cases involving throwing objects at high altitude, effectively safeguarding the safety of the people's over head. In order to accurately apply the law and make full use of the punitive, regulatory, and preventive functions of judicial judgments, this paper explores some outstanding issues related to the judicial determination of high-altitude object throwing crime.

1. Legislative background and legal interest analysis of high-altitude object throwing crime

1.1. The legislative origin of high-altitude object throwing crime

In recent years, frequent incidents of property damage and personal injury resulting from high-altitude objects thrown down have become a hot topic of concern in the current society. In order to effectively regulate high-altitude throwing behaviors and ensure the safety of the people, the Supreme People's Court, based on the summary of previous judgments on high-altitude throwing cases, specifically issued the «Opinions on the Trial of High-altitude Throwing» in October 2019, which clearly stipulates the punishment of high-altitude throwing crimes according to law; The Civil Code of the People's Republic of China, the first civil code since the establishment of the new China, enacted on May 28, 2020, expressly prohibits the throwing of objects from buildings, and holds the tortfeasor legally responsible for causing harm to others by throwing objects from buildings⁵; The «Amendment

¹ Opinions on the Proper Handling of Cases of High-altitude Littering and Falling Objects According to Law [EB/OL]. (2019-11-14) [2023-07-18]. The National People's Congress of the People's Republic of China // URL: <http://www.npc.gov.cn/npc/c30834/201911/f9197a5e778d4718bfcc4af13a587700.shtml>.

² The Amendment XI of the Criminal Law of the People's Republic of China [EB/OL]. (2020-12-16) [2023-07-18]. The National People's Congress of the People's Republic of China // URL: <http://www.npc.gov.cn/npc/c30834/202012/850abff47854495e9871997bf64803b6.shtml>.

³ Refer to Article 291-2 of the Criminal Law of China.

⁴ Supplementary Provisions (VII) of the Supreme People's Court and Supreme People's Procuratorate on the Enforcement of the Criminal Law of the People's Republic of China [EB/OL]. (2021-02-17) [2023-07-18]. Chinese Supreme People's Procuratorate website // URL: https://www.spp.gov.cn/spp/xwfbh/wsfbt/202102/t20210227_510055.shtml.

⁵ See: *Cao Bo*. The Justification for the «Criminalization» of Throwing Objects from Heights and its Systematic Interpretation [J] // Hebei Law Journal. 2021 (2). P. 158.

to the Criminal Law (XI)» implemented on March 1st, 2021, added a provision after Article 291-1 of the Criminal Law, formally incorporating the act of «throwing objects from a building or other high altitude with serious circumstances» into the scope of criminal law regulation and defining it as the crime of throwing objects from a high altitude. After the promulgation of the Amendment to the Criminal Law (XI), the crime of high-altitude littering was transferred from the initial inclusion in Chapter 2 of the Specific Provisions on Crimes Endangering Public Safety to Chapter 6 on Crimes Disturbing Social Order. This should be seen as the legislator's recognition of the problem and a shift towards the denial and revision of the relevant provisions in the «Opinions on the Trial of High-Altitude Littering».⁶

The Amendment to the Criminal Law (XI) introduces the offense of throwing objects from a height, primarily based on the following two considerations: Firstly, from the perspective of current demands of our era, entering the mid-to-late 20th century, due to the increase in uncertain risks created by human actions and institutional and technical risks, the concept of «risk society» was widely discussed abroad.⁷ In the context of the «risk society», the concept of proactive preventive criminal law has emerged. The offense of dangerous driving is a product of the proactive preventive criminal law perspective. The social harm caused by throwing objects from heights is no less than that caused by dangerous driving, as throwing objects from heights is more covert and sporadic.

Considering that dangerous driving, which affects «travel safety», is already subject to criminal law regulation, it is necessary to include the act of throwing objects from heights, which affects people's «safety above their heads», within the scope of criminal law regulation. Secondly, from the perspective of the current legal system in China, the existing civil liability mechanism for torts is difficult to effectively deter high-altitude littering behavior. Civil prosecution of high-altitude littering can only be pursued for those instances that have resulted in actual harm, while those acts that carry a significant risk of harm but have not resulted in actual damage are difficult to regulate under civil law. While high-altitude throwing behavior may pose a threat to the life, body or property of unspecified persons, thereby endangering public safety to some extent, it cannot be denied that there are also high-altitude throwing

behaviors that do not necessarily pose a threat to public safety. However, these high-altitude throwing behaviors may have a certain disruptive effect on public order.

Therefore, if only high-altitude throwing behaviors that endanger public safety are criminalized, those high-altitude throwing behaviors that do not endanger public safety but disrupt public order will be excluded from criminal punishment. Thus, it cannot effectively punish and prevent this type of high-altitude throwing behavior.⁸ Criminal law is the protective law of other branch laws, serving as the final line of defense for social defense in our country. When other branch laws are unable to effectively contain certain behaviors, criminal law should play its role as the last line of defense and incorporate them into the scope of criminal law regulation.

1.2. The Protective Legal Interest of high-altitude object throwing crime

The protected legal interest of the crime of throwing objects from high altitudes include the maintenance of social public order rather than public safety. The «Opinions on the Trial of High-Altitude Throwing» issued by the Supreme People's Court in 2019 pointed out that «incidents of high-altitude littering and falling objects continue to occur, posing serious threats to public safety.» Based on this, the legal interest violated by high-level paratrooper actions are public safety. Consequently, such actions should be deemed as criminal offenses of endangering public safety and should be punished accordingly. In the first draft of the Amendment to the Criminal Law (XI), the act of throwing objects from a height is stipulated in Article 114, paragraphs 2 and 3 of the Criminal Law: «Those who throw objects from a high altitude, endangering public safety, will be subject to detention or control and may also be fined or punished with a fine alone.» «If the aforementioned act causes injury or other serious consequences, and also constitutes another crime, the offender shall be punished according to the more severe provisions of the law.» This regulation still follows the tone set by the «Opinions on the Trial of High-Altitude Throwing» and identifies high altitude throwing behavior as an act that violates the public interest and endangers public safety.⁹ The Amendment to the Criminal Law (XI) passed on December 26, 2020 moved the crime of throwing objects from high altitude from Chapter 2 of endangering public safety to the first section of

⁶ See: *Zhang Mingkai*. The Denial of Judicial Interpretation and Its Problem-solving in the Amendment to the Criminal Law (XI) [J] // the Journal of Law. 2021 (2). P. 17.

⁷ See: *Lao Dongyan*. The Criminal Law Legislative View of Risk Society and Functionalism [J] // the Law Review. 2017 (6). P. 17.

⁸ See: *Chen Xingliang*. The Evolution of Legislative Ideas on Public Security Crimes: A Perspective from the Amendment to the Criminal Law (XI) [J] // The Journal of Law. 2021 (1). P. 50.

⁹ See: *Lin Wei*. Reflection on Legislation and Application of Doctrine of High Altitude Throwing Crime [J] // The Journal of Law. 2021 (3). P. 44.

disturbing public order in Chapter 6. This clearly indicates that the act of throwing objects from high altitude cannot infringe upon public safety, and the legal interest violated by such behavior are those of social public order.

Recognizing the protective legal interest of this offense as a safeguard for public order is advantageous for maintaining the coherence of criminal law system. Firstly, from the system positioning of the crime of throwing objects from a high place in the first draft of the Amendment to the Criminal Law (XI), it belongs to the crime of endangering public safety by dangerous methods under Article 114 of the Criminal Law. Actions that endanger the public by dangerous methods are highly dangerous behaviors. The act of throwing objects from a high place obviously does not have the same level of danger as arson, flooding, explosion, or the release of hazardous materials. It is a low-level dangerous behavior. Obviously, it is inappropriate to put it in Chapter 2 of the Criminal Law on crimes endangering public safety.

Placing the crime of throwing objects from a high place in Chapter 6 on crimes that disrupt social management order in the Amendment to the Criminal Law (XI) is conducive to maintaining the coordination of the criminal law system. Secondly, the statutory punishment for the crime of endangering public safety by dangerous methods is «imprisonment of not less than three years but not more than ten years.» In the first draft of the Amendment to the Criminal Law (XI), the statutory punishment for the crime of throwing objects from a high place is «detention or surveillance, and a fine or single fine.» The current Amendment to the Criminal Law (XI) provides that the statutory punishment for the crime of throwing objects from a high place is «imprisonment of not more than one year, detention, surveillance, and a fine or single fine.»

Whether it is the first draft or the current version of the Amendment to the Criminal Law (XI), the statutory punishment for the crime of throwing objects from a high place differs greatly from the statutory punishment for the crime of endangering public safety by dangerous methods. Article 144 of China's Criminal Law stipulates that the statutory maximum sentence for the crime of endangering public safety by dangerous methods is ten years' imprisonment, while the statutory maximum sentence for the crime of throwing objects from a high place is one year's imprisonment. Therefore, placing the crime of throwing objects from a high place under Chapter 6 of crimes against social order is conducive to maintaining the coordination of the Criminal Law system.

From the standpoint of protecting the public interest of social order, it is crucial to consider

the following factors in the understanding and application of the offense of throwing objects from a high altitude: Firstly, the act of throwing objects from high altitude cannot be considered as the crime of endangering public safety using dangerous methods. The legal interest protected by the crime of endangering public safety using dangerous methods is public safety, which belongs to a specific dangerous crime. On the other hand, the legal interest protected by the crime of throwing objects from high altitude is social public order, which belongs to an abstract dangerous crime. The danger posed by the two crimes is not homogeneous, and it is also difficult to argue that the latter crime can create the same degree of public danger required by the crime of endangering public safety using dangerous methods. Secondly, according to the provisions of Article 2 of the crime of throwing objects from heights, «if the aforementioned behavior also constitutes another crime, punishment shall be determined according to the provision with a more severe penalty.» As throwing objects from heights simultaneously infringes upon multiple legal interests, it will be treated as an imaginative joinder of offenses and subjected to a single punishment.

2. Current Situation of judicial determination of high-altitude object throwing crime

2.1. Before the implementation of the Amendment to the Criminal Law (XI)

Through the advanced search function provided by the China Judgment Document Network¹⁰, setting the cause of action as a criminal one, with the judgment deadline set as December 31, 2020. The case category was limited to criminal cases, and the document type was limited to judgments, with keywords such as «high-altitude throwing», «high-altitude falling objects», «high-altitude + throwing», «high-altitude + throwing and flinging», and «high places + throwing and flinging» employed. As a result, 130 court documents were retrieved, out of which 69 were found to contain valid judgments related to high-altitude throwing and were analyzed accordingly.

On the basis of the analysis of the above cases, it can be seen that the crime of high-altitude throwing before the implementation of the Amendment to the Criminal Law (XI) showed the following characteristics in China's judicial practice:

Firstly, the applicability of the crime of endangering public safety through dangerous methods presents a general trend. From the distribution of crimes, there were a total of 44 cases involving the crime of endangering public security by dangerous means, 11 cases of manslaughter,

¹⁰ China Judgment Document Network. URL: <https://wenshu.court.gov.cn/> [accessed: April 25, 2022].

6 cases of causing serious injury by negligence, 3 cases of major responsibility accidents, 2 cases of picking quarrels and provoking troubles, 2 cases of intentional destruction of property, and 1 case of intentional injury, totaling 7 charges. Among them, the utilization rate of the crime of endangering public security by dangerous means reached 63.77 %. Using the implementation date of the «Opinions on the Trial of High-altitude Throwing» on October 21, 2019 as a dividing point, there were 31 and 38 judgments before and after that date, respectively. The application rates of the offense of endangering public safety by dangerous means were 32.26 % and 89.47 % respectively. This indicates that in the practice of punishing high-altitude littering crimes, judicial organs in China show a preference for the crime of endangering public safety by dangerous means, and this preference has been further strengthened after the issuance of the «Opinions on the Trial of High-altitude Throwing».

Secondly, the evaluation of the same behavior differs. In Professor Yu Xiaohai's analysis of the judicial sentencing document for high-altitude parabolic crimes, there are five cases of high-altitude parabolic behavior that are not recognized as constituting the crime of endangering public safety by dangerous methods, which are essentially no different from other cases. For example, in the case of Li's high-altitude parabolic behavior, the expression «this court believes»: «Defendant Li caused trouble after drinking alcohol and arbitrarily damaged other people's property by throwing objects from a high altitude, and the circumstances were serious, and his behavior constituted the crime of provocation and troublemaking.»¹¹

In the case of intentional injury of Si 1, Lian and Stumari, the expression «this court believes» is that «the defendant threw a stone at the road where pedestrians passed by after drinking, causing the victim Si 2 to die after being injured, and his behavior constituted the crime of intentional injury.»¹²

These two characteristics indicate that under the social call for severe punishment of high-altitude throwing, the directional guidance of the «Opinions on the Trial of High-altitude Throwing» and the special preference of judicial organs for the crime of endangering public safety by dangerous methods, the punishment for high-altitude throwing is generally too strict, and the boundary between this crime and other crimes is blurred. Criminal Incidental Civil Judgment.

2.2. After the implementation of the Amendment to the Criminal Law (XI)

Through the advanced search in the China Judgment Documents Network, the cause of action was set as the criminal cause, the judgment start time was March 1, 2021, the deadline was April 25, 2022, the case type was criminal case, the document type was judgment, and the keywords of the full text were «high-altitude throwing», a total of 94 documents were retrieved.

On the basis of the analysis of the above cases, it can be seen that the crime of high-altitude throwing after the implementation of the Amendment to the Criminal Law (XI) showed the following characteristics in China's judicial practice:

Firstly, the boundary of the crime of endangering public safety with dangerous methods is ambiguous. Among the search results mentioned above, the author added the keyword «endangering public security by dangerous means» and found 20 relevant documents, only one of which, the Shanghai Lu Yongnian case¹³, was sentenced under this crime, while the others were sentenced under the crime of throwing objects from a high altitude. Among them, the public security organs have investigated 13 cases for suspected crimes of endangering public safety by dangerous methods, while the procuratorial organs have prosecuted for the crime of high-altitude throwing in these cases; the procuratorial organs have prosecuted for the crime of endangering public safety by dangerous methods, and the courts have sentenced for the crime of high-altitude throwing in 2 cases; the procuratorial organs have initially prosecuted for the crime of endangering public safety by dangerous methods and later changed it to the crime of high-altitude throwing in 2 cases. Adding the keywords «intentional injury», «intentional homicide», «intentional destruction of property», and «provoking trouble» separately for search yielded 0 results each. This indicates that the distinction between different crimes primarily lies in «high-altitude throwing» and «endangering public safety by dangerous methods» after the implementation of the Amendment to the Criminal Law (XI).

Secondly, the reasoning provided by the judge is not sufficiently clear. In the process of browsing the judgment documents, the author found that there were various manifestations of high-altitude projectile behavior, including high-altitude projectile behavior of drunken venting, high-altitude projectile behavior of seeking help, and high-altitude projectile behavior of cleaning up garbage, etc., but in the final reasoning part, the court only used defendant so-and-so to throw objects from buildings or heights, and the

¹¹ See the document: [2018] Shandong Province 0811 Criminal First-Trial Verdict No. 1021.

¹² See the document: [2019] Sichuan Province 34 Criminal Incidental Civil Judgment No. 1021.

¹³ See the document: [2021] Shanghai 0106 Criminal First-Trial Verdict No. 49.

circumstances were serious, and his behavior had constituted the crime of high-altitude throwing. For example, in the Li Jiabao case, the expression «this court believes» is, «The defendant Li Jiabao threw objects from the building, and the circumstances were serious, and his behavior constituted the crime of throwing objects from height.»¹⁴ In the case of Cheng involving the crime of high-altitude projectiles, the expression «this court believes» is, «The defendant Cheng threw objects at height, the circumstances were serious, and his behavior constituted the crime of high-altitude projectiles.»¹⁵ In Wang Jing's case, the court's reasoning was that «the prosecution charged defendant Wang Jing with the crime of throwing objects from height, and the sentencing recommendation was appropriate and should be adopted.»¹⁶

3. Issues in the judicial determination of high-altitude object throwing crime

3.1. The issue of retroactivity in the application of criminal law

After the promulgation of the Amendment to the Criminal Law (XI), almost all high-altitude thrown object cases that occurred before March 1, 2021 and have not been adjudicated or whose judgments have not been finally determined were ultimately convicted and punished under high-altitude object throwing crime, and the Lu Wei case is one of them. On November 28, 2020, at about 9:00 a.m., the defendant, Lu Wei, had an argument with his girlfriend. To vent his frustration, he pushed the automatic mahjong machine, which was placed in the living room, onto the balcony. As a result, the wooden cover and mahjong tiles on the machine fell to the public pedestrian walkway in the residential area below. Additionally, he also threw various components of the plastic-wrapped mahjong machine, including the metal base and chip drawer, from the balcony, which also fell to the public pedestrian walkway below. The final court ruled that the defendant Lu Wei was guilty of high-altitude object throwing crime, sentencing him to four months' imprisonment, suspended for six months, and a fine of RMB 3,000.

Regarding the legal classification of the defendant Lu Wei's behavior in this case, the court stated that «compared with the crime of endangering public

safety by dangerous methods, the penalty for the crime of high-altitude throwing is relatively light, and according to the principle of both the old and the light, the defendant Lu Wei should be convicted and punished as the crime of high-altitude projectiles by applying the provisions of paragraph 1 of Article 291-2 of the Criminal Law of the People's Republic of China as amended by the 2020 Amendment to the Criminal Law(XI) of the People's Republic of China.

In fact, high-altitude throwing behavior generally cannot produce the specific public danger required by Article 114 of the Criminal Law. Therefore, before the implementation of the Amendment to the Criminal Law (XI), there was a phenomenon of excessive expansion of the application of the crime of endangering public safety by dangerous methods in judicial practice.¹⁷ According to the non-retroactive principle of criminal law, if the perpetrator lacks explicit provisions for the punishment of their actions at the time of implementation, but is sentenced retrospectively based on changed regulations, it is clearly contrary to the concept of the principle of legality in criminal law.¹⁸ According to this viewpoint, if the act of throwing objects from a height by an individual does not constitute any other crime, throwing objects from a height that occurred before the implementation of the Amendment to the Criminal Law (XI) cannot be considered as a crime, and the old law should be applied after the amendment. However, in judicial practice, there is an opinion that the act of throwing objects from a height could have been considered as endangering public safety by dangerous methods before the implementation of the Amendment to the Criminal Law (XI), and should be regarded as the crime of throwing objects from a height after the amendment.¹⁹

3.2. The normative interpretation of the constituent elements is inaccurate

In the analysis of the current situation after the implementation of the Amendment to the Criminal Law (XI), the author proposes that the reasoning part of the judgment in criminal cases of high-altitude throwing usually simply states, «The defendant(s) threw objects from a building or high altitude, and the circumstances are severe, constituting the crime of high-altitude throwing.» This is precisely the objective element of the crime of high-altitude throwing, and almost every reasoning part of the

¹⁴ See the document: [2022] Zhejiang Province 0503 Criminal First-Trial Verdict No. 33.

¹⁵ See the document: [2022] Shanghai 0503 Criminal First-Trial Verdict No. 66.

¹⁶ See the document: [2022] Liaoning Province 0302 Criminal First-Trial Verdict No. 10.

¹⁷ *Li Jia*. Difficult Issues in the Application of the Crime of High-altitude Throwing [J] // Journal of Southeast University (Philosophy and Social Sciences Edition) the Journal of Law. 2021 (23). P. 105.

¹⁸ *Lin Dongmao*. A Review of Criminal Law [M]. Taipei: Taiwan Yipin Culture Press, 2009. P. 104.

¹⁹ See: *Liu Xianquan and Huang Nan*. The Retroactivity of the Provisions on New Crimes in the Criminal Law Amendment (XI) [N] // People's Court Daily. 2021 (6). May 27.

judgment document contains the terms «high altitude or building», «throwing», and «severe circumstances».

However, upon careful examination of the judgment document, it is not found that the degree of «severe circumstances» is explained, nor is the specific manifestation of «high altitude» and «throwing» described. In the criminal verdict of the Wang Jing high-altitude throwing case, the reasoning of the judgment is expressed as follows: «The public prosecution accuses the defendant, Wang Jing, of the crime of high-altitude throwing, and the charge is deemed valid. The recommended sentence is suitable and should be adopted. After committing the crime, the defendant, Wang Jing, voluntarily surrendered, truthfully confessed her own crimes, and thereby qualifies for self-surrender. She also willingly admitted guilt and accepted punishment. Furthermore, she took the initiative to compensate for some of the economic losses incurred by the victims, and obtained partial forgiveness from some of the victims. Therefore, she can be leniently punished in accordance with the law.»²⁰

After the addition of the offence of throwing objects from a height in the Amendment to the Criminal Law (XI), judicial organs must be wary of the potential crisis of over-application of this charge and avoid indiscriminately charging individuals for such offences without proper consideration, which could blur the distinction between general infractions and criminal behaviour.²¹

3.3. The boundary between other related offences is blurred

As mentioned previously, before the establishment of the offense of high-altitude littering, the majority of high-altitude littering behavior was considered as the crime of endangering public safety by dangerous means, with a small portion being deemed as intentional injury, intentional destruction of property, or provocation and troublemaking. Following the establishment of the offense of high-altitude littering, most cases of high-altitude littering have been identified as such, but there have been cases where the crime of endangering public safety by dangerous means has been utilized, such as in the case of Lu Yongnian in Shanghai, where the latter crime was applied.²²

In these cases, the focus of public attention is whether the behavior constitutes the crime of

endangering public safety by dangerous means and whether it should be punished according to that crime.²³ Nowadays, the tendency of criminal justice to respond to public opinion and to overemphasize criminal policy is becoming increasingly obvious, and the trend towards severe punishment is becoming more serious, resulting in the over-application of the crime of endangering public safety by dangerous means and the questioning of the objectivity, justice and reasonableness of judicial judgments. Therefore, distinguishing between the crime of high-altitude throwing and the crime of endangering public safety by dangerous means is a major challenge in judicial determination.

4. Improvement of judicial determination of high-altitude object throwing crime

Based on the analysis of the issues in the judicial determination of the crime of throwing objects from high places in the previous section, the author will solve how to improve the judicial determination of the crime by regulating the interpretation of the subjective and objective components of the crime of throwing objects from high places and defining its relationship with other offences.

4.1. Definition and identification of «high altitude»

How high it is called «high altitude» has not been explained in either the «Opinions on the Trial of High-altitude Throwing» or the «Amendment to the Criminal Law (XI)». According to the «Modern Chinese Dictionary», «high altitude» is defined as «the atmospheric layer with an isobaric surface above 850 millibars», but this definition obviously lacks reference value. Therefore, it is necessary to explore the concept of «high altitude» in the context of criminal law. Some experts believe that throwing from a relatively high height, such as from a mid-to-high altitude, can be interpreted as throwing objects from high altitude.²⁴ One viewpoint draws upon the definition of «high-altitude work», which refers to work performed at a height of 2 meters above a falling height benchmark. In conjunction with the typical height of a residential building's first floor, it is believed that a maximum distance of 2 meters from the ground to the highest point of

²⁰ See the document: [2022] Liaoning Province 0302 Criminal First-Trial Verdict No. 10.

²¹ *Li Jia*. Difficult Issues in the Application of the Crime of High-altitude Throwing [J] // Journal of Southeast University (Philosophy and Social Sciences Edition) the Journal of Law. 2021 (23). P. 106.

²² See the document: [2021] Shanghai 0106 Criminal First-Trial Verdict No. 49.

²³ *Fan Jianmin*. Review of the Over-application of the Crime of Endangering Public Safety by Dangerous Means [J] // Law and Business Research. 2016 (4). P. 99.

²⁴ *Liu Yingkai*. The Criminal Law Regulation and Restriction Interpretation of High-altitude Throwing Behavior [J] // Administrative and Law. 2021 (4). P. 110.

a thrown object during work is reasonable.²⁵ There is a viewpoint that states that any object that when thrown produces a danger to others due to gravity (as opposed to a danger produced by a horizontal throw or projection) can be considered to belong to the high altitude category. The specific altitude of the object should not be mechanically understood or limited.²⁶

The author agrees with the last perspective, which advocates for the establishment of legislation that criminalizes high-altitude littering. The focus is on protecting the safety of individuals from above. Therefore, it is necessary to explicitly define the range of «high-altitude» based on the inherent «physical harmfulness» of high-altitude littering.²⁷

The determination of «high altitude» in the context of criminal law focuses on the danger below the projectile caused by the gravitational potential energy of the projectile being converted into kinetic energy when it falls. The «building or other high altitude» stipulated in the crime of high-altitude projectiles is not limited to the sky far from the ground, and whether «high altitude» is not limited to the ground as a reference object.²⁸ The author believes that whenever a person throws an object from a high place, it should be understood as «throwing objects from a great height», if there is a possibility of causing harm to others in terms of personal injury and property damage.

4.2. Judicial determination of «serious circumstances»

The crime of high-altitude projectiles adopts the legislative model of circumstantial offences, that is, high-altitude projectiles can only constitute a crime if they meet the «serious circumstances». It is generally believed that the crime of high-altitude projectiles is a dangerous offender, and it is not entirely conditional on the occurrence of actual harm as a condition for criminalization.

Therefore, in judicial practice, the judgment of «serious circumstances» should focus on the nature of the high-altitude projectile itself, rather than the actual harmful consequences caused by the act. That is, the degree of social harm caused by the act should be comprehensively considered from the aspects of the perpetrator's motive, the place where the object is thrown, the circumstances of the thrown object and the consequences caused, and only when it reaches

the level of punishment can it be understood as «serious circumstances».

Overall, the judicial authorities should uphold the principle of modesty in criminal law and strictly control the scope of criminal liability. Generally speaking, «serious circumstances» can be divided into three levels. First, the subjective malice level of the perpetrator: those who repeatedly commit high-altitude throwing behavior; those who continue to engage in such behavior after being warned; those who engage in high-altitude throwing behavior again after being subject to criminal or administrative punishment; etc. Second, the level of danger of the behavior: throwing objects towards densely populated areas such as public roads and squares; throwing heavy objects, sharp objects, hazardous chemicals, etc. that may cause others to suffer minor injuries or more serious consequences; etc. Third, the level of harmful consequences of the behavior: throwing objects causing others slight injuries or significant property losses; seriously disturbing the order of public places due to throwing objects; causing serious adverse effects locally; etc.

Criminal law is the last resort to protect society, and if civil law and administrative law can make a negative evaluation of a certain high-altitude projectile behavior commensurate with the nature of the act, then criminal law should not be used. Although the crime of high-altitude projectiles is a typical misdemeanor, the scope of the criminal law should not be expanded because the severity of the punishment should not be light, but whether it seriously disturbed public order should be used as the substantive criterion. In judicial practice, it is more important to comprehensively examine the degree of social harm caused by the conduct, and only when it reaches the level of punishment can it be evaluated as «serious circumstances».

4.3. Subjective «intentional» judicial judgments

There are two different opinions in the academic community regarding the form of guilt for throwing objects from a high altitude. One viewpoint believes that the form of guilt for throwing objects from a high altitude is intentional, with a minority being directly intentional and the vast majority being generalized intentional. «In the case of throwing objects from a high altitude constituting a crime, the subjective psychological attitude held by the perpetrator is only

²⁵ See: *Zhang Weiwei and Gao Liping*. Judicial Recognition and Legislative Reflection on «High-altitude Projectiles» [J] // *Journal of Hebei University of Engineering (Social Science Edition)*. 2020 (4). P. 77.

²⁶ *Yu Tongzhi and Wang Shuo*. Several Issues in the Judicial Determination of High-altitude Projectile Criminal Cases [J] // *Application of Law*. 2022 (4). P. 130.

²⁷ *Yang Zhiguo and Fang Yumin*. Key Points in the Judicial Judgment of High-altitude Projectile Crimes [N] // *Procuratorial Daily*. 2021 (003). February 1.

²⁸ See: *Xiao Zhonghua*. Determining the Crime of Throwing Objects at High Altitude Based on Whether Legal Benefits Are Damaged [N] // *Procuratorial Daily*. 2021 (003). December 15.

a small part of clear direct intent, intending to harm, kill someone, or destroy something specific, and most perpetrators hold generalized intent...»²⁹ Another perspective holds that high-altitude littering can constitute intentional or negligent crimes, depending on the circumstances.³⁰ Using high-altitude throwing of objects causing injury to individuals as an example, «the vast majority of high-altitude throwing incidents that cause injury to individuals may involve criminal issues. Depending on the circumstances, they may constitute crimes of negligent or intentional injury...»³¹

The author agrees with the first view, which holds that high-altitude throwing can only be intentional. Regarding the offense of high-altitude throwing, in general circumstances, once the act of high-altitude throwing is completed, it will undermine the social consensus rule that prohibits the indiscriminate throwing of objects by people in high places, resulting in a disruption of social public order. Since the offense of high-altitude throwing is an abstract endangerment crime, its harmful behavior and non-material consequences occur simultaneously. Therefore, in cases where the perpetrator intentionally engages in high-altitude throwing, it is sufficient to establish that the perpetrator is aware of the harm caused by their actions to the social consensus rule and that they hold an attitude of at least tolerating such harmful consequences. Thus, the subjective culpability form of the offense of high-altitude throwing can only be intentional, either directly or indirectly.

In judicial practice, there are two points to consider when determining whether the perpetrator has criminal intent subjectively: firstly, it is necessary to correctly identify «throwing» and distinguish between high-altitude throwing and high-altitude falling objects. In modern Chinese language context, «throwing» has various meanings such as «to throw», «to toss», «to discard» and «to abandon». The so-called high-altitude falling objects usually refer to objects falling or dropping from buildings or people at high altitudes.³² The essential difference between high-altitude throwing and high-altitude falling lies in the different manifestations of subjective guilt. The former is intentional, while the latter is negligent. Secondly, intention refers to whether the

perpetrator intended to engage in the act of high-altitude throwing, not whether they intended the resulting harm caused by the act of high-altitude throwing. The perpetrator's intention lies in the act of throwing, while their knowledge of the potential harm resulting from the act should be established. Regarding non-direct intentional throwing and negligent falling, under the current legal framework, they are predominantly governed by civil liability rather than criminal evaluation.³³

4.4. Clarifying the relationship between high-altitude object throwing crime and other crimes

Based on the thrown objects, the harms caused, and the purpose of standard protection, «high altitude littering» can be classified into three types. The first type refers to high altitude littering behavior that usually does not pose a threat to personal and property safety, such as discarding waste paper, feces, and other filthy objects. The second type refers to high altitude littering behavior that generally poses a moderate risk to personal and property safety, such as throwing various blunt objects, sharp objects, and other objects with sufficient physical destructive power. The third type refers to high altitude littering behavior that typically poses a severe threat to the personal and property safety of an unspecified majority of people. This includes throwing combustibles, explosives, toxic, radioactive, and infectious substances, as well as throwing various blunt objects, sharp objects, and other objects with sufficient physical destructive power at specific high-risk targets such as vehicles in motion, highways, airports, and other specific locations.³⁴

Regarding the high-altitude littering behavior of the first and second type, it can be divided into high-altitude littering behavior with actual harmful consequences and high-altitude littering behavior without actual harmful consequences. Intentional high-altitude littering behavior poses a risk of causing bodily harm to others, but if it does not result in any actual injury to individuals, it is difficult to be convicted of intentional harm under China's judicial practice, which does not punish attempted intentional harm. After the promulgation of the Amendment to the Criminal Law (XI), the act of throwing objects

²⁹ *Cao Bo and Wen Xiaoli*. Rules for Judicial Determination of High-altitude Projectiles Endangering Public Safety [J] // *Journal of Guizhou University (Social Science Edition)*. 2020 (3). P. 100.

³⁰ See: *Zhang Mingkai*. Criminal Law Analysis of High-altitude Parabolic Cases [J] // *Law Review*. 2020 (3). P. 24.

³¹ *Guo Hua*. Those with Serious Consequences of High-altitude Projectiles Should Be Held Criminally Responsible [N] // *People's Political Consultative Conference Daily*. 2019. (012). August 6.

³² *Peng Wenhua*. Interpretation and Application of the Provision on High-altitude Parabolic Throw in the Amendment to the Criminal Law (XI) [J] // *Journal of Suzhou University (Philosophy and Social Sciences Edition)*. 2021 (1). P. 56.

³³ *Yu Tongzhi and Wang Shuo*. Several Issues in the Judicial Determination of High-altitude Projectile Criminal Cases [J] // *Application of Law*. 2022 (4). P. 130.

³⁴ *Wei Dong and Zhao Tianqi*. The Normative Purpose and Technical Selection of Criminal Law Amendments: Taking the Amendment to the Criminal Law (XI) (Draft) as a Reference [J] // *Rule of Law Research*. 2020 (5). P. 59.

from a high place that only poses an abstract danger will be included as a criminal offense.³⁵ It does not require the occurrence of actual harm. Therefore, for acts of throwing objects from a height that have not caused actual harm, it should be determined whether the behavior meets the constitutive elements such as «throwing objects from a building or other high place» and «severe circumstances» based on the aforementioned interpretation of the constituent elements, thus establishing that such behavior falls under the criminal regulation of the crime of throwing objects from a height. The actual harm resulting from the act of throwing objects from a height usually manifests as infringement of others' rights to life, physical health, and property. According to the provisions of Article 2 of the high-altitude object throwing crime, «If there is behavior described in the preceding paragraph that also constitutes another crime, the defendant shall be punished according to the heavier punishment.» If the act of throwing objects from a high altitude also meets the constitutive elements of intentional homicide crime, intentional injury crime, or intentional destruction of property crime, then high-altitude object throwing crime and intentional homicide crime, intentional injury crime, or intentional destruction of property crime will compete with each other, and this is a situation of inclusive competition. According to the principle of inclusive competition, the application is a two-step process: the holistic law is superior to the partial law in the first step, and harsher punishments in law are superior to lenient punishments in the second step. Although high-altitude object throwing crime is superior to intentional homicide crime, intentional injury crime, or intentional destruction of property crime as a holistic law, according to the principle that the heavier law is superior to the lighter law, the defendant should be convicted and punished according to the crime with the heavier punishment, which is in accordance with the provisions of the Criminal Law on high-altitude object throwing crime.

With regards to the third category of behavior, throwing harmful, flammable, and explosive objects from buildings or heights, such as gas canisters, in this situation, throwing objects from a height belongs to a category of dangerous methods equivalent to arson, drowning, and releasing hazardous substances. Throwing objects from a height poses a threat to public safety. The main difference between the concurrence of law articles and imagined concurrence is whether there is an inclusive or overlapping relationship between the specific criminal constitutions of several crimes. There is no such relationship between the elements of the crime of throwing objects from high altitudes and the elements of the crime of endangering

public safety by dangerous means, therefore, the crime of throwing objects from high altitudes competes imaginatively with the crime of endangering public safety by dangerous means and should be punished according to the more severe crime. Article 114 of the Criminal Law stipulates that the statutory penalty for endangering public safety by dangerous means is «imprisonment for more than three years but less than ten years». Article 291 of the Criminal Law also stipulates that the statutory penalty for throwing objects from high altitudes is «imprisonment for less than one year, detention, or control, and a fine in addition to or instead of imprisonment». Therefore, for the behavior of throwing harmful, flammable and explosive objects from buildings or heights that harms public safety, the crime of endangering public safety by dangerous means should be used to convict and punish.

Conclusion

The separate criminalization of high-altitude littering behavior demonstrates that China's criminal legislation fully considers and timely responds to social demands and public appeals, and it is another solid example of positive view of criminal law legislation. China's judicial practice has established the judicial sentencing rules for high-altitude littering crimes through self-deduction, but the judicial stance and methods reflected in this empirical rule have many problems that need to be corrected. The crime of high-altitude littering is a generalized conclusion of high-altitude littering behavior that should be treated as a minor offense based on reflections on many problems existing in past judicial practices, rather than a «master key» for handling all high-altitude littering behaviors. This legislative creation provides an opportunity to correct the deviation of judicial practice, but it does not completely respond to the fundamental problems in judicial practice. «Most laws are concretized through continuous judicial sentencing processes, gaining their final clarity and then being applicable to specific cases. Many provisions are, in fact, part of the current law by judicial decision.»³⁶ In the constructive interpretation of the crime of high-altitude littering, it is necessary to systematically, coherently, and properly define the elements of infringement of legal interests, «high-altitude», «serious circumstances», subjective intent, and other constitutive elements. It also requires a more pragmatic perspective to distinguish high-altitude object throwing crime from other related intentional crimes, thus jointly improving the judicial determination of high-altitude object throwing crime.

³⁵ Zhou Jie. Legislative Analysis and Application Difficulties of the «high-altitude object throwing crime» [J] // Northern Jurisprudence. 2021 (6). P. 110.

³⁶ Karl Larenz. Methodology of Law/translator: Chen Aie [M]. Beijing : Commercial Press, 2003. P. 20.

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