

Research on the Determination of the High Altitude Throwing Crime

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Abstract: In recent years, cases of high altitude object throwing have occurred frequently, and their behaviors have seriously threatened the safety of public life and property, and have become a hot topic of discussion in the society. In response, China's Criminal Law Amendment (XI) has made it as an independent offence, which is included under the "offence of disturbing social order". However, the ambiguity of the legal provisions and the complexity of the cases in judicial practice make the determination of the high altitude throwing crime the focus of controversy in the theoretical and practical circles. This paper first based on the criminal law "four elements" theory, the objective elements of the high altitude throwing crime and subjective elements of a detailed analysis, especially on the concept of "high altitude", "throwing", "thing" and criteria for determining "serious circumstances" for discussion, pointed out the existing law on these elements of the provisions of the inadequacy. Secondly, this paper puts forward the aerial throwing offence in judicial practice, there is a greater uncertainty, especially in the distinction between the high altitude throwing crime and its related crimes is more ambiguous. Finally, this paper analyses the problems in the determination of the high altitude throwing crime, puts forward the clear boundaries between the crimes, strictly control the "seriousness" of the judicial determination of the standard and other corresponding measures to regulate the application of the high altitude throwing crime.

Keywords: high altitude throwing crime, social order, serious circumstances, judicial determination.

1. Introduction

1.1. Research background

In recent years, there have been frequent cases of high altitude object throwing, the consequences of that act seriously threaten the lives, health and property safety of the people. How to eradicate this "pain hanging over the city" and guard the people's "safety above their heads" has become a hot topic of discussion in society. In response to the concerns of the society, the Supreme People's Court promulgated the judicial interpretation "Opinions on Properly Handling Cases of High Altitude Object Throwing and Falling Objects in accordance with Law" (hereinafter referred to as the "Opinions") on 21 October 2019, which provides basic guidelines for the judiciary to deal with cases of high altitude object throwing. At the same time, the Criminal Law Amendment (XI) added the high altitude throwing crime to Article 292 of the Criminal Law, which has since become an independent

crime under "the crime of disturbing social order". This legal regulation has effectively corrected the errors and deviations that existed in long-term judicial practice, and maintained the authority and legitimacy of the law. However, due to the ambiguity of the provisions of the law and the complexity of the cases in judicial practice, there is a big controversy in China's criminal law theoretical and practical circles over the identification of cases of high altitude object throwing, and there is an urgent need to clarify the characterization of the act of high altitude object throwing and the relationship between the high altitude throwing crime and the related crimes. This paper, based on the provisions of the Criminal Law Amendment (XI) regarding the high altitude throwing crime, delves into the interpretation of key expressions within the high altitude throwing crime. It systematically examines the challenges present in judicial practice concerning the identification of such cases and offers potential solutions. The goal is to provide references that may aid in refining the identification issues related to the high altitude throwing crime.

1.2. Research significance

The significance of this research lies in both theoretical and practical domains. Theoretically, it explores the legislative evolution of high-altitude object throwing, transitioning from civil tort compensation to criminal regulation through the Opinions and Criminal Law Amendment (XI). This shift underscores a commitment to crack down on endangering behaviors and protect public safety. By dissecting ambiguous elements, such as what constitutes "high altitude," "throwing," and "serious circumstances," this research helps clarify the boundaries between this crime and related offenses, providing theoretical guidance for judicial application. Practically, high-altitude object throwing is a severe threat to public order and personal safety, generating diverse opinions in judicial circles due to its complexity. By analyzing typical cases, this study offers a structured framework to improve the determination standards and consistency in legal practice, ensuring fair and authoritative trials across jurisdictions.

2. Analysis of the constituent elements of the high altitude throwing crime

According to the "four elements" theory in criminal law, for any crime specified by the law to be established, it must simultaneously meet both objective and subjective criteria [1]. The objective criteria include the criminal object and the objective aspects of the crime, while the subjective criteria encompass the criminal subject and the subjective aspects of the crime. Amendment (XI) to the Criminal Law stipulates that the so-called high altitude throwing crime is the act of throwing objects from a building or other heights under serious circumstances [2]. Correctly analyzing the constituent elements of the high altitude throwing crime is the prerequisite and basis for the accurate application of this crime.

2.1. Analysis of the objective elements of the high altitude throwing crime

Due to the limitations of the Chinese language and the ambiguity of legal provisions, there has been ongoing debate within criminal law theory and judicial practice regarding cases involving the high altitude throwing crime. In the author's view, the root cause of this problem lies in the objective aspects of the high altitude throwing crime.. Therefore, from the clarification of the basic concept of the high altitude throwing crime, the content of the provisions of the law for a reasonable interpretation, in order to solve the problem of judicial practice of the controversial interpretation of words.

2.1.1. Determination of "high altitude"

Obviously, the place of high altitude object throwing is limited to a height. Amendment (XI) to the Criminal Law stipulates that the place of high altitude object throwing is a building or other height [3]. Buildings are easy to identify, but the key lies in how to identify "other heights". According to the definition of the Modern Chinese Dictionary, "high altitude" generally refers to a space with an isobaric surface of 850 millibars or more, which is higher than the ground. From the point of view of the determination of the crime, this definition lacks specific reference meaning. Referring to the provisions of the national standard GB/T 3608-93 "Classification of work at height", work at height refers to work at heights where there is a possibility of falling above 2 metres (including 2 metres) from the base plane of the fall height. Accordingly, the author believes that in the judicial application of the high altitude throwing crime, 2 meters of the fall height base plane can be used as a reference, and the personal danger and legal interest infringement in specific cases of high altitude object throwing can be used as the key to measure [4].

2.1.2. Definition of "throw"

Throwing refers to throwing, tossing or discarding, and has a subjective and intentional flavour to it. Throwing can either be completely artificial or carried out with the help of some kind of tool. Therefore, no matter which means are used in the act of high altitude object throwing, it will have the consequence of disturbing the social order. It is worth mentioning that, high altitude object throwing is different from falling objects, the two have strict boundaries: first, the Criminal Law stipulates that the act of high altitude object throwing requires the perpetrator to have subjective intent, while the act of objects falling from high places reflects the perpetrator's negligence; second, the subject of the act of high altitude object throwing can only be a person, while the subject of the act of objects falling from high places can be either a person or an object that falls naturally. Strictly grasping the concept of "throwing" is of great significance for determining the high altitude throwing crime.

2.1.3. The concept of "thing"

The term "thing" refers to things, objects. Because the concept of thing is so broad, there is no uniform standard of access to the identification of things in judicial practice. There are many criteria for the classification of objects, such as their external features, quality, volume and so on. In the author's opinion, the "object" in the high altitude throwing crime can be classified according to the danger of the object, which can be divided into non-dangerous objects, general dangerous objects and highly dangerous objects [5]. Non-hazardous object refers to the objects with zero hazard factor in the scene of high altitude object throwing, such as toilet paper; general hazardous object refers to the objects with lower hazard factor in the scene of high altitude object throwing, such as cups of water, mobile phones, etc.; highly hazardous object refers to the objects with higher hazard factor in the scene of high altitude object throwing, such as sulphuric acid and fireworks.

2.1.4. Determination of "serious circumstances"

The Criminal Law Amendment (XI) stipulates that only high altitude object throwing with serious circumstances constitutes the high altitude throwing crime. Therefore, the high altitude throwing crime is a crime of circumstance, and "serious circumstances" is one of the constituent elements of this crime. However, there is no judicial interpretation of the criminal law article 291 "serious circumstances" to make a clear description, which may lead to the judge in the "serious circumstances" of the judicial application of the lack of uniform standards, which in turn give rise to the problem of improper judicial application. The author believes that the harmful consequences of

the behaviour and the perpetrator's personal danger can be used as metrics of serious circumstances". First of all, the harmful consequences of high altitude object throwing is the primary criterion for judging the circumstances. If the act of high altitude object throwing causes large property damage or social order chaos and other consequences, it should be identified as "serious circumstances". Secondly, the physical danger of the perpetrator is also an important criterion for judging the circumstances. If the perpetrator has a record of previous convictions, repeatedly fails to change, and commits the act of high altitude object throwing again, it shall be deemed "serious circumstances".

2.2. Analysis of the subjective elements of the high altitude throwing crime

The subjective elements of a crime refer to the perpetrator's mental attitude and internal subjective characteristics at the time of committing the criminal act, including the criminal subject and the subjective aspects of the crime. The subjective constituent element is an important content of the criminal constitution, which is of great significance in the conviction and sentence. Therefore, this part will focus on analyzing the subjective elements of the high altitude throwing crime.

2.2.1. Analysis of the subject of the crime

Any criminal act, are certain criminal subject implementation, the criminal subject is the indispensable elements of the criminal constitution. The criminally responsible subject of the crime of the high altitude throwing crime refers to the natural person who engages in high altitude object throwing and is legally required to bear criminal responsibility. The subject of the high altitude throwing crime is a general subject, meaning a natural person who is at least 16 years old and possesses criminal responsibility.

2.2.2. Analysis of the subjective aspects of the crime

The subjective aspect of a crime refers to the mental attitude of the subject of the crime towards the harmful act he or she has committed and the harmful consequences it has caused. The form of culpability is the primary component of the subjective aspect of a crime and an essential element in the constitution of a crime. Criminal law is generally agreed that the form of guilt of high altitude object throwing is intentional, of which a few for direct intent, most of the indirect intent, negligent throwing objects are not included in the category of "high altitude object throwing". Generally speaking, in the case of high altitude object throwing, it is difficult to judge the type of subjective intent of the perpetrator. Therefore, it is necessary to make a clear distinction between the type of subjective intent of the perpetrator of high altitude object throwing. Firstly, if the perpetrator believes that his act of high altitude object throwing will inevitably lead to harmful results, his form of guilt is direct intent. This situation is extremely rare in this type of case, because it is difficult for the perpetrator to foresee that his harmful act will inevitably produce harmful results. Secondly, if the perpetrator believes that his act of high altitude object throwing may lead to harmful consequences, it is necessary to analyze his will factors and further explore his psychological attitude towards the occurrence of harmful consequences. Direct intent reflects the perpetrator's active pursuit of such results, while indirect intent reflects the perpetrator's laissez-faire attitude towards the harmful results.

3. Problems in the determination of the high altitude throwing crime

In the judicial application of the high altitude throwing crime, despite the fact that the Criminal Law Amendment (XI) regulates the act of high altitude object throwing by creating an independent crime, the identification of this crime still faces many challenges in judicial practice. In addition to the blurring of the boundaries with other offences, the lack of a judicial determination of "serious

circumstances" also makes judges often encounter difficulties in the application process. Therefore, an in-depth analysis of the multiple problems faced in the judicial determination of the high altitude throwing crime is of great significance in ensuring the accurate application of the law and achieving a balance between crime and punishment.

3.1. Blurred lines with related crimes

The distinction between one crime and another is indeed one of the enduring themes in criminal law research. Criminal law must not only punish crimes severely but also determine guilt accurately and scientifically to protect the legally protected interests that have been violated. The Criminal Law Amendment (XI) stipulates the high altitude throwing crime under the heading of "disrupting social order", the legislative intent of which is that this crime infringes on the stability of the social order rather than on public safety and other personal and property rights. However, because of the broader scope of the social order, in the actual judicial application, there are often cases of inappropriate application between this crime and related crimes.

3.1.1. Blurring of the line with the crime of endangering public safety by dangerous means

In terms of the legislative advancement of the high altitude throwing crime, following the issuance of the Opinions by the Supreme People's Court in 2019, the majority of courts across the country have unified their quasi-criteria and adjudicated cases of high altitude object throwing with the crime of endangering public safety by dangerous means. In the short term, this has served as a greater deterrent to the behaviour of high altitude object throwing, and to some extent responded to the great concern of society. However, in the long run, the penalty for the crime of endangering public safety by dangerous means is too heavy, which is inconsistent with the infringing nature of the legal interests of the act of high altitude object throwing, and is not conducive to reflecting the safeguard function of the criminal law. In order to improve the legal system, the legislature conducted thorough research, and the Criminal Law Amendment (XI) Act added the high altitude throwing crime to article 291 bis of the Criminal Law, placing it under "the offence of disturbing social order". The legal interest protected by the crime of endangering public safety by dangerous means is public security, while the legal interest protected by the high altitude throwing crime, after it has been made an independent crime, is the social administrative order. The scope of social order is too broad and inextricably linked to public security, and many acts endangering public security also inevitably undermine the socio-economic and political order. In actual judicial practice, numerous cases have emerged where individuals throw objects from heights that pose a level of harm to public safety comparable to that of placing hazardous substances. This situation gives rise to the issue of concurrence between the two crimes. As the legal interests protected by the two crimes have their own interpretative space and similarities, the judicial authorities have difficulty in identifying the two crimes.

3.1.2. Blurring of the line with the crime of intentional destruction of property

According to legal provisions, the protected legal interests of the high altitude throwing crime and the crime of intentional destruction of property overlap to a certain extent. In practical judicial application, situations of concurrence between two crimes frequently arise. Case: nanjing a single mother due to family conflicts from the 7th floor throwing her daughter's belongings, smashed two cars, the loss of 20,000 yuan, threatening public safety, suspected of the high altitude throwing crime and the crime of intentional destruction of property. On the one hand, the woman committed the act of high altitude object throwing, from the nature of the goods, the height of the floor and the harmful consequences, in line with the "serious circumstances" standard, should be determined according to law for the high altitude throwing crime. On the other hand, the woman knew that her throwing from

a height may cause damage to public and private property in the area, but still carried out the act, it is inferred that at least with the destruction of property indirect intent. At the same time, her aerial throwing behaviour led to the destruction of property and the amount of the standard, should be determined according to law for the crime of intentional destruction of property. At this point, in the form of the number of crimes, the perpetrator of a criminal act at the same time violated several crimes, should choose a felony punishment. From this case, the boundary between the high altitude throwing crime and the crime of intentional destruction of property is blurred, and there are difficulties in identifying and distinguishing between the two in judicial practice.

3.1.3. Blurring of the line with intentional injury and intentional homicide crimes

The high altitude throwing crime often results in personal injury or even death, and the problem of imaginative concurrence between the high altitude throwing crime and the crimes of intentional injury and intentional homicide arises. If the perpetrator in order to achieve the purpose of intentional injury, intentional homicide to implement the act of high altitude object throwing, and led to the corresponding specific danger of the victim, should be based on the principle of imaginative concurrence, choose a felony punishment, evaluation for intentional injury and intentional homicide crimes. However, in the actual judicial application, the judicial organs often ignore the two imaginative concurrence issues, only focus on the "whether can be evaluated as the high altitude throwing crime " this problem. Clarify the boundaries between the two, is conducive to filling the loopholes in the judicial application of the high altitude throwing crime, is conducive to preventing the improper expansion of the application of the high altitude throwing crime.

3.2. Absence of judicial determination of "serious circumstances"

The Criminal Law Amendment (XI) Act's specification of the high altitude throwing crime reflects the conviction principle of "qualitative + quantitative" in the sub-rule of the Criminal Law. According to its crime standard, the high altitude throwing crime belongs to the typical circumstantial crime, and only when the act of high altitude object throwing that meets the elements meets the standard of "serious circumstances" can it be regarded as the high altitude throwing crime, and if "the circumstances are significantly slight and the harms are not great", then it can't be punished as a crime. However, in practical terms, the Criminal Law Amendment (XI) does not clearly stipulate the connotation and scope of "serious circumstances", and the judicial interpretation of this also does not have accurate and detailed elaboration, resulting in a lack of uniform standards in judicial practice, which leads to the inappropriate application of the crime, deviating from the principle of legality in criminal law. The term "serious circumstances" has a high degree of generality and a large degree of ambiguity, and different people have different standards of judgement, and the circumstances involving "serious circumstances" in different cases are not the same [6]. Therefore, clarifying the criteria for the judicial determination of "serious circumstances" is the prerequisite and basis for the correct application of this crime, and an important way of maintaining judicial fairness and authority.

3.3. Disputes over the characterization of cases of throwing objects from a height

Legal interest refers to the interests protected by the law and has interpretative significance. Correctly understanding the legal interest protected by the high altitude throwing crime provides an important guidance for understanding its constituent elements. Before the Criminal Law Amendment (XI) was introduced, the Opinions held that the legal interest infringed upon in criminal cases of high altitude object throwing was public safety, i.e., the specific danger to an unspecified majority of people. Although the first draft of the Criminal Law Amendment (XI) recognized the biased characterization of the Opinion, it still included the high altitude throwing crime within the scope of crimes against

public security [7]. In the end, the second review of the Criminal Law Amendment (XI) reversed the wrong tone and stipulated the high altitude throwing crime under "the offence of disturbing social order". This shows that there are disputes between the legislature and the criminal law academia over the qualification of cases of high altitude object throwing. The same applies in practice. Since the implementation of the Criminal Law Amendment (XI), cases have frequently arisen where legal and prosecutorial authorities reach inconsistent conclusions. Therefore, clarifying the legal interest protected by the high altitude throwing crime and accurately classifying such cases is one of the challenges facing the judiciary in the future.

4. Solutions to the problem of identifying the high altitude throwing crime

In Chapter 3, the author analyses in detail the multiple problems faced in the judicial determination of the high altitude throwing crime, including the blurred boundaries between this crime and other crimes, the unclear standard of "serious circumstances" and the controversy over the qualification of cases of throwing objects from a height. These problems not only affect the judge's conviction and sentencing in specific cases, but may also lead to inconsistent application of the law, which in turn affects the fairness of justice. In order to address these challenges, this chapter will focus on how to effectively address these issues by, among other things, clarifying the boundaries of the crimes.

4.1. Clear demarcation of boundaries with other crimes

Although Article 291-2 of the Criminal Law clearly stipulates that if an act of high altitude object throwing simultaneously constitutes another crime, it shall be convicted and punished according to the crime with the heavier penalty, due to the similarity between the high altitude throwing crime and other crimes in terms of the constituent elements and the broad nature of the protection of legal interests, there exists the possibility that the act of high altitude object throwing constitutes a number of crimes at the same time. Therefore, accurately and reasonably clarifying the boundaries between the high altitude throwing crime and other crimes is conducive to the normative application of this crime.

4.1.1. Distinction from the crime of endangering public safety by dangerous methods

From the perspective of the legislative advancement of the high altitude throwing crime, i.e. from the introduction of The Opinions to the promulgation of Amendment (XI) to the Criminal Law, the legislator's understanding of the legal interests infringed upon by this crime has undergone a shift from public security to social management order. Therefore, the key to judge whether the high altitude throwing crime or the crime of endangering public security by dangerous methods should be applied to cases of high altitude object throwing lies in the judgement of whether the legal interests infringed upon by the harmful acts are public security. The author believes that the key lies in accurately grasping the basic concept of public security. Public safety refers to the safety of society at large, encompassing the life, health, and significant public and private property of an unspecified majority. Understanding from the literal meaning, "majority" corresponds to "minority", and the crime of endangering public security by dangerous means can only violate the interests of the majority. As for "unspecified", it is not only a modification of "majority" to indicate the uncertainty of the number of persons, but also reflects the uncertainty of the object infringed upon and the scope of the harmful consequences of the act of high altitude object throwing [8]. Thus, the high altitude throwing crime protects the personal safety or property rights and interests of an unspecified minority, and thus protects the order of social administration; whereas the crime of endangering public security by dangerous means protects the specific dangers of an unspecified majority.

4.1.2. Distinction from the crime of intentional destruction of property

Cases of property damage caused by the act of high altitude object throwing are common, thus, the distinction between the high altitude throwing crime and the crime of intentional destruction of property is particularly important. In the author's view, the key to distinguish between the two lies in the harmful results caused by the act of high altitude object throwing. According to Article 275 of the Criminal Law, if an act of high altitude object throwing damages public or private property and involves a large amount or other serious circumstances, it should be treated as the crime of intentional destruction of property. From a considerable number of criminal cases of high altitude object throwing, as long as the act of high altitude object throwing causes damage to the goods, has reached the standard of "serious circumstances", should be judged as the high altitude throwing crime. Specifically, the high altitude throwing crime requires a lower degree of severity of the harmful consequences and a smaller amount of property damage. In addition, according to the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Criteria for the Filing of Criminal Cases under the Jurisdiction of the Public Security Organs (I), destroying public or private property more than three times, or gathering more than three people to openly destroy public or private property, constitutes the crime of intentional destruction of property. Therefore, when two persons are assembled to throw objects from high places and destroy public or private property twice, they do not meet the criteria for conviction for the crime of intentional destruction of property, but they meet the criteria for "serious circumstances" and should be punished for the high altitude throwing crime.

4.1.3. Distinction from the crimes of intentional injury and intentional homicide

If an act of high altitude object throwing causes injury or death, it often involves Article 232 on intentional homicide or Article 234 on intentional injury in the Criminal Law. In judicial practice, the boundaries between the high altitude throwing crime and these two types of crimes are relatively blurred, especially when the consequences of the act are serious, and it is easy to be confused. The key to distinguishing between the high altitude throwing crime and the crimes of intentional injury and intentional homicide lies in the degree of clarity of subjective intent. Intentional injury and intentional homicide crimes require the perpetrator to have clear intent to injure or kill, i.e., when the perpetrator, out of intent to injure or kill, uses the act of high altitude object throwing as a means of committing a crime and causes the victim to face a specific danger of personal injury or death [9]. The high altitude throwing crime, on the other hand, tends to be committed when the perpetrator lacks full awareness of the serious consequences that may be caused, which usually manifests itself as indirect intent. Therefore, when the perpetrator does not have sufficient knowledge of the consequences and does not show a clear intent to kill or injure, it is appropriate to consider the high altitude throwing crime rather than the crime of intentional injury or intentional homicide.

4.2. Strictly control the judicial determination standards for "serious circumstances"

"Serious circumstances" is the key to conviction and sentencing for the high altitude throwing crime. However, since the current law does not clearly define "serious circumstances", in judicial practice, the judge's determination of "serious circumstances" in a specific case is highly subjective. Therefore, strictly control the "serious circumstances" determination standard, help to unify the judicial practice, safeguard fairness and justice. The author believes that the control of "serious circumstances" of the judicial determination of standards, need to be combined with the objective elements of the act of high altitude object throwing, the subjective elements and social hazards of systematic analysis, to ensure that the conviction and sentence has a clear and reasonable basis. Firstly, the quantitative standard of the harmful consequences should be clarified. For example, the size and weight of the

object and the specific situation in which it is thrown can be combined to determine whether the behaviour constitutes a serious threat, and in particular, there should be a clear quantitative basis for the consequences of injury or death that may result from the act of high altitude object throwing. In addition, whether the thrown object causes public disorder, panic among people, or similar consequences should also be considered as a factor in determining whether the circumstances are "serious." Secondly, it should be combined with the subjective viciousness of the perpetrator and the previous convictions. If the perpetrator repeatedly engages in high altitude object throwing or persists in throwing dangerous objects despite multiple warnings, demonstrating a high degree of subjective malice, the act should be classified as having "serious circumstances" and be subject to a harsher penalty.

4.3. Standardize the determination of the nature of the high altitude throwing crime

After the implementation of Amendment (XI) to the Criminal Law, the high altitude throwing crime was made an independent offence and placed under the system of crimes of "disturbing the social order", making it clear that the legal interest it protects is the order of social administration. Therefore, to regulate the adjudication of the nature of the case of high altitude object throwing, first of all, from the attribution of legal interests, and make clear that the essence of the high altitude throwing crime is to maintain the social management order, rather than public security. Although the act of high altitude object throwing may pose a threat to public safety, the fundamental reason for its independent criminalization lies in its disruption of the social management order. In other words, the act of high altitude object throwing disrupts the order of public places and threatens the management and maintenance of order in society as a whole, rather than merely posing a direct danger to the lives and property of the unspecified majority [10]. Therefore, in judicial practice, the high altitude throwing crime should be avoided to be confused with other offences aiming at protecting public security, and should be characterized with its harm to the order of social management as the core. In order to reduce disputes over the characterization of cases, the specific meaning of "social administrative order" should be clarified through legislative interpretation and judicial practice, and the constituent elements of the high altitude throwing crime should be refined, particularly in terms of the degree of threat to social order posed by the act. For example, the time and place of the throwing behaviour, the danger of the object and its destructiveness to the order of public places should be key factors in determining the nature of the case. In addition, the standardization of judges' discretionary powers should be strengthened, and uniform judicial interpretations and case guidance should be adopted to ensure a more accurate understanding and application of the legal interest of "social order" in judicial decisions, so as to reduce differences in characterization and guarantee the consistency and fairness of the application of the law.

5. Conclusion

This paper focuses on the determination of the high altitude throwing crime, and explores the controversy of the crime in the theoretical circles and the dilemma of its application in the judicial practice by combing the relevant legal articles and analyzing the relevant cases. With the implementation of the Criminal Law Amendment (XI), the act of high altitude object throwing is formally included in the scope of the offence of disturbing social order, marking the further refinement of China's criminal law system for the protection of public security and social order. However, due to the ambiguity of the provisions of the law and the complexity of the act of high altitude object throwing, the judicial authorities often face confusion when dealing with such cases, especially when there is a considerable challenge in how to accurately differentiate between the high altitude throwing crime and other related crimes.

In the process of analyzing the problem, this paper firstly interprets the constituent elements of the high altitude throwing crime through the theory of "four elements". Through the conceptual analysis of "high altitude", "throwing", "thing", clarifies the key expressions in this crime. At the same time, this paper also focuses on the judicial determination of the element of "serious circumstances", pointing out the gaps in the current law in this regard, resulting in the application of different cases. In addition, the paper also analyses the boundaries between the high altitude throwing crime and the crime of endangering public security by dangerous methods and intentional destruction of property, stressing the importance of accurately distinguishing between these crimes.

Through the above analysis, the author believes that, to regulate the application of the high altitude throwing crime, it is necessary to clearly delineate the boundaries between the crimes, refine the "serious circumstances" of the determination of the standard, and reduce the subjective arbitrariness in judicial practice. The author hopes: through the research in this paper, can provide certain theoretical reference for the judicial organs in dealing with the case of high altitude object throwing, and at the same time for the further improvement of the future law to provide some ideas and suggestions.

References

- [1] Gao, Mingxuan, & Chang, Mark. *Criminal Law [M]*. Peking University Press, 2022 edition, pp. 38-45.
- [2] Article 291-2 of the Criminal Law stipulates: "Whoever throws objects from buildings or other high altitudes, causing serious circumstances, shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention, or public surveillance, and shall also, or shall only, be fined."
- [3] Amendment (XI) to the Criminal Law stipulates "the place of throwing objects from a height is a building or other height."
- [4] Zhou Yutong. *Research on the Judicial Application of the Crime of Throwing Objects from High Altitudes [D]*. Jilin University, 2022.
- [5] Xing Jiahang. *Research on Judicial Determination Problems after the Criminalization of Throwing Objects from a Height [D]*. Lanzhou University, 2021.
- [6] Huang Wei. *Research on the Judicial Application Issues of the Crime of Throwing Objects from High Altitudes [D]*. Dalian Ocean University, 2024.
- [7] Peng, Wenhua. *The Understanding and Application of the Provisions of Throwing Objects from a High Altitude in the Eleventh Amendment of Criminal Law [J]*. *Journal of Social Sciences Dynamics*, 2021(1):52-62.
- [8] Sheng Haojie. *The Interpretation of the Criminal Law Doctrine of Throwing Objects from Height—Thoughts on the Criminal Law Amendment (XI) [J]*. *Journal of the People's Public Security University of China (Social Science Edition)*, 2021(20).
- [9] Wang Yitong. *Research on the Determination of the Crime of High-Altitude Object Throwing [D]*. Northwest Minzu University, 2021.
- [10] Guo Xiaoliang. *Typified Evaluation of Crimes of Throwing Objects from Heights [J]*. *Journal of Legal Studies*, Vol. 40, No. 5, May 2024, pp. 57-63.