

Interpretation and Judicial Cognizance of Constitutive Elements of Crime of Collecting Illegal Debt

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Abstract

On March 1, 2021, the Amendment to the Criminal Law (11th) was officially implemented, adding the crime of collecting illegal debt in Article 293 of the Criminal Law. Since then, the behavior of collecting illegal debt by "soft violence" has been curbed, avoiding the crime of provoking trouble. Based on the constitutive elements, this paper explains the objective elements by combining the reasonableness of collecting illegal debt into punishment in judicial practice.

Keywords

Amendment of Criminal Law; Crime of Collecting Illegal Debt; Illegal Debt; Picking Quarrels and Provoking Trouble.

1. The Rationality and Necessity of Collecting Illegal Debt into Punishment

1.1. Hazards to Society

For many creditor's rights in the beginning of establishment, being illegally induced lending interest rates and means, the debt itself is illegal. However, in the face of inadequate protection by law of debt, the creditor, for the Illegality of debt, cannot choose normal compliance approach or the judicial relief to realize creditor's rights when he or she refuses to or is unable to repay debts. This has prompted many lenders to seek out third-party collection organizations or set up a collection organization to collect debts. However, due to the vicious purpose, violent means and the mixed composition of personnel, such organizations tend to use violence to collect debts illegally, which may develop into gangs involving black and evil.

Illegal means include: to SMS phone bombing of the debtor, threats to the normal life of the debtor, therefore in the work place to entwine schoolroom, harassment, etc to the contacts of the debtor personnel soft violence to interfere with the debtor work life, formed in the spiritual force through these means, the killing of the debtor's social and mental collapse. Criminals avoid legal punishment by means of soft violence without causing personal injury to others, and make criminal law ineffective by means of skirting the law. However, these behaviors seriously infringe on the life, physical health, mental health, privacy rights and property safety of the borrower and related people.

1.2. Confuse the Rationality and Edge of Private Relief

Private relief refers to the subject of rights in the scope of legal permission, relying on their own strength, through the implementation of self-defense or self-help behavior to relieve their own infringed civil rights. It is a conflict resolution mechanism for the parties to safeguard their legitimate rights and interests with their own strength. In the case of creditor's rights and debts, the parties can negotiate on an equal footing through telephone calls and door-to-door debt calls, which is the solution for most of the loans between personals and can also solve most of the debt problems smoothly. However, the premise of private relief is legitimate rights and interests, while the starting point of private relief must be to safeguard legitimate rights and

interests. Illegal debt is not the protection category of private relief and lacks the basis of legal claim right. Therefore, in illegal debt, the counterpart has no obligation to fulfill the obligation according to the request of the other party, which does not have the basis of legitimacy.

In the collection of illegal debts, because the debts are illegal debts generated on the basis of high-interest loans, the debt collector is not to safeguard legitimate rights and interests, so it does not constitute the applicable premise of private relief. And in the process of debt collection, the debt collection party uses the prescribed means such as violence, coercion, restriction of personal freedom of others or invasion of others' houses, intimidation, tracking, harassment of others, that is, legal bonds, these means have exceeded the allowable boundaries of the law.

Therefore, the violent means of debt collectors in illegal debt collection cannot be regarded as private relief. These violent means are suspected of infringing on the life and property law interests of others, which does not conform to the existence value and reasonable standard of private relief, but highlights the legitimacy of including it in criminal law regulation.

1.3. Build a Complete Penalty and Punishment System

Before the crime was determined, the definition of collecting illegal debt was vague in practice, which might involve both illegal detention and infringement of citizens' information, and most of them were convicted as the crime of picking quarrels and provoking troubles. The legal interests protected by the crime of picking quarrels and provoking troubles are social and public order. However, in many cases, the debt collector's collection behavior of the debtor mainly infringes on the personal rights and interests of the debtor, and does not violate social and public order. The infringement of personal legal interests should be judged according to the degree of infringement. If it is identified as the crime of picking quarrels and provoking troubles without distinction, it is bound to violate the principle of legality, not in line with the modesty of criminal law, and increase the punishment of the perpetrator.

Thus considering the chaos in the judicial practice mentioned above, the newly added crime of collecting illegal debt includes three common illegal debt collection behaviors into the criminal circle and supplemented by light punishment, which can not only regulate illegal debt collection behaviors, but also avoid excessive punishment, boosting practical rationality.

2. Explanation of Objective Elements of Crime of Collecting Illegal Debt

Whoever, under any of the following circumstances, collects illegal debts resulting from high-interest loans, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined :1.using violence or coercion; 2 .restricting the personal freedom of another person or intruding into another person's house; 3. intimidating, stalking or harassing others." Therefore, the crime of collecting illegal debt requires that both the debt and the means of collecting illegal debt are illegal.

2.1. Illegal Debt Category

The debt of illegal, mainly embodied in the debt caused by "usury", for the verification of usury, from the perspective of civil, the judicial interpretation of folk lending requests lenders to borrowers pay interest rates according to contract agreement, the two sides agreed interest rates more than one-year loans when the market price is the contract of interest rates four times for usury. From the administrative point of view, according to the regulations of the Central Bank, "the interest rate of private individual loans shall not exceed 4 times of the interest rate of loans of the same grade issued by the People's Bank of China for financial institutions for the same period". More than the People's Bank of China announced the same period of financial institutions with the same grade loan interest rate of 4 times that is usury. However, from the criminal point of view, the Opinions of the Supreme People's Court, The

Supreme People's Procurator-ate, the Ministry of Public Security and the Ministry of Justice on Several Issues concerning Handling Criminal Cases of Illegal lending issued by the Supreme People's Court and the Supreme People's Procurator-ate on October 21, 2019 put forward that the interest rate standard for illegal lending is 36%. In the face of three different definitions of civil law, criminal law and administrative law, the definition of usury has reached 20.6% (36%-15.4%), so the author thinks that it needs to distinguish according to the different situations in specific physical cases. In addition to usury illegal debts, there are also a large number of other illegal debts. Including but not limited to: gambling debts, drug money, debts incurred by people buying and selling, loan practices, debts contracted by fraud, debts contracted by force, false loans. All the above-mentioned illegal debts shall be included in the crime of collecting illegal debts.

2.2. Illegality of Collection Means

1. The use of violence, coercion.

Violence is the means of this crime, "hard violence" and "soft violence" collectively referred to as "violence". As the highest legal punishment of this crime is three years in prison, so the level of violence and means has strict requirements, if caused personal injury, infringe others' life and health and property rights, is suspected of intentional injury, such as restricting the personal freedom of others, the deliberate destruction of financial crime; this kind of circumstance and the crime of illegal debt collection imagine competition, choose a felony in broken. So in this crime, "soft violence" is the main means of crime, in accordance with the April 9, 2019, the Supreme People's Court, the Supreme People's Procurator-ate, Ministry of Public Security, justice criminal case about to deal with the implementation of "soft violence" views on some issues of the provisions of the "soft violence" refers to the behavior people seek illegal interests or illegal, disturbing, pestering, making trouble or gathering a crowd in other people or in relevant places, which is enough to cause fear or panic in others and thus form psychological compulsion, or which is enough to affect or limit personal freedom, endanger personal and property safety, or affect normal life, work, production or business operation.

2. Restricting the personal liberty of another person or trespassing into another person's house.

In this law, the offender's crime is "restricting the personal freedom", so to distinguish with "deprived of personal freedom"; the offender does not make the debtor lose personal freedom, and the debtor has a certain space, but its free access or exclusive space was limited by person. This is often shown in the debtor's surveillance at their doorstep, and even into the debtor's house and eat with them, live with them.

3. stalking and harassing others.

The intimidation is backed by violence. The essence is a threat. Intimidation, including telephone and network, makes one afraid, which is not necessarily supported by violence, nor limited to face-to-face. Creditors can either carry out threatening behavior by themselves or organize others to do so, the purpose of which is to make the debtor and his family members have psychological fear or form psychological coercion. Tracking, refers to closely following up. For example, tailing, waiting, stalking or other similar behaviors make the debtor and his family members anxious. Harassment refers to, on the involuntary cases, taking physical and verbal action to offend or insult, disturbing others life, work, production and management order, causing a huge psychological burden to the debtor and their families, the formation of psychological force, influence and restrict the personal freedom of others, endangering personal and property security and affecting normal production and life. Whatever measures are taken, they must be directed at others, mainly the debtor and his family. Whether the actor adopts one of the above three types of behavior, or adopts two or three types of behavior at the same time to collect illegal debts, the seriousness of the circumstances is required to constitute

this crime. As for how to understand the situation, consequence and degree of "serious circumstances", it needs to be judged according to specific cases. Judicial organs should make a comprehensive determination based on the means, amount and frequency of collecting illegal debts and the degree of intrusion on the normal production and life of the victims. Before the promulgation of judicial interpretation, it can be determined by referring to the relevant provisions of judicial interpretation on the seriousness or severity of the circumstances in the crime of picking quarrels and provoking troubles.

3. Retro-activity of the Crime of Collecting Illegal Debt

On March 1, 2021, Amendment to the Criminal Law (11th) officially came into force, adding the crime of collecting illegal debt in Article 293 of the Criminal Law. How to apply the law to the collection behavior that occurred before the amendment took effect and has not been concluded after the amendment took effect is the retroactive issue of this crime.

In judicial practice, before the promulgation of the Amendment to criminal Law (11th), the judicial authorities regarded the behavior of soliciting usury with "soft violence" as the crime of provoking trouble.

After the enforcement of the criminal law amendment (11th), in terms of the method of previous clear stipulation behavior, even if the judicial interpretation provisions for the crime, it also must strictly follow the principle of the old and be given a lighter, and ensure the implementation of principle of a legally prescribed punishment, to "soft violence" again on the usury; the law has no clear stipulation of situation. The provisions of the Amendment to criminal Law (11th) should not be applied to determine guilty and should be declared innocent. As for the behavior of collecting illegal debts that has not been tried before the latest amendment takes effect, it shall be recognized as the crime of provocation, but only as the crime of collecting illegal debts after it takes effect. According to the retroactive principle of the criminal law, the legal punishment of the crime of collecting illegal debts is lighter than the crime of provocation, which should be recognized as the crime of collecting illegal debts.

Esteemed Deputies, The crime of collecting illegal debt should be punished, and the regulation of this kind of crime by the crime of provoking trouble is conducive to rationally striking the crime of collecting illegal debt and strictly implementing the principle of statutory punishment for a crime. To promote the development of China's criminal judicature by analyzing its constituent elements and strictly incriminating crime.

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References

- [1] Zhang Mingkai. Alternative Interpretation of crime of collecting illegal debt [J]. Forum of Politics and Law, 2024,40(02):3-17.
- [2] Xiang Mei. Judicial Determination of crime of Collecting illegal Debt in Criminal Law Amendment (11) [J]. Zhejiang wanli college journal, 2022, 35 (01): 32 to 37. DOI: 10.13777 / j.carol carroll nki issn1671-2250.2022.01.006.
- [3] Li Jinpeng. Collection crime of illegal debt problems analysis [J]. Journal of railway police college, 2021, 31 (6) : 110-115. The DOI: 10.19536 / j. carol carroll nki 411439.2021.06.018.
- [4] lee branch. Collection of debt into the punishment of the crime in evaluation and judicial application [J]. Journal of taiyuan city vocational and technical college, 2021 (11) : 183-186. The DOI: 10.16227 / j. carol carroll nki ty. 2021.0707.

- [5] Han Kang, PEI Changli. Theory of "the crime of illegal debt collection" in the standard of "usury" [J]. Journal of theory, 2021 (9): 44-49. DOI: 10.13221 / j. carol carroll nki LLJJ. 2021.09.007.