

# **Abstract**

## **Contentious issues of necessary defence in judicial practise**

The subject of this thesis is necessary defence in Czech criminal law. Necessary defence is defined as an action which is usually considered illegal but because it is made in defence against an imminent or persistent attack on values protected by criminal law, it is not considered a crime. The law also states that the intensity of this defence cannot be clearly and obviously disproportionate to the form of the attack. This thesis focuses primarily on contentious issues that courts often deal with when they interpret and apply necessary defence in real cases.

Before focusing on contentious issues this thesis first describes the basics of necessary defence. Since necessary defence is one of the circumstances excluding liability in Czech criminal law, this thesis first briefly describes these circumstances. In the next section the thesis focuses on the conditions and limits of necessary defence as they are defined in criminal law. Necessary defence is comprised of an attack and a corresponding defensive action. This section first focuses on the obligatory attributes of the attack and then on the conditions of the defence. Next this section describes the consequences of violating the limits of necessary defence and then it focuses on putative necessary defence.

Then the thesis focuses on contentious issues of necessary defence in Czech case law. In each of the eight chapters in this section a different contentious issue is described. Then several relevant court cases are presented and analysed in order to find possible solutions to each contentious issue.

The first chapter of this section concentrates on how to determine the exact moment an attack ends. Determining this moment exactly is important because after it defence is no longer necessary. The second selected issue is the permissibility of self-defence against people exercising public authority. In addition to this problem this chapter also examines the issue of necessary defence against employees of security services. The third chapter focuses on similarities and differences between necessary defence and a regular fight. The fourth selected issue in this section is the subsidiarity condition in the context of necessary defence. The fifth chapter deals with the question of proportionality between the harm caused by the attacker and the harm caused by the defender. The sixth selected issue is the use of weapons by the defender against an unarmed attacker in necessary defence. This chapter first outlines this issue in general and then it concentrates on the more specific question of necessary defence with a firearm

against an unarmed attacker. The seventh chapter focuses on putative necessary defence and on assessment of mistakes that can be made by the defender. The subject of the eighth and last chapter is the issue of automatic defensive devices. This chapter first deals with the general question of preventive self-defence, then it describes the conflicting court decisions and the binding opinion of the Supreme court of the Czech Republic on the subject of automatic defensive devices.