

Contentious issues of necessary defence in judicial practice

Abstract

This thesis discusses necessary defence and its contentious issues which appear in judicial practice of Czech courts. It is one of the conditions precluding illegality stated in the section 29 of the Penal Code. Which means that a criminal offence is not committed if legal requirements for conduct in necessary defence are fulfilled. These requirements are that the defence should avert an impending or progressing attack to an interest protected by the Penal Code as well as not to be obviously grossly disproportionate to a manner of an attack. Necessary defence is an important institute of criminal law because it may affect everyone, and for this reason it has often appeared in the media and some cases even provokes social discussion on its legal regulation.

The goal of this thesis is to analyse contentious issues appearing in court decisions such as possibility and manner of usage of a weapon or automatic defensive device, evaluation of motive to an act in necessary defence, comparison of protected interests, for example protection of life and health against protection of property or domestic freedom, consideration of an existence and a term of attack and related apparent necessary defence, the difference between mutual assault and necessary defence, the possibility of the defence against the acts of officials and other performance of rights and obligations.

The first part concerns general explanation of all the conditions precluding illegality, as well as their common and different attributes. The following part is concentrated only to necessary defence, its brief development, parallel with other branches of law and detailed characteristics of all the features. The importance of judicial practice for the Czech legal system was recorded in the third part. Further selected court decisions concerning controversial issues arisen during an application of the Section 29 of the Penal Code in specific cases were examined.

The important conclusion implying from the analysis of judicial practice is that every case needs to be evaluated concerning all the relevant circumstances. Courts are obliged to focus on the existence of a threat or progressing attack during the consideration of necessary defence. Also, they need to measure the manner of the attack and the defence, while the excess of necessary defence may not be presumed only on a fact that the defender did not avoid the attack or that the attacker is injured or killed, because necessary defence does not require subsidiarity nor proportionality. The evaluation should consider even subjective state of the defender while averting the attack.

Key Words

Conditions precluding illegality, necessary defence, judicial practice.