

The term and legal consequences of exceeding the limits of extreme necessity and necessary defence

Abstract

This thesis deals with the concept and legal consequences of exceeding the limits of extreme necessity and necessary defence, i.e. two conditions precluding the illegality of an act, which can be found in Chapter III of the current Criminal Code. Those conditions preclude the illegality of an act that would normally be illegal, because an act under those conditions is generally desirable in order to defend the interests protected by the Criminal Code. With the absence of illegality, acts under one of the conditions precluding illegality do not at all result in the commission of a criminal offence, which in case of extreme necessity and necessary defence, allow people to defend themselves at times when the state does not provide them protection against a certain danger or attack. However, if the statutory limits of these conditions precluding illegality are exceeded, the illegality will not be eliminated and a criminal offence will be committed.

The main purpose of this thesis is to analyse the Czech legislation related to extreme necessity and necessary defence in terms of its limits. In particular, it aims to reveal the shortcomings of the legislation and offer solutions.

The goals and structure of this thesis are set out in more detail in the introduction. The thesis is then divided into three parts, which progressively examine the concept of exceeding the limits of extreme necessity and necessary defence, the consequences of this exceeding and the subjectively perceived shortcomings of the existing legislation. In the individual chapters and subchapters of the first part, the institutes of extreme necessity and necessary defence are first placed in the context of conditions precluding illegality, followed by an analysis of their individual conditions. The second part deals with the criminal consequences of exceeding the statutory limits of the two conditions precluding illegality. In the third part the author presents her own subjective view of the topic by evaluating the sufficiency of the existing legislation and offering proposals for corrections or changes. This part also contains a review of the current legislative proposals, which relate to the topic of the two conditions precluding illegality. In the conclusion, the author argues that the current legislation of extreme necessity and necessary defence is generally satisfactory and that the currently discussed proposals for its changes are counterproductive. In her view, however, the introduction of an apologetic extreme necessity

as applied in some countries and some minor linguistic adjustments and additional definitions will open space for better regulation.