

Self-defense and Necessity: Current Issues

Abstract

This diploma thesis concerns the institutions of self-defense and necessity as circumstances excluding unlawfulness, and current issues related to them. Both institutions entail the possibility of individuals to act in order to protect their interests, as protected by criminal law. These interests can be individual or society-wide. Such conduct may be considered a criminal act, however, upon meeting statutory conditions, the unlawfulness of such conduct is excluded entirely. Therefore, it will not be a criminal act and the individual cannot be punished, neither under criminal law, nor legal rules of other legal areas.

The aim of this thesis is to focus on current aspects of these institutions. Furthermore, the thesis explores whether the institutions' conditions are appropriately set for individuals acting within them and whether the legislation gives courts sufficient room for assessing specific situations. The resulting finding is that both institutions are effective at reacting to a large number of situations, including those that have only recently started emerging. The institutions' conditions are set in an accommodating manner, and allow the courts a wide margin of discretion.

The first chapter defines the circumstances excluding unlawfulness in general. The second chapter describes the historical development of self-defense and necessity. The third chapter focuses on the individual conditions of self-defense. The fourth chapter details necessity and its conditions. The following fifth chapter compares both institutions. Finally, the sixth chapter discusses specific issues of necessity and self-defense and overstepping the conditions of these institutions and its consequences. The chapter also describes putative self-defense and necessity. The chapter's conclusion focuses on the use of both institutions in the case of copyright infringement on the internet, and the issue of using automatic defense systems.

Key words

Self-defense, necessity, excess, automatic defense systems