

Concept and the legal consequences of breaching the limits of necessary defense and extreme emergency

The necessary defense and extreme emergency are institutes, which guarantee indemnity to acting person in the situation of necessary defense and extreme emergency. Both institutes have long tradition in law orders all over the world. The limits of acting in necessary defense and extreme emergency are set up little differently in each country.

Breaching of the limits necessary defense or extreme emergency occurs, if the offender commits the offense diverting attack or other danger without being fully met the conditions necessary defense or extreme emergency. The person is entitled to act in the necessary defense or extreme emergency, if complied with statutory requirements (conditions) which are defined in penal code and can not break the limits of necessary defense or extreme emergency.

A crucial condition for the situation of necessary defense is directly threatening or continuing attack on the interests protected by penal code, in case of extreme emergency is a danger directly threatening to the interests protected by penal code. If a person is in such situation, can act within the limits of necessary defense, that means that necessary defence must be not fully evidently unreasonable, or in case of extreme emergency to be compliance with the conditions of subsidiarity and proportionality.

The conditions and limits of necessary defence and extreme emergency sets up penal code 140/1961 Coll., in paragraph 13 and 14.

Further in my diploma work i treat about other conditions that need to be explained to understand the excesses of the necessary defense and extreme emergency and legal consequences for acting person. Without defining the conditions necessary defense and extreme emergency would not be properly explained the concept of excess, because the excess is linked to the failure of any of the conditions set up by law (§ 33 point f/ penal code).

If the limits of necessary defense or extreme emergency are breached, the acting person has criminal responsibility. The penal code takes into account these acting, and sets extenuating circumstances for that acting. The judge is entitled to reduce punishment after consideration.

I treat about putative defense and emergency. Putative defense and emergency is situation, in which the person thinks that there is real attack or real emergency, but the attack or danger is only in the imagination acting person. I deal about the legislation of these institutes de lege ferenda, as currently conceived in the forthcoming penal code.

I write about necessary defense and breach of its limits in Sweden, as a country with a long legal tradition. In the case of extreme emergency, i deal with the adjustment in the Russian Federation.