

Selected issues of necessity in theory and case law

Abstract

This diploma thesis aims to analyze the legal institution of necessity, focusing on some of its selected issues and current challenges. The thesis mainly examines necessity as a circumstance precluding wrongfulness in Czech criminal law, but it also draws upon the findings of foreign doctrine and case law, which it attempts to set in the Czech context. The research conducted relies primarily on analytical, synthetic and descriptive methods, additionally using the comparative method. The thesis is divided into four parts, which are further divided into chapters and subchapters.

The first part examines the concept of necessity in general, briefly introducing the foundational philosophical viewpoints on acts committed under the conditions of necessity, the development of necessity as a legal institution, as well as the distinction between necessity as a justification and necessity as an excuse.

The second part presents a critical interpretation of Section 28 of Act No. 40/2009 Coll., the Criminal Code, based on criminal law theory and Czech case law. In this part, I primarily examine the elements of the legal institution of necessity, focusing on their contentious aspects, as well as the manner, in which they are assessed.

The third part deals with the question of the permissibility of sacrificing human life in a state of necessity. Traditional historical cases are presented first, followed by a discussion of modern issues; specifically the question of the permissibility of shooting down a hijacked civilian airplane in the event of a terrorist attack (the so-called *Renegade* scenario), as well as *Re A (conjoined twins)*, in which the English judiciary had to rule on the permissibility of separating conjoined twins, saving the life of one at the expense of the other. Both issues are also dissected in the context of Czech criminal law.

Chapter 3.3 studies the issue of programming autonomous vehicles for traffic accidents resembling the so-called *trolley problem*. It may be presumed that the automation of transport could in the future lead to a bolstering of the legal institution of necessity and to overcoming the conflict between objective and subjective approaches to assessing the conditions for acting in a state of necessity. Furthermore, I conclude that it follows from the

prevailing interpretation of the current legislation that autonomous vehicles must be programmed to hit a person in some specific cases of traffic accidents in order to avoid a collision with a larger number of people. This solution, based on utilitarian ethics, may lead to saving a significant number of human lives. Nevertheless, it remains contentious whether it is desirable for humanity to delegate life and death decisions to inanimate machines.

The fourth part deals with the question of using necessity as a vehicle for social challenge, particularly addressing recent attempts to raise the so-called „climate necessity defense“ in criminal cases in Western countries. It is possible that in the future this phenomenon will spread in the Czech Republic as well. However, I conclude that such attempts will generally not be successful. The concept of necessity as a supra-legal mechanism for the implementation of political objectives would contradict the purpose of this legal institution in a democratic state governed by the rule of law, as well as the Czech constitution.

Key words: necessity, circumstances precluding wrongfulness, right to life