

SUMMARY

Controversial Issues of Necessary Defense in the Judicial Practice

The main purpose of the thesis is to analyze necessary defense in Czech criminal law. Author's main focus is determined by the title of the thesis and he mainly concentrates on judicial practice. Nevertheless, substantial part of the thesis comprises comparison with jurisprudence. Only theory deals with some issues, these ones are included too. If it's needed, the author compares necessary defense with similar legal institutes in legislation of foreign countries or briefly describes historical evolution of important issues.

The thesis is compound of six chapters. Chapter One includes introduction, explains starting points and approaches.

First content chapter is chapter Two. It defines basic terminology used in the thesis: circumstances excluding criminal liability (i.e. defenses or excuse defenses), circumstances excluding lawlessness (i.e. justification defenses) and necessary defense (i.e. self-defense and defense of person, property or other legal interest protected by criminal law).

Chapter Three contains the core of the thesis. It examines basic elements of necessary defenses and problems typically connected with particular elements. According to usual structure of papers on necessary defense, the chapter is subdivided into two subchapters. Subchapter One deals with attack and its obligatory attributes – human action, presence, (objective) lawlessness and social dangerousness (harmfulness). Related issues are investigated simultaneously; it means protected interests, attacks by officials, private security guards, attacks by insane, infants etc., attacks by animals. Subchapter Two looks at a defender and defense. It's especially focused on adequacy of used defense towards the attack and culpability of defender (so-called intent of defense and putative defense).

Chapter Four looks at excess of limits of necessary defense. The chapter consists of two subchapters. Subchapter One particularly concerns on culpability of a defender who exceeds the limits. Within the subchapter a name for the governing principle of this issue is coined – “The Principle of The Narrowest Point”. Subchapter Two deals with asthenic excess (excess out of confusion, fear, terror etc.) and it recommends changes to be made in legislation.

Chapter Five concentrates on problems resulting from using of automatic devices for protection. The main question is if using of devices is justifiable under conditions of necessary defense. The author examines three decisions concerning this matter; two of them were issued in recent times. But each of these decisions reaches another conclusion. Hence the doctrinal opinions are also summarized and compared. A common view recognizes using of devices as a special case of necessary defense.

Conclusions are drawn in Chapter Six. The author summarizes his recommendations for better interpretation of some attributes of necessary defense and new legislation on several issues.