

## 10 Abstract

### Controversial Issues of Necessary Defence in Case Law

In this thesis I focus on the problematic issues of necessary defence (self-defence) both from the point of view of case law (where available) and law theory (in areas that have yet to be decided by courts).

The second chapter describes the position of necessary defence in the systematic of Czech criminal law and defines the legal institute of necessary defence itself. Necessary defence is one of circumstances that exclude criminal liability (excuses and justifications). The substance of necessary defence is the repulsion of an imminent or pending attack on interests protected by the Criminal Code. The attack must be unlawful and harmful to the interests of society. The action of the defender must not be utterly apparently inadequate to the manner of the attack. Also the action of the defender must be intensive enough to otherwise constitute a crime.

The third chapter addresses the issues of basic components of necessary defence, that is, the *attack* and the *defensive action*. The harmfulness of an attack must be at least discernible. In regards to the unlawfulness of an attack, the criterion is *objective unlawfulness*, that is, behaviour is unlawful if it unduly threatens interests of others, without taking into consideration of the culpability of the attacker. As a result, even the attacks of children or the insane are considered attacks that can be repelled under the conditions of necessary defence. The second basic component of necessary defence is the *defensive action*, the defence itself. There is currently no *subsidiarity* requirement, that is, there is no duty to retreat. The necessary defence must not be utterly apparently inadequate to the manner of the attack. The inadequacy between the attack and the defence must be clearly and strikingly apparent. The word “apparently” also stresses the subjective criterion (the view of the defender) that must be used when deciding of is “inadequate”.

The fourth chapter concentrates on the issue of stepping outside of the limits of necessary defence, i.e. *excesses*. The excesses can be either *intensive* (defence was too intensive and therefore apparently utterly inadequate) or *extensive* (defence was either untimely or it came after the attack ceased to exist).

The fifth chapter deals with the issue of automated defence systems (such as traps, crossbows or booby traps). This issue is highly controversial and as a result it was a subject of an official opinion issued by the criminal collegium of the Supreme Court. The Supreme Court's opinion clearly states that automated defensive devices may be used in defence against an unlawful attack as long as the device is activated at the time of this attack and the effect of the device is not apparently utterly inadequate to the attack.

The sixth chapter is dedicated to comparison between Czech and American criminal law. As a basis for the comparison I have used the Model Penal Code. The main differences between the two are found in the degree of casuistry contained in the American law and in strict divisions of circumstances excluding criminal liability between *excuses* and *justifications* therein.

Finally the conclusions are drawn in the seventh chapter.