

ABSTRACT

of my Master's degree thesis in English

TERM AND LEGAL CONSEQUENCES OF EXCEEDING THE PRIVATE DEFENCE AND NECESSITY LIMITS (EXCESS)

The thesis examines the legal concept and legal implications of transgression of (acting outside of) private defense and necessity. It is based on the new Criminal Code, Act N. 40/2009 Coll. In some of the comparative passages the older legal regulation is mentioned, Act N. 140/1961 Coll., the Criminal Code in particular, as well as preceding penal codes. For illustration of examined concepts and definitions every charter includes case law that deals with the legal institute of private defense and necessity.

The thesis is based on the Czech legal regulation and doesn't include comparison with foreign legislation. It's been caused by the short time of effectiveness of the new Criminal code which brought several substantial changes in circumstances precluding wrongfulness of an act. Significant part of the thesis is dedicated to these innovations, e.g. new privileged the fact of criminal offence of manslaughter (§ 141 CC) and infliction of bodily harm with a justifiable motive (§ 146a CC) , new legal regulation of extraordinary reduction of the term of imprisonment (§ 58 CC) and extenuating circumstances (§ 41 CC). Essentially, the new Criminal Code as a whole brought a number of conceptual changes.

As for the content, the thesis is divided into seven chapters, the essential ones dealing with the acting outside (transgression) of private defense and necessity and the legal consequences of such acts.

The short introduction is followed by the chapter dedicated to the circumstances precluding wrongfulness. It comprises of a general summary of currently effective circumstances precluding wrongfulness and author's de lege ferenda contemplations. The chapter explores the concept and essence of legal institutes of private defense and necessity. The evolution of these institutes and comparison with the legal regulation provided by the Civil Code and the Administrative Infraction Act is included as well.

Chapter 3 deals with the legal institute of necessity exclusively. First, the conditions required to successfully claim the necessity as a criminal defense are analyzed. In the following part the limitations of necessity are considered, the detailed analysis of various excesses and transgressions is provided. Regarding intensive excess various perspectives of the implementation of proportionality is discussed. This analysis constitutes the theoretical groundwork for examination of the reasonableness of private defense, which is explored in chapter 4.

Chapter 4 deals with the legal institute of private defense and follows the same outline as the previous chapter. The essential part is dedicated to the intensive excess and individual concepts related.

Legal consequences of transgression of the limitations of private defense and necessity are explored in chapter 5. This chapter is divided into three parts. Part 1 consists of subjective aspect of such excesses, the following part contemplates the effective regulation implemented in cases of excesses from private defense and necessity. The final part explores the *de lege ferenda* regulation and includes author's reflections on the matter of preferential treatment of those defendants who acted outside the conditions of private defense and necessity and whether current legislation sufficiently regulates such cases.

Chapter 6 contemplates several issues related to the examined institutes, e.g. putative private defense and putative necessity, automatic defensive devices, defense against a person acting insane, legally irresponsible for one's acts, acting by error in fact and defence against a person in authority. The difference of private defense, mutual assault and brawl is explained here as well. The final chapter summarizes the content of the thesis.

The thesis is based on the legal regulation effective to 28th December 2010.

Key words: private defence, necessity, excess

Klíčová slova: nutná obrana, krajní nouze, excesy z mezí nutné obrany a krajní nouze