

ABSTRACT

This diploma thesis deals with the concept and legal implications of excessive self-defense (also private defense) and necessity (also distress). The two terms designate two circumstances precluding wrongfulness that the Czech Criminal Code recognizes. They have been intended to allow every person to defend himself and thus protect his rights against an attack or other forms of danger in case the state authority cannot provide for such protection. If the self-protection is executed within some acceptable boundaries that are provided by the Criminal Code, such behavior can be considered beneficial for the society and therefore nobody should be in any way punished for it. Criminal liability is only established when the given boundaries are crossed and even then there is a certain favored approach towards the perpetrator required. The intention of this diploma thesis is to address the connotations and importance of the given juridical institutes and to evaluate whether they function effectively or not, with eventual suggestions as to how to improve the result. After a short introduction the first part of the thesis deals with the concept of wrongfulness as one of the elements of a crime, and circumstances precluding the wrongfulness in general. In the end of the chapter there is a brief reflection on the advisable law alterations in this regard attached. The following third chapter firstly deals with the significance and development of necessity and self-defense and then the author focuses on the occurrence of the given juridical institutes in other branches of the Czech law, specifically the Czech constitutional law and the Convention for the Protection of Human Rights and Fundamental Freedoms, Czech administration law, and the Czech civil law from both – the old and the new Civil Code viewpoint. The fourth chapter then initially focuses on circumscription of each individual condition of necessity and consequently investigates those in respect of legal provisions, jurisprudence and the case law. In this regard the term of an excessive necessity is explained and situations when the “excess” occurs are described. The following fifth chapter deals with the self-defense and is structured similarly to the previous one – at first there are all of the conditions of self-defense circumscribed and then the disquisition on excessive self-defense follows. All the parts of the past two chapters need to be viewed and understood as a whole for they closely

relate to each other. The sixth chapter then addresses every single possible legal implication of an excessive self-defense and necessity. Subsequently the author evaluates the legal regulation of the legal implications in the sense of its sufficiency and suggests certain modifications in this respect. In the last chapter the author investigates some of the disputable aspects of self-defense, specifically legal admissibility of automatic defense mechanisms, importance of distinguishing between self-defense and instances of simultaneous bilateral or multilateral attack, and feasibility of self-defense against actions of a person in authority. The intention of the last chapter is to draw attention to some deficiencies in this area and to eventually provide for some suggestions *de lege ferenda*. This diploma thesis had been written in accordance with the legal regulations as applicable to the 30th of June 2013.