

# Abstract

## Disputed Issues of Necessary Defence in the Case Law

The thesis itself is focused on the points at issue of necessary defence mainly in the field of Czech criminal law although some partial issues are also compared to the foreign legislation. In compliance with the title of the work author's attention is dedicated in the first place to case law in the areas that have not been decided by courts yet, further, the law theory is described.

The thesis is composed of seven chapters, from which the *first* forms as an introduction, where the goals and approaches are indicated. The *last, seventh section* summarizes the outcomes and conclusions of the thesis and also serves as a recommendation of some useful legislative changes that can be done in the future.

The *Second Chapter* describes the institute of necessary defense itself and its position in the system of criminal law and defines the basic terminology. The circumstances excluding criminal liability (excuse defenses) are also depicted there and distinguished from circumstances excluding lawlessness (justification defenses). The last section of this part is dedicated to the current wording of the institute of necessary defence in the valid Czech Criminal Code.

The *Third Chapter* serves as the key part of the whole thesis and deals with the issues creating the basic components of the situation of necessary defence. The first subchapter describes the attack and its obligatory attributes, therefore the presence of the attack, its objective lawfulness, social harmfulness and the necessity to consider the so created danger as caused by a human being. The second subchapter talks about the defence itself, as the defensive action works as the second basic element determining the institute of necessary defence. In this place, the demand applied to the lawful defensive action, which has not to be utterly apparently inadequate to the mode of the attack, is researched, at the same time, especially the adequacy of the used defense towards the attack together with the liability of the defender are emphasized.

Cases, in which the by law approved boundaries of the defence are crossed, represent the subject matter of *Chapter Four*. In the first subchapter, the two types of excesses are described. First of them, *extensive*, signalizes that the defence was untimely or came after the attack was completed, in the second case, known as *intensive excess*, the defence was apparently utterly inadequate. In the last subchapter of this section, a special type of the

excess, the so called *asthenic*, is discussed and conclusions related to this matter are made.

In the *Fifth Chapter*, the problematic or controversial issues that have been solved contradictory by the courts in the past or where the conclusions still differs, are analyzed. At the beginning, the attacks of the infants or insane persons are pointed out, the necessary defence against public officials or private security guards is solved further. In the same part of the work the situation of the fight and its relation towards the necessary defence is mentioned as well.

The *Sixth Chapter* deals with the controversial issues of automatic defence systems, whose admissibility has been decided by courts in two cases and as the opinions were opposing, this matter also became a question of interest of the Supreme court. In accordance with its opinion, those devices, in case they are activated only at the moment of the attack and its intensity is not in breach of conditions of the allowed defence, are approved and considered as a special case of necessary defence.