

Disputed Issues of the Necessary Defence in Judicial Practice

Abstract

The thesis focuses on the issue of necessary defense in the Czech legal system, especially on the analysis and solution of the disputed queries that arise when applying and interpreting this issue with respect to legal regulations. The main attention is dedicated to judicial decisions, however, some of the disputable issues addressed in the criminal law theory are not neglected.

The thesis is composed of six chapters, together with the chapter of the Introduction which provides the basic definition of the issue and the main purpose of the work, and the Conclusion, which presents the final reflections on the findings and concludes the work.

The First Chapter deals with general basics of criminal liability, focusing in particular on the concept of illegality, since the necessary defense is among the circumstances excluding illegality, which at the same time represents a reason for excluding the criminal liability of the acting person. The very circumstances excluding criminal liability are briefly mentioned and listed in Chapter Two. The purpose of the Third Chapter was to characterize the concept of extreme distress and to distinguish it from essential elements of the necessary defence which represents its privileged case. The main part of the work is further included in the Fourth Chapter called Necessary Defence. In the introduction, the chapter deals with the essence and importance of necessary defense in criminal law. The chapter consists of three sub-chapters detailing the terms of acting in the necessary defence and its individual components. The main parts are treatises on attack and defense. In the context of the concept of attack its essential elements were defined, including the requirement of unlawfulness and social harmfulness of such conduct, the person of the assailant, the degree of his fault and the object of the attack. The next part was devoted to defensive conduct, which must not be quite obviously excessive to the way of attack. In connection with its definition, a distinction was made between adequacy, proportionality and subsidiarity of the necessary defence. Attention was also focused to the use of a weapon in the necessary defence and the putative defence. The cases of overcoming the necessary defence, the so-called excess, are discussed in Chapter Fifth. Within the two sub-chapters, the different types

of excesses are characterized, and consequently their legal assessment and the consequences resulting from exceeding the limits of necessary defence. Chapter Six deals with the necessary defense using automatic defensive devices. Within the chapters, the disputed issues and the relevant case-law relating to the subject are presented, including a brief description of the facts, the argumentation and the final resolution of these questions by the courts.