

Abstract

THE NOTION AND LEGAL CONSEQUENCES OF EXCEEDING THE NEED FOR SELF-DEFENSE AND DESTITUTION

The subject of this thesis are the notion and the legal consequences of exceeding the need for self-defense and destitution (excess). Both of those situations exclude illegality in the case of fulfillment of certain conditions assuring the right of an individual defend him-self in case of an attack, in other words in situations where there is a threat to interests protected by the criminal statute. The consequence of the fulfillment of the conditions of destitution and self-defense is the exclusion not only of criminal liability of the defendant but equally the illegality of his act. In these situations, we therefore are not dealing with a criminal act. This characteristic therefore in consequence makes destitute and self-defense into notions of great importance in the area of criminal liability.

The aim of this thesis is to focus on both of the notions mentioned above, mainly in regard of situations where we are faced with the exceeding of the allowed limits and therefore to fully elaborate on and detail the parameters of the notion of excess and the legal consequences linked to it. The term excess will be regarded from the point of view of theories, legal treatment and jurisprudence, as their approach and definition vary extensively.

The first part of the thesis deals with circumstances that exclude legal liability, within which we can incorporate destitution and self-defense. The section introduces the basis of these positions and depicts their role in the criminal statute. It equally looks at the meaning of illegality as a characteristic of a criminal offence, dealing with the question of; is illegality a general characteristic of a criminal offence or is it a characteristic that forms the essence of the crime?

The second and third section then deal specifically with the notions of destitution and self-defense, looking in detail at all the conditions which have to be fulfilled in order for the notions to apply. They therefore form boundaries in which the defendant has to find himself, in order for his act to be considered as socially beneficial and therefore for it to be stripped of any legal liability. Within those chapters' specific problems such as the need for self-defense

against a public official, a situation of loss of control, an individual acting under a mistaken belief and children are considered.

The fourth section deals with the definition of the terms of exceeding destitute and self-defense. In regard of the above sections, this chapter depicts specific cases and situations of excess in relation to the breach of specific conditions, which in theory should or could result in excess.

The legal qualification of the act of excess and its specific legal consequences are the subject of the fifth section. The first chapter deals with the question of culpability as a result of excess and depicts the possible approaches to the subjective nature of the defendant's excess. The second chapter goes further in detail into the different notions, which if applied help to establish that a criminal offence has been committed in relation to the exceeding of destitute and self-defense.

At the end of this section the author summarises the current legal framework, he also reflects on its future evolution and answers the question of; is the current legal framework satisfactory?

The sixth section deals shortly with error in law in connection with excess.

The thesis in most part reflects the current legal framework of the criminal statute no. 40/2009 Sb., and only in certain sections uses for comparison older legislation, mainly the criminal statute no. 140/1961 Sb. and further the criminal law that supersedes it. This thesis is based on the legal position as of 19. 3. 2014