

Self-defence in Criminal Law

Abstract

This thesis examines the legal institute of self-defence in criminal law, focusing on its theoretical foundations and practical problems, with special attention paid to the understudied concept of premature (self) defence. Combining an analysis of historical development, theoretical evaluation and legislative critique, it provides a comprehensive overview of self-defence as a circumstance excluding liability.

The work traces the historical development of necessary defence in Czech law, emphasising its roots in natural law and its codification in response to social needs. Key elements such as the direct threat of attack, the attack itself and its definition, the interests protected by the criminal law, and the not entirely obvious disproportionality are examined, along with variations in the form of excesses, premature (self) defence and its assessment, depending on the circumstances, as either a putative self-defence or a circumstance excluding liability *sui generis* as a performance of a duty.

The thesis advocates that premature defence should be qualified in cases fulfilling the performance of the obligation laid down in Section 367 of the Criminal Code as a separate legal construct, not as an excess. In cases not fulfilling the above mentioned, it is important to assess the premature self-defence as a putative self-defence, also not as an excess.

Legislative proposals, such as the proposal from the Chamber of Deputies "My House, My Castle" and the Senate's proposal to define the intensity of the permissible self-defence more broadly and to establish an asthenic excess, are critically assessed. While they aim to clarify the explicit regulation and enhance legal certainty, they also pose a certain risk of abuse and evidentiary problems in practice.

Judicial decisions on the self-defence are analysed to highlight practical inconsistencies and gaps in interpretation and to emphasise the need for clearer statutes. In addressing the research question - what are the theoretical and practical challenges associated with the institution of self-defence in criminal law, with an emphasis on the concept of premature self-defence - the thesis proposes *de lege ferenda* proposals, including the supplement of the offence of failure to prevent a criminal offence by setting limits on the permissible intervention, the introduction of an interpretative 'attack' clause and safeguards to balance the rights of the defenders with societal interests. By broadening the understanding of self-defence and

proposing legislative improvements, the thesis contributes to ensuring both legal certainty and justice in the application of this legal institute.

Key Words: Self-defence, limits of self-defence, premature self-defence