

Disputed issues of self-defense and necessity in case-law

Abstract

This diploma thesis focuses on the controversial aspects of self-defense and necessity with an emphasis on the analysis of the decision-making practice of judicial instances. Its aim is to properly define the individual defining features of these institutes, identify which of them can be characterized as ambivalent, and expertly examine whether and how jurisprudence deals with them, as well as evaluating, whether it does so in a consistent manner over the course of a larger period of time.

The first chapter provides an overview of individual circumstances excluding unlawfulness, defines their purpose, as well as their basic characteristics. It also includes an explanation of unlawfulness as a feature of a crime. The second chapter deals with the role and importance of jurisprudence in the territory of the Czech (continental) legal system, put together with thoughts about its bindingness as a source of law for the future. Chapter three deals with the institute of necessity, within which the interpretation is mainly focused on the legal conditions for the use of necessity, together with situations where deviations (excesses) from the limits of these legal conditions may occur. The fourth chapter focuses on the institute of self-defense. Its legal features, possible excesses (intensive, extensive) from the limits of self-defense are also identified, including conclusions from established decision-making practice. In a separate sub-chapter, more in-depth case studies are carried out with regards to the condition of the absence of obvious disproportionality. In both institutes, the supposed (putative) self-defense/necessity, accompanied by the conclusions arising from the relevant jurisprudence, is also covered. In the last, fifth chapter, closer attention is paid to three recent court decisions, which deviate in a certain way from established jurisprudential outcomes or constitute new jurisprudential pathways. These are the possibility of invoking necessity in the event of a fire being caused by the fault of the person invoking necessity and cases of self-defense of victims of domestic violence against their aggressors.

Key words: self-defense, necessity, circumstances excluding unlawfulness