

CURRENT ISSUES OF CONDITIONS PRECLUDING ILLEGALITY OF AN ACT

ABSTRACT

Circumstances precluding illegality are a traditional institution of criminal law, which provides exceptions even in such a crucial area as liability for criminal offences. These circumstances mean that if the statutory conditions are met, a particular act is not illegal from its inception and is therefore not punishable.

Circumstances precluding illegality must be treated with a certain degree of restraint, given that they justify persons to eliminate the danger created without fear of criminal sanctions. However, this often results in an interference with the fundamental rights of third parties. In interpreting them, therefore, it is essential to be responsible not only regarding the content of the individual conditions, but above all regarding the assessment of their fulfilment.

Given that this assessment considers the uniqueness of situations and the specific position of the perpetrators of otherwise criminal acts, it is not always easy to decide whether the conditions have been met. This, too, gives rise to a variety of questions, to which experts have sought to find answers in extensive discussions. The aim of this thesis is thus to approach some of these questions and to reflect on possible solutions. The analytical method, with elements of the philosophical and comparative methods, is used to achieve this goal.

The thesis first deals with extreme emergency, concluding that, although the condition of subsidiarity must be met for the application of this institute, individuals cannot be required to choose the least harmful alternative of action. At the same time, in some cases, the extreme emergency may also testify to the originator of the danger or the instigator of the extreme emergency. The thesis then concludes this chapter by discussing the proportionality condition and the rules for prioritizing patients in health care.

Space is then devoted to the self-defence. The thesis primarily discusses the nature of averted assault, which not only does not have to be covered by intentional fault, but its unintentional commission can also be admitted. Therefore, it is possible to assert the right

of self-defence even against a criminally irresponsible person, for example, a child or a mentally ill, insane person. The attack may also take the form of an omission or prolonged psychological pressure. Thus, a woman who kills her husband because of long-term psychological abuse can also act in self-defence if the conditions are met. Self-defence may also be applied in the case of the protection of property interests. If specific conditions are met, the preventive use of automated weapon systems may also be admitted as part of self-defence.

In the following chapter, the thesis focuses on the consent of the victim. Using comparative case studies, it examines why it is preferable, given the capacity to give consent, to apply the principles of sanity under criminal law and why consent can also be given through a representative. The thesis then discusses cases where the patient has freedom of autonomy of will and where the patient can make decisions about his or her personal integrity in the context of the provision of health services. In this regard, the thesis focuses on the controversial topic of the rights of women in labour to *non lege artis* procedures during childbirth.

In the chapter on admissible risk, the thesis addresses the question of how to assess injuries sustained during sport from a liability perspective. Although the theory of consent of the injured party has many proponents, the conformity of the legal system is more suited to the theory of admissible risk, since the practice of sport is a type of socially beneficial activity. However, even this theory is not sufficiently fitting since it cannot be applied in the case of amateur athletes. In the case of the latter, for example, the application of permissible activity as a special circumstance precluding illegality comes into play.

KEYWORDS

extreme emergency, self-defence, consent of the victim, admissible risk