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THE IMPORTANCE OF THE INSTITUTE OF NECESSARY DEFENCE IN CRIMINAL LAW AND CURRENT PROBLEMS OF ITS IMPROVEMENT

Samarkand Regional Academic Lyceum under
Tashkent State University of Law, Group 203 student
muhammadiskandarov593@gmail.com
Iskandarov Muhammadali Shuxratovich
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Abstract. This scientific article provides a comprehensive and systematic analysis of the theoretical and practical problems and the socio-legal significance of the right to necessary defence, one of the most important institutions of criminal law. Within the scope of the research, the provisions of Article 37 of the Criminal Code of the Republic of Uzbekistan have been studied in depth in terms of the conditions of legality, namely the criteria relating to the attack and the defence. The problems of the legal classification of cases involving exceeding the limits of necessary defence (excess), which give rise to the greatest number of disputes in judicial and investigative practice, have been analysed. In addition, the experience of foreign countries (the USA and Germany) has been examined using comparative legal methods, and well-founded proposals aimed at improving national legislation and strengthening guarantees of the inviolability of individuals have been developed.

Keywords: necessary defence, circumstances excluding the criminality of an act, criminal attack, limits of defence, excess, right to inviolability, proportionality criterion, preventive function, judicial practice.

Introduction. In the context of building a democratic state governed by the rule of law and a free civil society, a person, their life, freedom, honour, dignity and other inviolable rights are considered the highest values. The updated Constitution of the Republic of Uzbekistan firmly establishes that every person has the right to protect their life, personal inviolability and inviolable rights by lawful means against any unlawful encroachments. Ensuring these legal guarantees is not only the responsibility of specialised state bodies (the courts, the prosecutor's office and internal affairs bodies), but also the lawful right and social duty of every active member of society.

Within the system of criminal law, the institution of necessary defence occupies a special and fundamental place among the circumstances that exclude the criminality of an act. A person may find themselves in a situation where, at the very moment a criminal and socially dangerous attack directed against them or another person's legal interests is taking place, they are unable to wait for direct assistance from law enforcement agencies. In such an emergency, the state grants the individual the right to protect lawful interests by repelling the criminal attack, neutralising the attacker and, in the process, causing them physical or material harm. This institution serves as an important preventive means of increasing citizens' legal activity, fostering an environment of intolerance towards offences in society and preventing crime.

1. The concept of necessary defence and its socio-legal nature

Necessary defence is a legally permitted, socially beneficial and active action of an individual, which is fully supported by the state and society. Under Article 37 of the Criminal Code of the Republic of Uzbekistan, actions committed while causing harm to the aggressor in order to protect the life, health and rights of the person defending themselves or another person, as well as the interests of society and the state, against unlawful attacks are not recognised as a crime.

The distinctive nature of the right to necessary defence is that it is an absolute and inviolable right of a citizen. This right arises regardless of whether the person has special training or professional duties (for example, as an employee of the internal affairs bodies, the National Guard

or the security service), and also regardless of whether it is possible to flee from the attack, hide or seek assistance from other state bodies. Thus, the law encourages citizens not to flee in the face of a criminal attack, but to protect lawful interests.

2. Legal conditions for the lawfulness of necessary defence

In order to distinguish the institution of necessary defence from unlawful acts or arbitrariness, the theory of criminal law and judicial practice have developed conditions for the lawfulness of defence. These conditions are divided into two groups: conditions relating to the attack and conditions relating to the defence.

The conditions relating to the attack are as follows:

1. Social dangerousness of the attack: The attack must pose a real threat to the interests of the individual, society or the state and must be directed against objects protected by criminal legislation. Administrative or minor offences do not always give rise to the right to necessary defence; however, this does not apply where they involve violence and serious harm.

2. Reality of the attack (its actual existence): The attack must exist in objective reality, not merely in the imagination (perception) of the person defending themselves. If a person causes harm believing that an attack exists when it does not in fact exist, the situation is assessed under the rules on “imaginary defence”.

3. Imminence of the attack: Defensive actions must be carried out from the moment the attack has directly begun or the threat of its commencement has become apparent and imminent, until the attack has ended. Harm caused for the purpose of revenge after the attack has ended is not considered necessary defence.

The conditions relating to the defence are as follows:

- Harm must be caused exclusively to the aggressor: Defensive actions must be directed at the person of the individual directly carrying out the attack or at the means used by that individual, and not at third parties, the aggressor’s relatives or their property.

- Not exceeding the limits of defence: The harm caused must be proportionate to the value of the object being protected and to the nature and degree of danger of the attack.

3. The problem of exceeding the limits of necessary defence (excess)

The greatest number of errors and difficulties in judicial and investigative practice arise specifically when assessing cases of exceeding the limits of defence. According to Part Three of Article 37 of the Criminal Code, intentionally causing harm because the means and methods of defence are disproportionate to the nature and dangerousness of the attack is considered exceeding the limits of defence (excess).

Exceeding the limits can only be committed intentionally. Causing excessively serious harm to the aggressor through negligence does not give rise to criminal liability. In each case, courts must thoroughly analyse the physical strength, age and sex of the aggressor and the person defending themselves, the number of persons involved, the availability of weapons used in the attack, as well as the place and time of the incident (for example, an unexpected attack at night inside a residence).

The most important legal guarantee in practice is that if, as a result of an unexpected attack, a person enters a state of intense emotional agitation (affect) or fear, is unable to correctly assess the degree of danger of the attack and consequently causes serious harm, criminal liability is excluded in order to prevent the finding that the person exceeded the limits of defence and to prevent judicial errors.

4. Comparative analysis of the legislation of foreign countries

In the legislation of Western European countries and the USA, the institution of necessary defence is interpreted very broadly and in favour of the citizen. For example, in US criminal law there is the “Castle Doctrine”, according to which a person has the right to use a firearm without warning against any aggressor who unlawfully breaks into their home, country house or vehicle,

and to deprive that person of life. In such circumstances, the person is not required to flee from the home.

Article 32 of the German Criminal Code (StGB) also establishes broad limits for necessary defence and emphasises that the means of defence must be sufficient to reliably stop the attack. In German practice, if a person defending themselves exceeds the limits because of fear, panic or agitation, they are not held criminally liable.

Conclusion and practical proposals

Improving the institution of necessary defence in the criminal legislation of the Republic of Uzbekistan will serve to strengthen the legal protection of citizens and prevent judicial errors. Based on scientific analyses and practical requirements, the following proposals are put forward:

1. A separate part should be added to Article 37 of the Criminal Code establishing the rule that any harm caused to persons who unlawfully and violently break into an individual's home, property or enclosed area at night (including even depriving them of life) is automatically recognised as lawful necessary defence. This would genuinely ensure the inviolability of a citizen's private home.

2. The relevant resolutions of the Plenum of the Supreme Court must provide clear instructions to investigative bodies: during the preliminary investigation, the practice of approaching a citizen who has been subjected to a criminal attack with a "presumption of guilt" and immediately applying detention as a preventive measure against them should be abandoned. Treating the person who acted in defence as a victim at all times is a criterion of justice.

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