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THE QUESTION OF NECESSARY DEFENSE. COMPARATIVE ANALYSIS OF THE LEGISLATION OF UKRAINE AND THE REPUBLIC OF LITHUANIA

There are many urgent issues in today's situation to carry out. Preservation of the life and health of every citizen, observance of his rights and freedoms, as well as their free realization are the main goals of every civilized country. We believe that every citizen has the right to preserve his life and health, this fact is indisputable. Unfortunately, sometimes situations arise when it is necessary to harm one protected interest in order to protect other protected interests.

From a legal point of view, this act is legal and socially accepted, if the official body carries out under certain conditions that are mandatory. Criminal law contains many special institutions; in our case, we will consider the institution of necessary defense. The state offers a compromise: the institution of necessary defense and other circumstances that exclude the criminality of the act.

The state offers the opportunity this act to be committed only under certain special conditions, and only such an act we consider as a necessary defense. Otherwise, we can call the conditions of legitimacy of the necessary defense. Unfortunately, the issue of the system of conditions that exclude the criminality of an act, including the necessary defense, the legal rules do not sufficiently disclose in special legal texts. This institute can be useful to each of us. We do not claim, but we are sure, that most of the victims of sudden attacks by criminals believed that it would never happen to them, and that is why it is not necessary to think about it. Another category of people is afraid to defend themselves because they do not know the laws perfectly and do not know how to apply and implement them in everyday life.

We attempted to do our analysis and find out exactly how the legislator regulates this issue, as well as highlight current problems, legality of necessary defense, criminal liability for exceeding the limits of necessary defense, relying on domestic scientific assets and international experience. Most of the constitutions of various countries contain provisions on the right to self-defense. In the Constitution of Ukraine, these provisions are included in the second chapter: «Rights, freedoms and duties of a person and a citizen» [1]. The Constitution of Ukraine established the right to life, health, freedom, inviolability of the individual, protection of honor and good name, protection of property. These rights have become necessary for the normal functioning of every person and citizen at the current stage of the country's development. The main content of the legal status of a person is the rights provided for by the Constitution of Ukraine. If we draw parallels, we can note the fact that the Constitution of the Republic of Lithuania also has a whole section dedicated to the rights and freedoms of citizens and people — the second section «Cilveks un valsts» [2]. As stated in Article 18 of the Constitution, human rights and freedoms are natural. The article states that the presumption of innocence applies, that is, until his or her guilt is proven, a person is not considered a criminal.

That is why it is logical that the Criminal Code of the Republic of Lithuania also has a provision regulating the institution of self-defense (Article 28). Part 1 of Article 28 states that every person has the right to the necessary defense, regardless of whether he could have avoided the attack or sought help from officials [3].

The Article 28 in part 2 states that a person does not bear criminal responsibility for committing an act, if the limits of necessary defense were not exceeded, in the appendix it is noted that the criminal punishment can be mitigated on the basis of Article 62 of the current Criminal Code of the Republic of Lithuania. In Part 3 of Article 28 we can see that it is recognized as exceeding the limits of necessary defense in the case of the implementation of direct, intentional killing or grievous bodily harm, if the defense clearly did not correspond to the nature and danger

of the encroachment. We can note that an act that was committed due to a state of strong mental excitement or fear caused by a dangerous encroachment, or an act committed for the purpose of protection against home invasion, the law considers it as exceeding the limits of necessary defense. The specified reasons indicate the legitimacy of the necessary defense; therefore, the person who acted because of the listed cases will be exempt from punishment.

If we compare the level of development of the domestic and foreign institutions of necessary defense, the official rules note that the circumstances that exclude the criminality of this situation are better systematized in Ukrainian legislation.

When analyzing part 3 of Article 36 of the Criminal Code of Ukraine we can see the conditions of legality and the permissible limits of the necessary defense are given in their entirety [4]. In part 5 of Article 36 of the same Code we can read that the use of weapons or any other means or objects to protect against an attack by an armed person or an attack by a group of persons. As well as to prevent an illegal and violent home invasion, does not exceed the limits of necessary defense and does not result in criminal liability or other premises, regardless of the severity of the damage caused to the trespasser. While the Criminal Code of the Republic of Lithuania does not say anything about it. In this case the problem of use of firearms for self-defense is one of the key problems for future development.

At the same time, some other circumstances that exclude the criminal illegality of an act are better developed in the Criminal Code of the Republic of Lithuania, for example, Article 34 and Article 35, which states that if the act resulted in more public benefit than harm, then this act is also recognized as not criminally punishable. There are no such provisions in the Criminal Code of Ukraine. That is why we believe that it would be expedient to borrow certain provisions of the institute necessary for both countries, in order to improve the level of development of this institute of criminal law. We think it would be good idea that the Constitution of the Republic of Lithuania could include new articles in the second chapter «Cilveks un valsts». There is no provision in this main law of the Republic of Lithuania that self-defense is a legal act if the person carries out this act under certain conditions of legality. There is no established provision that would guarantee the fact that a person can defend his or her right to life and health against criminal encroachments.

Regarding the proposals for both countries, we are sure that it is necessary to develop a certain program that would be able to explain in an accessible and understandable form for every citizen that there is nothing legal in self-defense, if the person carries out this act legally. It is necessary to make it clear to the citizen how to act in this or that situation. In our opinion, if a citizen does not know how to protect himself or herself from such situations, does not know how to act, or is afraid of breaking the law, it is the fault of the legislator, not the individual citizen.

In both countries, the question of the circumstances that exclude the criminality of an act is not entirely clear to an ordinary citizen. The today's society is the society of humanistic values. The life and health of each citizen is the greatest value for the democratic state, value that must be protected on the highest level.

1. Конституція України від 28.06.1996 р. URL: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>.http (дата звернення: 25.11.2022)

2. Lietuvos Republikas konstitucija : URL : <https://www.lrs.lt/home/Konstitucija/Konstitucija.htm> (дата звернення 03.02.2023)

3. Lietuvos Respublikos baudžiamasis kodeksas :URL : https://www.infolex.lt/portal/start_ta.asp?act=doc&fr=pop&doc=66150 (дата звернення 30.01.2023)

4. Кримінальний кодекс України : URL : <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (дата звернення 30.01.2023)

5. Скиба, Е. К. Соціально-філософський аналіз генезису агресії людини *Грані. Науково-практичний журнал*. 2019. Вип. 22. С. 66–76.