

Summary

The year: 2020.

Specialty / field of study (code and full name): 40.03.01-Law

Level of study: bachelor's degree.

Institute or Higher school: Law University.

Department of criminal law disciplines and forensic expertise

The subject of the final qualifying work::" Necessary defense as a circumstance excluding the crime of an act ".

Author: Khazhnagoev Kantemir Zamirovich, 4th year student Institute of distance learning, information technology and online projects (Criminal law profile) - 341-16.

Scientific supervisor: kand.yus. sciences, associate professor, head of the Department of Criminal Law Disciplines and Forensic Expertise Yury Nikolayevich Shapovalov.

The relevance of the research topic.The necessary defense is one of the options for realizing the right to protection, not only of one's rights, but also the rights and interests of others, as well as the rights and interests of society and the state. The institute of necessary defense is one of the most important means of protecting the interests of the state, property, rights and interests of individual citizens. It helps deter unsustainable people who intend to commit a crime from carrying out their criminal intent. The Criminal Code provides for circumstances precluding criminal acts. Necessary defense also applies to such circumstances (Article 37 of the Criminal Code of the Russian Federation). Any violation of the law causes enormous damage to our state, society, and therefore to each and every member of this society. A very active form of public participation in the fight against crime is the exercise by Russian citizens of their right to the necessary defense. In modern conditions, it is necessary to ensure that as many citizens as possible are able to withstand the growth of crime in our country to protect personal and state interests. It is the wide participation of the public in the fight against violations of public order and criminal attacks that makes the necessary defense an even more effective means of preventing and combating crimes. In such a situation, the question of a proper understanding of the institution of necessary defense and its correct application in practice is of great importance in the fight against criminal crime, in involving the general public in the fight against robbers, rapists and murderers. All this obliges law enforcement bodies and the court not to make mistakes in their work and to be able to correctly resolve the issue of the presence or absence in a particular case of the necessary defense, excluding the public danger of the act, or exceeding the limits of the necessary defense.

The purpose of the work:is a comprehensive analysis of the provisions of the criminal law on the necessary defense and the practice of its application.

Objectives: analyze the provisions of the current legislation of the Russian Federation regulating the issues of necessary defense; to study the educational and specialized literature on the subject; consider materials of judicial practice on the application of criminal law on necessary defense; to study the history of the development of scientific concepts and legislation on necessary defense; define the concept of necessary defense in the modern legal system; analyze the conditions of lawfulness of the necessary defense.

Theoretical and practical significance of the research: consists in a comprehensive analysis of the provisions of both modern and previously existing Russian criminal legislation, containing discretionary norms that provide for the right to necessary defense and establish the conditions for its implementation to exclude cases of lawful harm from criminal acts. The practical

significance of the study lies in the possible use of recommendations in law enforcement when qualifying acts committed in the conditions of necessary defense.

Results of the study:

Necessary defense is a legal institution of criminal law, like many other institutions of criminal law, appeared along with the emergence of the state and law and developed depending on a number of conditions of state and social nature.

In the domestic criminal law, the norms on necessary defense have undergone changes more than once, and currently Art. 37 of the Criminal Code of the Russian Federation “Necessary Defense” is valid as amended by Federal Laws of March 14, 2002 No. 29-Φ3, dated December 8, 2003 No. 162-Φ3 and dated July 27, 2006 No. 153-Φ3.

According to Art. 37 of the Criminal Code of the Russian Federation, the necessary defense is a legitimate defense against real and actual socially dangerous and criminally unlawful infringement by inflicting harm to the infringer in order to repel this infringement, if the limits of the necessary defense were not exceeded. Based on the legislative definition of the necessary defense, we can conclude the following:

- a) the necessary defense is a circumstance excluding the criminality of the act;
- b) acts committed in the state of necessary defense are socially useful;
- c) necessary defense - the subjective right of every citizen;
- d) protection of state, public interests, another person's moral obligation, public duty of a citizen;
- e) the right to necessary defense is equally shared by all persons, regardless of the possibility of avoiding a socially dangerous encroachment or seeking help from other persons or authorities;
- f) citizens can use the right of necessary defense only to the extent specified by law.

Recommendations

1. If there are objective signs of an “encroachment – defense” situation, it is necessary to establish the cause of the event, its initiator, the existence of personal injury to the participants in the incident, and other circumstances that significantly affect the assessment of what is happening.
2. It is necessary to give the correct criminal law qualification of the assault, which should be the basis for assessing the response of the defender.
3. It must be borne in mind that the necessary defense is possible only against attacks that are expressed in action. In order to ensure that citizens have the right to harm upon inaction, when such inaction can lead to socially dangerous consequences provided for in the Criminal Code of the Russian Federation, the legislator should add to the number of circumstances precluding criminal acts a new institution: “Coercion to action to fulfill a legal obligation” .
4. The basis for the emergence of the right to necessary defense is socially dangerous encroachments, both reckless and deliberate, capable of harming the interests protected by law, both of individuals and of the state and society, regardless of whether these acts contain the full corpus delicti or not are criminal in the absence of the subject of the crime (committed insane). However, the necessary defense is unacceptable against actions that are outwardly similar to the act provided for by the Special Part of the Criminal Code, but due to their insignificance are not recognized as crimes, since these acts, as indicated in Part 2 of Art. 14 of the Criminal Code do not constitute a public danger.
5. An infringement giving the right to defense must be in cash, that is its implementation should already begin, or the immediate threat of its implementation should be so obvious that the rights and interests protected by law are in immediate danger. In addition, the assault must be valid, i.e. existing not in the imagination of the defender, but in reality. However, situations of legitimate

defense against imaginary encroachment are possible, if, due to the current situation, the defender had sufficient reason to believe that he was undergoing real encroachment, and with all due care and discretion, he could not but take the apparent encroachment for what was really happening.

6. In h. 3 Article. 61 of the Criminal Code provides that if the circumstances listed in part 1 of article 61 are provided in the Special Part as signs of a crime, then I can't take them into account again. Thus, in our opinion, it should be excluded from cl. 61 of the Criminal Code of the Russian Federation such a mitigating circumstance as exceeding the limits of necessary defense, given the fact that the corresponding privileged corpus delicti are exhaustively defined in the Special Part of the Criminal Code of the Russian Federation, in Art. 108 and 114.