КРИМІНАЛЬНЕ ПРАВО, КРИМІНАЛЬНО-ВИКОНАВЧЕ ПРАВО, КРИМІНОЛОГІЯ

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LIMITS OF JUSTIFIABLE DEFENSE

Institute of self-defense is one of the oldest; it resides in all legislation at all stages of development. It is mentioned in the Treaties of Oleg and Igor with the Greeks (911, 945 years.), in the «Russian Truth» and almost all of the later legislation [1].

«Cathedral Code» of Tsar Alexei Mikhailovich in 1649 adjusted the necessary defense too [2].

«Code about penal and correctional punishment» in 1845 permitted to self-defense in the protection of persons, property and honor of women. The defense was allowed not only to protect themselves, but also for the protection of other persons in danger [3].

«Criminal Code» of 1903 gave a generalization of the definition of self-defense, determining that «there is revered criminal act perpetrated with the necessary defense against unlawful attacks on a person or property of protecting person or of another person».

Legislation of the Soviet Union defined the right to self-defense, starting with the « Guiding Principles of Criminal Law « in 1919, however, most generally it was formulated in the « Penal Code of the Russian Federation in 1922 «, which was applied on the territory of Ukraine [4].

The Criminal Code of the Ukrainian SSR in 1927 fully repeated the provisions of the previous Code.

Fundamentals of Criminal Legislation of the USSR and the Union Republics of 1958 and the Criminal Code of the Ukrainian SSR in 1960, paying no attention to editorial changes, almost identically recorded this provision.

In 1990, the Supreme Soviet of Ukrainian SSR adopted the Law «About amendments and additions to the Criminal Code of the Ukrainian SSR», which was substantially redrafted Article 15 of the Criminal Code in the direction of democratization of the institution [5].

Justifiable defense (according to the law of Ukraine) is acts done to protect the lawful rights and interests of the person who defends himself or another person, as well as the public and the state interests from the socially dangerous attempt by causing the one who infringes, damages required and sufficient in this setting for immediate diversion or termination attempt, if it was not exceeded the boundaries of self-defense [6].

The Criminal Code refers to self-defense to circumstances exclusionary criminal activity.

The right to self-defense is a natural and inalienable, absolute human right. This means that all the other parties can not lawfully prevent a citizen exercising the right to self-defense.

In other words, every citizen has the right to self-defense regardless of the opportunity to seek help from the authorities or official persons to prevent or stop attacks. Availability of the right to self-defense is not connected well with the existing possibility for the person to seek help from other citizens. The Criminal Code states that every person has the right to self-defense regardless of the opportunity to avoid socially dangerous encroachments, or seek the assistance of other persons or authorities [7].

Assigned to Article 36 of the Criminal Code of Ukraine the right of everyone to self-defense of a socially dangerous encroachment is an important guarantee of the constitutional provisions. It is based on the inviolability of the rights and freedoms of man and citizen, the inalienable right of every person to life, his home and property, as well as it provide conditions for the protection of the interests of society and the state [8].

The Constitution states that «everyone has the right to protect his life and health, life and health of others from unlawful encroachments.» Therefore, the right to defense is recognized by the Basic Law of Ukraine one of the fundamental human rights. The provisions of the Criminal Code of Ukraine are development and concretization of the constitutional injunctions.

The right to self-defense is an absolute: every person has the right to take defensive measures against socially dangerous assault regardless of whether it has a chance to avoid attacks (run, barricaded the door, etc.) or every person has the right to seek help from the authorities or other certain individuals.

For certain individuals, such as, for example, police officers, military, self-defense is a duty, which involves evading responsibility. According to the Constitution of Ukraine defense of the Fatherland is the duty of a citizen of Ukraine, that is, protection against the encroachments of the state is a constitutional duty [9].

Actions committed in a state of self-defense, if they were not exceeded self-defense borders, are considered to be legitimate; and they can not be a basis to institute not only criminal, but also civil or any other legal proceedings against the person.

Exceeding the limits of necessary defense, the law recognizes the intentional infliction of serious harm to infringe that does not correspond to the danger of abuse or situation of protection.

Under heavy damage by exceeding the limits of self-defense should be regarded as the death of a person or causing him serious bodily injury. Inconsistency serious damage caused encroaching danger of abuse or situation of protection should be considered explicitly when it is taking into account the circumstances are obvious to every man, therefore, for the defender.

So, obviously inappropriate will not be caused by the necessity of serious injury to a person who intends to commit theft, and makes no attempt to provide physical resistance. Excessive force should also be considered and cases where a person has caused grave damage to encroach, while having the opportunity to prevent or stop an infringement is clearly with causing less damage and aware of this possibility [10].

Liability for exceeding the limits of self-defense arises only when there is damage of two types, namely, serious injury (Art. 118 of the Criminal Code of Ukraine), or premeditated murder (art . 124 of the Criminal Code of Ukraine). In other cases, exceeding the limits of necessary defense is not a crime.

The criminal case brought on the fact of an act committed in a state of self-defense (if there was not exceeding its limits), must be closed due to lack of evidence.

For prevention attacks special resources may be used that operate in the absence of the person whose interests are suffering losses. The use of such resources is only possible in cases where the damage is excluded persons who have not committed socially dangerous acts and the damage is not beyond the limits of necessary defense. In view of this range of tools which can be used to prevent attacks, it includes mainly passive protection means constipation, locks, doors, grills, alarms and etc.

It is unacceptable to use, such as traps, which are installed in the vehicles, leaving poison in food to prevent theft from premises, exposed live wires and etc. Such actions are not considered justified for necessary defense; a person who uses them is solely responsible for damages.

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МЕДИКО-ПРАВОВЕ ЗНАЧЕННЯ ТА СУТНІСТЬ ЛІКАРСЬКОЇ ТАЄМНИЦІ В КОНТЕКСТІ КРИМІНАЛЬНОГО ЗАКОНУ

Конституція України, а саме стаття 49, проголошує, що кожен має право на охорону здоров᾽я, медичну допомогу та медичне страхування [1]. Стаття 32 містить заборону втручатись в особисте і сімейне життя, а також заборону збирати, зберігати, використовувати конфіденційну інформацію про особу без її згоди. Аналогічні принципи встановлені в Загальній декларації прав людини та Конвенції про захист прав людини та основоположних свобод [2; 3] Положення статті 145 КК України встановлює покарання за умисне розголошення лікарської таємниці особою, якій вона стала відома у зв’язку з виконанням професійних чи службових обов’язків, якщо таке діяння спричинило тяжкі наслідки.

Однією з найпоширеніших проблем сьогодення виступає лікарська таємниця, яка є однією з основних складових медичного права та медичної етики. Інститут кримінально-правового забезпечення лікарської таємниці (ст. 145 КК України) є відносно новим і малодослідженим наукою кримінального права України. Уведення кримінальної відповідальності за розголошення лікарської таємниці з одного боку, свідчить про збільшення засобів охорони прав громадян, але, з іншого боку, враховуючи досить нечасте застосування зазначеної статті, обумовлює необхідність вирішення ряду питань, пов’язаних з загально соціальною і кримінально-правовою характеристикою незаконного розголошення лікарської таємниці [8].

Це питання досліджували такі науковці: Є.В. Лащук, Л.К. Карпенко, О.Е. Радутний, В.Г. Карпук, С.О. Козуліна та інші.