

## CONDITIONS FOR THE LEGITIMACY OF NECESSARY DEFENSE

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### Abstract

According to the Concept for Improving the Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan, over the past years, domestic criminal and criminal procedure legislation has undergone significant changes aimed at improving its norms, implementing advanced international standards and foreign practices in order to unconditionally ensure the rights and freedoms of citizens involved in participation in criminal proceedings.

**Keywords:** - implementing advanced, foreign practices, citizens involved.

### Introduction:-

The Concept also states that a number of problems and shortcomings remain in judicial and investigative practice, including those caused by the imperfection of certain norms of criminal and criminal procedure legislation that hinder the effective implementation of the country's criminal law policy. In particular, there are legal gaps in the system of criminal and criminal procedure legislation that impede the effective protection of the rights, freedoms and legitimate interests of citizens, ensuring the rule of law and objectivity in the course of pre-trial and trial proceedings in criminal cases.

Necessary defense is one of the circumstances excluding the criminality of the act. First of all, necessary defense is a natural right. The naturalness of this right lies in the fact that it is not created by the state, but is recognized and sanctioned by it.

Encroachment is the basis for the necessary defense, thus defense is a defense, that is, a response to an encroachment.

The essence of necessary defense is ultimately to harm the attacker in order to protect law enforcement benefits. But since the law equally protects all citizens, the one who violates the law by committing unlawful acts is also subject to legal protection. Therefore, causing harm to a person who violates the law in a situation of necessary defense is strictly and strictly regulated. In case of non-compliance with the requirements of the law, the person defending himself from a socially dangerous encroachment may himself become a criminal .

Therefore, it is important to take into account the requirements (conditions) that apply to a person exercising the right to necessary defense .

Necessary defense is a legitimate defense against a socially dangerous encroachment on the interests of citizens and the state protected by criminal law by causing harm to the offender, subject to certain conditions .

The necessary defense cannot be immeasurable. The perpetrator has his own rights. He goes beyond the protection of the criminal law when he commits a socially dangerous act. But if the defending person exceeds the limits of necessary defense, the attacking person becomes the object of protection. Protection against encroachment is lawful subject to the conditions of lawfulness, which are divided into two groups: the conditions of lawfulness related to the attack and the conditions of lawfulness related to protection (defence) .

“The necessary defense is the unity of two opposites: encroachment and protection. Each of these opposites has its own property, determined by the corresponding conditions. The conditions relating to the encroachment determine the state of necessary defense, and the conditions relating to protection determine the legitimacy of actions to protect the subjected good in a state of necessary defense .

S.V.Borodin believes that “the resolution of the issue of the legitimacy of the harm caused to the attacker by the person carrying out the defense depends on the nature (value) of the protected interest; proportionality of the means of protection and attacks, the intensity of the means of defense and attack; a number of other circumstances characterizing the balance of forces of the attacker and the defender, and the situation of encroachment .

In order for the defending person to have the right to the necessary defense against a socially dangerous encroachment, the latter must have certain characteristics. In the doctrine of criminal law, the totality of these signs is called the conditions for the legitimacy of the necessary defense related to the encroachment:

1) The offense must be real, that is, real, and not imaginary.

The condition of the reality of the attack makes it possible to delimit the necessary defense from the imaginary defense. Imaginary defense- it is a defense against non-existent encroachment. An imaginary defense occurs as a result of a mistake by the defender. "The error may be caused by an incorrect assessment of the behavior of the victim, the personality of the victim, or the moment the assault ended" .

"The courts must distinguish between the state of necessary defense and the so-called sham defense, when there is no real socially dangerous infringement and the person only erroneously assumes the existence of such an encroachment.

In those cases where the situation of the incident gave reason to believe that a real attack was being committed and the person who took the means of protection was not aware and could not be aware of the fallacy of his assumption, his actions should be considered as committed in a state of necessary defense.

If a person causes harm without being aware of the imaginary infringement, but due to the circumstances of the case, he should have and could have been aware of it, the actions of such a person are subject to qualification under the articles of the Criminal Code, which provide for liability for causing harm through negligence.

In the Criminal Codes of such countries as Latvia, Ukraine, Belarus, the concept of imaginary defense is given and criminal liability for the consequences of committing a crime in such a state is explained.

2) The attack must be present, that is, already begun or immediately forthcoming. The law does not give us the right to use the necessary defense against the past action. Thus, the necessary defense is not allowed for future actions.

3) The attack must be illegal, unfair, socially dangerous. The basis for causing harm permitted by criminal law to the offender is the commission of a socially dangerous attack by him. Encroachment is only an action aimed at causing damage to interests protected by criminal law and threatening immediate harm.

Some believe that the right to the necessary defense against the insane should be excluded. In our opinion, this would contradict the very concept of necessary defense. If the attack is valid and inevitable, then it makes no difference who the attacker is: sane or insane. In turn, the defender at the moment of danger will not be able to distinguish between a sane person and an insane

person. The decision of the Plenum of the Supreme Court gives the following explanation about this: A socially dangerous offense, protection from which is permissible within the limits of Article 37 of the Criminal Code, should be understood as an act provided for by the Special Part of the Criminal Code, regardless of whether the person who committed it was brought to criminal liability or released from it due to insanity, underage to criminal liability or on other grounds.

We fully agree with A.V.Naumov, who believes that “a person who has taken all measures to evade the encroachment of an insane person (runs away, calls for help), of course, deserves moral approval, and not condemnation, by his behavior, because in this case it does so not out of cowardice, but for reasons of humanism and with the utmost discretion .

For a citizen to have the right to the necessary defense, the offense must be prohibited by the Criminal Code. The necessary defense does not apply to other offenses.

4) The unpredictability of the attack. This condition is not included in the traditional list of conditions for the legitimacy of necessary defense. But we decided to include it because it is of great importance .

A.F.Koni considers this: “Indeed, if we allow the necessary defense in all cases when an attack can be foreseen in advance, then there would be many abuses. Thus, instead of a court of public authority, which should act justly and without being carried away, the offender would be subjected to a court of interested private individuals - merciless and almost always partial. Knowing that a person wants to attack me, instead of warning the public authorities about this, which could punish him for preparing for a crime, I myself decide to arbitrarily subdue this person. Conscious of my strength, I wait ... finally I wait for the attack I foresaw and - I strike the enemy to death. Thus, by my silence, I, as it were, incite the enemy to commit a crime. In addition, if it is possible to foresee an attack, then there is the possibility of preventing the attack, that is, it is possible to prevent the public authority, that is, assistance from the public authority is possible, and, consequently, there is no longer the right of necessary defense in its true sense .

Conditions for the legitimacy of a necessary defense relating to defense:

1) Harm should only be inflicted on the offender. Causing harm to third parties is prohibited. If the attack is committed by a group of persons, the defending person has the right to apply to any of the attackers such protective measures that are determined by the danger and nature of the actions of the entire group.

It is also stated in the decision of the Plenum of the Supreme Court: "When an offense is committed by a group of persons, the defender has the right to apply protective measures to any of the attackers, which are determined by the danger and nature of the actions of the entire group"

2) Proportionality of protection to the nature and degree of public danger of the encroachment. The nature of the encroachment is determined by its object, and the degree - by the size of the threatening damage.

The defense must not exceed the limits of the necessary defense. Exceeding the limits of necessary defense is recognized as a clear inconsistency of protection with the nature and danger of encroachment. "When deciding whether there are signs of exceeding the limits of necessary defense, the courts must take into account not only the conformity or inconsistency of the means of defense and attack, but also the nature of the danger threatening the defender, his strength and ability to repel the attack, as well as all other circumstances that could affect the real the ratio of the forces of the encroacher and the defender (the number of encroachers and defenders, their age, physical development, the presence of weapons, the place and time of the encroachment, etc.)"

"The courts should keep in mind that in a state of mental agitation caused by an assault, the defender cannot always accurately weigh the nature of the danger and choose proportionate means of protection. The actions of the defender cannot be considered as committed in excess of the limits of necessary defense and in the case when the harm caused to him turned out to be greater than the harm prevented and the one that was sufficient to prevent the attack, unless there was a clear discrepancy between the defense and the nature and danger of the attack .

Persons who are attacked, in most cases, are in a state of fright, in a state of strong emotional excitement, that is, passion. That is why the person is not able to fully assess the current situation. And you can not demand from him to correctly measure the nature and danger of the attack. It follows from this that it is always necessary to take into account the mental state of the person, which was caused precisely by the encroachment.

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