

The courts' case-law on legitimate defence

Having regard to the novel provisions on legitimate defence of the new Criminal Code that entered into force on 1 July 2013, uniformity decision number 4/2013 BJE of the Criminal Department of the Curia of Hungary provided rules as to how the criminal courts should interpret and apply these novel provisions by taking into account the elements to be retained of the decades-long judicial practice on legitimate defence and the broader applicability thereof as a ground for exemption from punishment under the new Criminal Code. In the six years since then, despite not being in conformity with the current legislation, the previous judicial approach according to which the necessity and recognition of the defensive act depend on the requirement of “proportionality”, a term deliberately abandoned by the legislator, has continued to prevail.

On the other hand, the Curia has delivered a number of significant decisions which were adopted in compliance with the current legislation and also stressed the legislature's intention of finally recognising the constitutional right to legitimate self-defence. In a particular case involving the so-called situational legitimate defence, the Curia held that such defence could be used against the perpetrator of a defamation by physical assault and pointed out that a physical assault committed at 1:30 a.m. could be legitimately repelled by knife stabbing and that the statutory requirements laid down in section 22, subsection (2) of the new Criminal Code could not be relativized.

In another case, the Curia's decision swept away some uncertainties related to the interpretation of the concept of legitimate defence when the supreme judicial forum acquitted, on grounds of legitimate defence, a car-driving woman who i. had chased two robbers on a motorbike who had previously robbed her, ii. had run over them upon catching up on them and iii. consequently had killed one of them.

In yet another case, the Curia found that a defensive act to repel an assault threatening the physical integrity of the victim's domestic animal could also be acceptable and legitimate, in addition, it noted in a number of its decisions that, according to the legislator's approach, the aggressor was to bear all risks linked to his unlawful attack.

The Curia's obligation to explore and eliminate the discrepancies between the occasionally persisting previous judicial approach and the Curia's formalist jurisprudence-harmonising activity in the context of legitimate defence stems from the Fundamental Law of Hungary, thus, in 2019, the President of the Curia decided to set up a jurisprudence-analysing working group to examine the practical issues of legitimate defence. The working group completed its investigation, and the group members prepared individual sub-reports on the cases transmitted to them by the high courts. The working group's summary report is expected to be approved in the Spring of 2020.

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