

## ACTUAL PROBLEMS OF PROVING THE STATE OF NECESSARY DEFENSE IN RUSSIAN CRIMINAL LAW

G. A. Arutyunyan, E. V. Postnikova

In this article there is the author's subjective point of view that the legal institution of necessary defense in the criminal law of the Russian Federation functions improperly, does not find a consistent application in judicial procedural practice and contradicts the goals and principles of criminal law of the Russian Federation established by the legislator. The author's opinion is supported by judicial statistics provided by the Supreme Court of the Russian Federation, as well as an example in the form of a real case that was in the proceedings of one of the lawyers of the Chamber of Lawyers of the Samara region. In the end, the author puts forward his own initiative for a possible solution to the discovered problem, which could ensure proper enforcement of human rights and freedoms guaranteed by the legislation of the Russian Federation.

**Key words:** criminal proceedings; evidence; extreme necessity; institute of defense; the use of weapons for protection.

The relevance of this paper arises for a number of reasons. Firstly, the incorrect work of the institute of necessary defense is one of the most pressing problems in Russian criminal law. There are not many scientific researches and textbooks published on this topic. Secondly, in the near future, the institution of necessary defense is not subject to legislative change, therefore it is necessary to develop concepts of proper regulation of this institution in a scientific way.

Currently, this problem has been poorly studied. One of the most relevant works is a scientific article by Andrey V. Nikulenko, Doctor of Law, Professor of the St. Petersburg Academy of the Ministry of Internal Affairs of Russia, on the topic "necessary defense and exceeding its limits: opportunities for legislative improvement" [1]. It showed that in the Criminal Code of the Russian Federation there are no specific signs of a clear discrepancy between the nature of protection and the degree of danger of encroachment, as a result of which contradictory court decisions are made. This is also part of the research of this scientific work.

The aim of this article is to find out whether the institute of necessary defense really works in

Russian criminal law or not and to offer ideas for solving possible problems related to this institute.

In order to achieve this goal, it is necessary to solve the following tasks: to analyze real court cases related to the necessary defense and to investigate the official judicial statistics on cases related to this institution.

According to article 37 of the Criminal Code of the Russian Federation, causing harm to an attacker in a state of necessary defense is not a crime. The necessary defense provided must correspond to the nature and danger of the attack. This causes difficulties in life. How to determine the degree of danger? This is difficult for an ordinary person to do under ordinary circumstances, and even more difficult in a situation of assault, when emotions run high and it is almost impossible to assess the situation soberly. That is why there are often cases when, in the course of defending against an attack, a person, unwittingly, inflicts such damage that is considered excessive by law. Unfortunately, "socially dangerous encroachment" by investigative authorities and the court is usually understood as the direct use of violence [2]. This is a crime according to article 114 of the Criminal Code of the Russian

Federation and creates the risk that it is not the attacker who will be punished, but the defender. In my opinion and in the opinion of many practicing lawyers and legal scholars, this article is “unworkable” and drafted incorrectly, as a result of which many people are unfairly punished because they defended themselves from physical aggression.

For a clearer understanding of the situation, I will give as an example a real case of exceeding the limits of necessary defense from the judicial practice of a lawyer in Samara, whose assistant I am. Last names have been changed due to attorney-client privilege.

Citizen Ivanov, together with his two neighbors, were waiting for Citizen Karlov in order to talk peacefully and calmly. When Karlov came out, he began to hit the windshield of the car with a crowbar with such force that it almost completely broke. One of those sitting in the car, frightened, opened the door and ran away. Then Karlov pulled Ivanov out and began hitting his back and head against the car door (because of this, Ivanov would be diagnosed with a mild concussion). Ivanov had a traumatic pistol with him. He decided to use it for protection, but due to the fact that he was constantly being hit against the car, when he took out the gun, he accidentally fired and hit Karlov in the intestines. Karlov survived.

As a result, Ivanov was prosecuted for exceeding the limits of necessary defense, because the intestines are a vital organ, and damage to them is formally serious harm to health, although Karlov did not have any critical consequences of the shot. The court sentenced Ivanov to imprisonment for a period of 1 year. It's a short period of time, but:

1) Ivanov received the “stamp” of a criminal record for life (both in the legal and social sense);

2) His wife left him, his daughter stopped communicating with him;

3) His credit company went bankrupt because people, having heard about Ivanov's criminal record, became afraid for their deposits and began to actively take them away.

And this is just one example of how the life of a person convicted of trying to defend himself from an inadequate aggressor collapses. And there are a lot of such sentences. According to the research I conducted, in 2021, 248 people were convicted of exceeding the limits of necessary

defense (10 % of them went to prison), and in 2022, 220 people were convicted (14% of them went to prison). Statistics on the adjacent article – 114 [3]. Most of these cases are as controversial as the one I cited as an example. Only a small part of them are cases in which the defender actually went too far and moved from defense to attack.

In my opinion, such court sentences are extremely unfair. The problem is so wide that even the decision of the plenum of the Supreme Court on this issue is contradictory and is applied incorrectly by the courts. You can see that the court rules that the defense cannot be prosecuted for reckless endangerment, as happened in the case I mentioned, but the court nevertheless sent the defendant to prison.

To summarize, I would like to point out the conclusion I have reached. It is currently very difficult to prove the state of necessary defense in the Russian Federation, since, in my opinion, the law establishes too stringent and impossible requirements for self-defense. This leads to the fact that citizens are afraid to exercise the right to necessary defense granted to them by law. “People are not so much afraid of a confrontation with an offender as of further proceedings,” writes V. L. Zuev [4]. In this regard, I would like to put forward my own proposal to solve this problem:

1) I propose to abolish such punishment as imprisonment for crimes related to exceeding the limits of necessary defense. Deprivation of liberty is a measure necessary to isolate from society a person who poses a threat to him: for example, murderers, serial killers, scammers, rapists, pedophiles, etc. A person defending himself from an attack does not pose a threat to society. Imagine what will happen to an intelligent businessman after a year of communicating with such professional killers, corrupt officials, and swindlers, when he gets out of prison? What kind of knowledge will he gain? I think it is obvious to everyone that he will come out a worse person than he was, and with resentment towards the state he will commit the crimes that he learned in prison.

2) In my opinion, the courts should understand exceeding the limits of necessity differently, primarily to the Supreme Court of the Russian Federation. A truly unfair situation would be for the defender to continue to harm the attacker even after he has been rendered harmless. For example, the

defender continues to kick the attacker after the attacker has already fallen to the ground. Personally, this is how I understand exceeding the limits of necessary defense. To my view, if courts take the same position, the institute of necessary defense will work correctly.

After conducting a study of judicial statistics and real court cases, I have identified that the institution of necessary defense in Russian criminal law does not work correctly. I also proposed 2 of my ideas to solve this problem. I should say that defending yourself in Russia of course is not prohibited by law, but the law sets very strict requirements for such defense. You can only legally defend yourself so that you have the opportunity to escape from the attacker. Any extra action beyond this can lead to criminal liability. In my opinion, the legislator should work exactly on softening the conditions of necessary defense so that the laws in our country function based on the principle of justice, as it should be in a rule-of-law state.

### Conclusion

Thus, this work explores the actual problem of criminal law in 2024 – the imperfections

of the institute of necessary defense in the Criminal Code of the Russian Federation, and also contains the idea of a possible concept of this institution that could solve the existing problem.

### References

1. Никуленко А. В., Смирнов М. А. Необходимая оборона и превышение её пределов: возможности законодательного совершенствования // Вестник Санкт-Петербургского университета МВД России. 2020. № 3 (87). С. 111–117.
2. Петрушенков А. Н. Кодификационные проблемы необходимой обороны, влияющие на ее реализацию // Социально-политические науки. 2020. Т. 10. № 3. С. 155–163.
3. Уголовное судопроизводство. Данные о назначенном наказании по статьям УК [Электронный ресурс]. URL: stat.апи-пресс.рф/stats/ug/t/14/s/17 (дата обращения: 13.11. 2023).
4. Алексеенко В.А. Проблемы и перспективы развития института необходимой обороны в Российской Федерации // Вестник науки. 2024. Т. 4. № 1 (70). С. 111–118.

## АКТУАЛЬНЫЕ ПРОБЛЕМЫ ДОКАЗЫВАНИЯ СОСТОЯНИЯ НЕОБХОДИМОЙ ОБОРОНЫ В РОССИЙСКОМ УГОЛОВНОМ ПРАВЕ

Г. А. Арутюнян, Е. В. Постникова

В данной работе доказана субъективная точка зрения авторов о том, что правовой институт необходимой обороны в уголовном праве Российской Федерации функционирует ненадлежащим образом, не находит состоятельного применения в судебно-процессуальной практике и противоречит установленным законодателем целям и принципам уголовного права Российской Федерации. Мнение авторов подкреплено судебной статистикой, приведенной Верховным Судом Российской Федерации, а также примером в виде реального дела, находившегося в производстве у одного из адвокатов Палаты адвокатов Самарской области. В конечном итоге авторы выдвигают собственную инициативу по возможному решению обнаруженной проблемы, которая могла бы обеспечить надлежащее исполнение гарантированных законодательством Российской Федерации прав и свобод человека.

**Ключевые слова:** уголовный процесс; доказательство; крайняя необходимость; институт обороны; применение оружия для защиты.

*Статья поступила в редакцию 31.05.2024 г.*

---

© Арутюнян Г. А., Постникова Е. В., 2024.

Арутюнян Гарик Ааронович ([g\\_arutyunyan63@mail.ru](mailto:g_arutyunyan63@mail.ru)),

студент II курса юридического института Самарского университета,

Постникова Екатерина Вячеславовна ([chrisanne@mail.ru](mailto:chrisanne@mail.ru)),

доцент кафедры иностранных языков и профессиональной коммуникации Самарского университета, 443086, Россия, г. Самара, Московское шоссе, 34.