

The Legal Basis of Self-Defense and Its Requirements in Criminal Law

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Abstract

The purpose of this article is to establish the legal ground for justifiable self-defense and to set forth its requirements. After reviewing the principle of individual protection and the principle of legal order protection, which are used to be considered as the basis for the self-defense, the author argues that the “right principle” can justify acts in self-defense in a way consistent with the task of criminal law, i.e. maintenance of right-duty relation between people. The problem of the principle of individual protection is that self-defenses become fights between people in the natural status, where there are no concept of rights and duties. The principle of legal order protection is in flaw due to its circular argument, because the validity of legal order occurs, once the legitimacy of the norm is established. Based on the right principle, the author proposes that the rights of self-defense as coercive powers are necessarily connected with the individual rights, and the defender’s act that harms to the attacker shall be permitted under two conditions. First, the attacker attempts to culpably infringe the personal rights of defender, because the necessity of defense exists only at this moment. Second, the defense is necessary to restore the sphere of personal rights. The defender doesn’t have to choose to escape or to defense under risk. There should not be any other social-ethical restrictions on the act in self-defense, unless the defender has a legal duty to undertake the risk of the attacker. A defense can also be justified, even if the interest sacrificed is worth much more than the interest protected.

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