

LAW - ПРАВО**NUGZAR TEVDORADZE****Doctor of Laws, Faculty of Law of Samtskhe-Javakheti State University
Associate Professor(Georgia)****EXEMPTION FROM CRIMINAL LIABILITY FOR NECESSARY REPULSION
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The criminal law legislation of different countries of the world envisages exclusionary circumstances of conflict of law, in the presence of which the criminal liability of a specific person is excluded.

The institution of necessary repulsion is one of the oldest. It is mentioned in the Laws of Manu (before 1200-200 BC), where it is discussed about the justification of killing when there is a threat to life. Some legal monuments justified such action also in the case of property protection.

In order for the necessary repulsion to be considered reasonable, the encroachment must be unlawful, momentary, real, relevant or socially significant and subjectively carried out for the purpose of protecting the legal good.

It should be noted that in some countries the norms of mandatory repulsion are not established by legislation, but by judicial precedents or judicial practice. Almost everywhere there is a requirement that the offense must be unlawful and real, and the defense must be proportionate to the threat. It is permissible to cause harm to the offender not only to protect life and health, but also to protect property.

And yet, what can be the object of protection in the necessary repulsion?

In most countries, the circle of such objects is quite wide. So, for example: in the criminal codes of Russia, Belarus, Azerbaijan, Kazakhstan, Kyrgyzstan, Bulgaria, Hungary, Latvia, Lithuania and Romania, it can be:

1. The rights, life, health of the subject, which was threatened, as well as similar rights of the third party;

2. State and public interests.

The criminal law code of some countries does not directly say anything about the latter. It is only about protecting one's own or another person's life, health, property, personal integrity and other rights (Austria, Albania, Andorra, etc.).

In common law countries, the object of infringement is defined in detail. So, eg: Under Australian law, a person makes a self-defense when he believes it is necessary: 1. to protect himself or another; 2. To prevent illegal deprivation of one's own or another's freedom; 3. To prevent illegal possession, destruction, damage, illegal invasion of property; 4. To prevent criminal action within the boundaries of the owned building or plot of land; 5. To evict a person who violates the boundaries of ownership from the owned building or plot of land.[1].

English criminal law does not know the term «necessary repulsion». In English criminal law studies, Professor K. Kenny, in the number of circumstances that exclude the criminality of an act, does not mention necessary repulsion, but during the analysis of murder or bodily injury, depending on the essence of the case, the conversation, to a certain extent, refers to necessary repulsion, but it is called literally («self-defense»). In English criminal law, «necessary repulsion» is a circumstance precluding criminal liability, which excludes criminal liability in cases where the accused relies on the protection of public and private interests. At this time, the action of the self-defense is legal. Before the enactment of the Criminal Law Act 1967 in England, the legal status of any person acting to

protect public or private interests was governed by the common law. Section 3 of the English Criminal Law Act 1967 allows a person to use reasonable force to protect the public interest, in particular to prevent crime in the apprehension of an offender, suspect or other unlawful person. However, in some cases, public and private interests may completely overlap. The provisions of this law apply not only to police officers, but also to other persons and are not limited to serious crimes.[2].

The right of self-defense is recognized under US law. The term «necessary repulsion» refers to a circumstance excluding liability, during which the legal interests of one person are protected from the encroachment of another person. J. Fletcher calls this «necessary repulsion». In US criminal law, issues related to necessary repulsion are regulated more thoroughly than in England, but the term «necessary repulsion» does not exist here either. Legislation uses the word «protection» (eg, New York State CPC Articles 35. and 35.15). The institution of mandatory deterrence itself is not provided for in federal law, and issues related to it are decided in state law under the 1962 US Model Penal Code. It is understood here that every state in the US has its own criminal law, but there is a model criminal law code that has a recommendatory nature, which has had a serious impact on the reformation of criminal law in the United States. The Code includes a third chapter, called «General principles of the propriety of action,» which details some types of circumstances that exclude the criminality of an action, namely during necessary repulsion («defense»). Model SSC distinguishes several types of defense: a) use of force during defense (Art. 3.04); 2) use of force while protecting another person (Art. 3.05); 3) use of force to protect property (Art. 3.06); 4) use of force in law enforcement (Art. 3.07) and others. However, in doctrine and legislation, we find another, and more often necessary two-part classification of repulsion, which includes both self-defense and defense of others in one type. A somewhat different classification is provided in the New York State criminal Code: «use of force»

for the protection of a person (§ 35. 15), for the protection of a building, and in the apprehension of a fugitive (§ 35. 20)272 or in the abduction and prevention of an abduction, and in such an act, during which damage is punishable by criminal law (§35. 25.). Despite the difference in the classifications of the types of necessary repulsion, one general conclusion can be made: the object of protection can be a person defending himself or another person who is being attacked, and property can also be the object of protection. [3].

According to Article 32 of the German Penal Code, it is not unlawful for a person to: (1) exercise a necessary repulsion from the idea of (1) an individual's interest in the effective protection of legal goods, and (2) the assertion of rights. [4]. The state of necessary repulsion arises as a result of an unlawful, momentary encroachment on a person. The violation is momentary if it begins immediately, has begun, or continues.[5].

All kinds of valuables and legally recognized interests that are in the control of the implementer of the protective action or a third party have the possibility of generating the necessary repulsion. The action committed in the state of necessary repulsion, directed against the attacker, must be objectively necessary and normatively recommended. In addition, it must be subjectively produced with the will to protect.[6].

According to the French Criminal Code, which was adopted in 1994, the grounds for exempting a person from criminal liability are systematized and placed in one chapter. The basis of self-defense is discussed in Article 122-5 of the French Criminal Code.[7]. According to Article 122-5 of the French Criminal Code: 1. A person is exempted from criminal responsibility if he uses the necessary repulsion to protect himself or others from an illegal attack, except for cases where the defense is disproportionate to the attack. 2. A person shall not be held criminally liable if, in order to prevent illegal actions or protect property, he repels the killer, except for intentional murder, if it is not necessary to prevent an attack or to avoid property damage,

self-defense must also be proportional to the attack.[8].

According to Article 122-6 of the French Penal Code, a person is in a state of self-defense if: 1. if the person repels an attacker who is trying to illegally enter the residence and 2. defends himself against theft or robbery.[9].

According to section 34 of the Canadian criminal Code, the infliction of death or grievous bodily harm is permissible only in an attack that is dangerous to life or health and where the repeller reasonably believes that this is the only way to avoid the danger.[10].

According to § 3 of the Austrian Penal Code, necessary repulsion is allowed in the case of an unlawful attack: on life, health, physical integrity, freedom and property. But a necessary repulsion will not be considered reasonable if the person or his interests suffer a slight loss and the defense is disproportionate to the attack.[11].

According to Article 34 of the Israeli Penal Code, a necessary repulse is permissible if self-defense is performed in defense of one's own or another's: life, health, unlawful imprisonment, or protection of property, unless the attack is provoked.[12].

Article 341 of the Israeli Penal Code allows for a crime against property if the offender attempts a violent act in an apartment or other facility, unless self-defense is clearly inappropriate or provoked. [13].

According to the first part of Article 37 of the Code of Criminal Law of the Russian Federation, the necessary repulsion is justified if it was carried out in defense of one's own life or someone else's life, the interests of society or the state, or if the attack was carried out in a life-threatening or threatening way. According to point 2.1 of the same article, the necessary repulsion will not be exceeded if this person could not objectively assess the degree and nature of the danger of the attack due to the suddenness of the attack. According to the third part of the same article, everyone has the right to exercise this right regardless of whether they could escape or have special training.[14].

According to the Indian and Singaporean

Criminal Codes, the killing of an attacker is allowed when he poses a threat of murder, grievous bodily harm, rape, kidnapping, violent deprivation of liberty. In certain cases, the death of the attacker is allowed even in the case of a particularly dangerous attack on property.

In the vast majority of modern states, there is almost the same approach to defining the nature of the action against which necessary repulsion is permissible. In some places such action is defined as «unlawful trespass», although sometimes different wording is given.

The basic condition for necessary repulsion is that the magnitude of the repulsion must be proportional to the degree of attack. In the criminal law codes of most countries, only the general principle of proportionality of the applied measures is formulated. These countries are Algeria, Bosnia, Denmark, Iceland, Spain, Italy, Uruguay, Switzerland, etc. Sh. In other countries, the legislator more specifically determines the correspondence between the nature of the unlawful act and the permissible defensive measures (mainly in common law countries). However, the main focus is on determining exactly in what cases the repeller is authorized or unauthorized, will cause death or serious injury to the attacker.

As for the Criminal Law Code of Georgia, the necessary repulsion is provided for in the general part of the circumstances excluding the violation of the law, Article 28.

According to Article 28 of the Criminal Code of Georgia:

1. The one who commits the action provided for by this Code in a state of necessary repulsion, that is, the one who, during the unlawful encroachment, damages the offender in order to protect his or someone else's legal good does not act unlawfully.

2. A person has the right to necessary repulsion regardless of whether he can prevent the encroachment or call for help to another.

3. Damage to the trespasser in order to return the property or other legal good taken by unlawful encroachment is justified even if it happened immediately after the transfer of this good to

the trespasser and if it could still be returned immediately.

4. Exceeding the scope of necessary repulsion means a clear inconsistency of defense by the repeller with the nature and danger of the attack. [15].

Necessary repulsion, to be considered legitimate, the encroachment must meet the following criteria: the encroachment must be unlawful, the encroachment must be momentary; The infringement must be genuine, the infringement must be relevant. The object of protection of necessary repulsion can be both a person and property. The harm must be done to the perpetrator and not to a third party, and the limits of necessary repulsion must not be exceeded.[16].

The law clearly states that the repulsor has no right to go beyond the scope of the necessary repulsion. Therefore, the action of the repulsor is within the framework - it should not cause such damage to the attacker, which is not necessary to

avoid the attack. According to Section 4 of Article 28 of the Criminal Code of Georgia, which is currently in force: «Exceeding the scope of necessary repulsion means a clear inconsistency of defense by the repeller with the nature and danger of the attack.»[17].

In conclusion, it can be said that the criminal law of most countries of the world provides for the institution of necessary repulsion in a different form. The legislation of some countries defines the conditions under which an action is considered necessary repulsion, and also sets certain conditions for the prevention of crimes against property - when it is determined by law that it is to take life while protecting property except in exceptional cases, but the basic principles are still the same: necessary repulsion to be considered justified - The encroachment must be unlawful, the encroachment must be momentary; The infringement must be genuine, the infringement must be relevant.

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НУГЗАР ТЕВДОРАДЗЕ

Доктор юридических наук, ассоциированный профессор Самцхе-Джавахетского государственного университета (Грузия)

**ОСВОБОЖДЕНИЕ ОТ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ ЗА
НЕОБХОДИМОЕ ОТТАЛКИВАНИЕ (СРАВНИТЕЛЬНЫЙ АНАЛИЗ)**

РЕЗЮМЕ

В статье рассматривается освобождение от уголовной ответственности в случае необходимог отпора. Акцентируется внимание на месте и содержании данного института в законодательстве зарубежных стран. Обсуждаются условия, которым должно соответствовать, чтобы оно рассматривалось как обстоятельство, исключающее ответственность. Также проведен сравнительный анализ с законодательством Грузии и выделены общие признаки, являющиеся предпосылкой освобождения от уголовной ответственности в случае отпора.

Уголовно-правовое законодательство разных стран мира предусматривает исключительные коллизионные обстоятельства, при наличии которых исключается уголовная ответственность конкретного лица.

Институт необходимог отпора является одним из древнейших. Он упоминается в «Законах Ману» (до 1200-200 гг. до н. э.), где речь идет об оправданности убийства при угрозе жизни. Некоторые правовые памятники оправдывали такое действие и в случае защиты имущества.

Для того чтобы необходимог отпор считалось обоснованным, посягательство должно быть противоправным, сиюминутным, реальным, уместным или общественно значимым и субъективно осуществленным в целях защиты правовог блага.

Следует отметить, что в некоторых странах нормы обязательного отпора устанавливаются не законодательством, а судебными прецедентами или судебной практикой. Практически везде существует требование, чтобы правонарушение было противоправным и реальным, а защита — соразмерной угрозе. Допустимо причинение вреда правонарушителю не только для защиты жизни и здоровья, но и для защиты имущества.