



Research Article

THE DIFFERENCE BETWEEN NECESSARY DEFENSE AND EXTREME NECESSITY

Submission Date: October 15, 2022, **Accepted Date:** October 25, 2022,

Published Date: October 30, 2022 |

Crossref doi: <https://doi.org/10.37547/tajpslc/Volume04Issue10-10>

Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

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ABSTRACT

This article analyzes the difference between necessary defense and extreme necessity.

In addition, the article analyzes the social danger and wrongfulness of an act committed by an arrested person for causing harm during the detention of a person who has committed a crime, the harm caused to him is associated with specific circumstances and does not deviate from the limits of actions necessary for detention.

KEYWORDS

Socially dangerous act, committed, person, during detention, harm, necessary defense, crime, punishment, responsibility.

INTRODUCTION

Circumstances excluding crime are acts aimed at eliminating the threat created for objects of criminal law protection by causing harm, recognized as socially useful and socially expedient .

These circumstances do not entail criminal liability, since there is no public danger. These circumstances are even socially useful.

According to Article 35 of the Criminal Code of the Republic of Uzbekistan, circumstances excluding crime



are recognized when an act containing the signs provided for by the Criminal Code is not a crime, due to the absence of public danger, wrongfulness or guilt.

The Criminal Code of the Republic of Uzbekistan distinguishes seven types of circumstances precluding the criminality of an act:

- 1) Insignificance of the act (Article 36);
- 2) Necessary defense (Article 37);
- 3) Extreme necessity (Article 38);
- 4) Infliction of harm during the detention of a person who has committed a socially dangerous act (Article 39);
- 5) Execution of an order or other obligation (Article 40);
- 6) Justified professional or economic risk (Article 41);
- 7) Commission of an act as a result of physical or mental coercion or threat (Article 41).

These circumstances are included in the list of acts excluding crime, as they correspond to the interests of the state, society, and most importantly, the individual. It should be noted that many countries do not include in the list of circumstances excluding the criminality of an act, the insignificance of the act.

The last type of circumstances excluding the criminality of an act: physical or mental coercion or threat was included in the Criminal Code of the Republic of Uzbekistan as a separate type only in 2018. Prior to this, the issue of liability for causing harm to rights and legally protected interests as a result of physical or mental coercion was resolved taking into account the provisions of the article on extreme necessity (Article 38 of the Criminal Code of the Republic of Uzbekistan).

Circumstances excluding the criminality of an act may not be of public danger (for example, due to insignificance) or not be illegal (for example, necessary

defense, emergency, detention), or do not contain guilt (execution of an order or other obligation, or justified professional or economic risk).

If we turn to international experience, then, for example, in the Criminal Code of Georgia, the list of circumstances excluding the criminality of an act is not exhaustive. Article 32 of the Criminal Code of this country states: "The actions of a person who has committed an act provided for by the Criminal Code in the presence of other circumstances, which, although not directly mentioned in the Criminal Code, fully satisfy the conditions for the legality of this act, are not unlawful." This provision expands the powers of law enforcement agencies and the court.

The Polish Criminal Code includes in this list, in addition to traditional types, factual and legal errors, as well as insanity. The latter circumstance also includes France and Finland in the list.

A.V.Naumov believes that in circumstances excluding the criminality of the act, there is no public danger, guilt, punish ability, criminal wrongfulness.

Against the authors who exclude social danger from these circumstances, V.S. Prokhorov argues: "It is hardly possible to agree with the authors who claim that these circumstances exclude the social danger of the act. Public danger is an objective category, its objectivity lies in the fact that it is not the result of an assessment by a legislator or a court, but is a reality, the essence of which is that a person's behavior conflicts with existing social relations between people, in other words, causes them harm".

"An analysis of the circumstances excluding the criminality of the act, according to the elements of the corpus delicti, shows that they always contain objective signs of a crime and not always subjective.



On the subjective side, the circumstances excluding the criminality of the act can be guilty and innocent. However, even if they are guilty, then in this case, as a rule, they are characterized by a socially useful goal: to prevent an imminent danger, to stop a crime, or to detain a criminal. It is in the name of these socially useful goals, the essence of which is to ensure the right of citizens to commit, in some cases, due to necessity, acts containing signs of a crime, the state recognizes them as circumstances precluding the criminality of the act.

The most common circumstances in the world that exclude the criminality of an act are necessary defense and extreme necessity. In countries such as Germany, China, Japan, only these types are included in the list of circumstances precluding the criminality of an act. In China, if a person exceeds the limits of extreme necessity and causes significant harm, then criminal liability occurs, but in these cases, a punishment below the lower limit is imposed or the person is released from punishment.

Necessary defense and extreme necessity are not only the most important types of circumstances that preclude the criminality of an act, but are also similar in content.

"Extreme necessity is a legal mechanism for resolving contradictions in the collision of law-protected interests".

According to Article 38 of the Criminal Code of the Republic of Uzbekistan: "It is not a crime to act that caused harm to the rights and interests protected by law, committed in a state of emergency, that is, to eliminate the danger that threatened the person or rights of this person or other citizens, the interests of society or the state, if the danger under these circumstances could not be eliminated by other means

and if the harm caused is less significant than that prevented.

An act committed in a state of extreme necessity is lawful if the person has not been allowed to exceed its limits.

Exceeding the limits of extreme necessity is the infliction of harm to the rights and legally protected interests, if the danger could be eliminated by other means, or if the harm caused is more significant than the prevented one.

When assessing the legitimacy of an act committed in a state of extreme necessity, the nature and degree of the danger to be prevented, the reality and proximity of its occurrence, the actual ability of the person to prevent it, his state of mind in the current situation and other circumstances of the case are taken into account.

Many scientists believe that there is no social utility in the application of extreme necessity. So, for example, according to S.G.Kelina: "Public utility, of course, takes place when a criminal is detained, with the necessary defense against socially dangerous encroachment, since in these cases we are talking about peculiar methods of combating socially dangerous or criminal behavior. But there is no way to recognize such "public utility" under any other circumstance, for example, in case of emergency, when harm is inflicted on a third person who is not guilty of the danger.

V.V.Orekhov believes that in extreme necessity there is at least some share of social utility. So, according to him: "Extreme necessity is such an act of human behavior in which a person can eliminate the danger that threatens legitimate interests only by causing harm to some other interests also protected by law. Being in a state of emergency, a person must choose a variant of his behavior: either allow the realization of

the threatening danger, or eliminate it, but by violating other legitimate interests, by causing them this or that harm. In the latter case, the actions of a person may fully fall under the signs of a crime and, thus, be socially dangerous. However, if they are committed under certain conditions, then their unlawfulness is excluded, and the person is not subject to criminal liability. This decision of the law is justified by the fact that, in the final analysis, less harm is caused to the individual, society and the state than that which could have occurred if measures had not been taken to eliminate (neutralize) the threatening danger. In addition, in this the social utility of extreme necessity is manifested.

In order for an act committed in a state of extreme necessity to be lawful, the conditions of lawfulness are necessary: the conditions of lawfulness relating to the threatening danger and the conditions of the lawfulness of the act to eliminate the threatening danger.

The conditions of legality relating to the imminent danger are:

1) A real threat of imminent danger to the rights and legally protected interests.

Danger does not always have to be socially dangerous. Article 38 of the Criminal Code of the Republic of Uzbekistan speaks only of the elimination of danger, and not of public danger. Thus, the danger can be any and at the same time threaten the personality or rights of this person or other citizens, the interests of society or the state.

The source of danger can be not only human behavior. These can be natural disasters, weather conditions, machine malfunctions, animal behavior, physical or pathological processes of the human body (illness, dehydration, and so on).

2) The presence of danger. "The present danger is understood as one that has arisen, but has not yet ended, or although it has not begun to manifest itself, however, has created a direct threat of damage to legally protected interests. Neither future nor past danger can create a state of emergency. But a state of emergency may also arise immediately before the appearance of a danger to protected interests in the case when its appearance after some time, during which it is impossible to take harmless measures to eliminate it, is inevitable. In this regard, the example of dropping a car from a railway bridge is interesting, over which a train should pass according to the schedule in a minute.

3) Reality (reality) of danger. The danger must exist in reality.

Conditions for the legitimacy of an act to eliminate the threatening danger:

1) Focus on the protection of interests protected by criminal law. This condition implies the presence of objects of protection specified in the Criminal Code.

2) The impossibility of eliminating the danger by other means;

3) Causing harm to third parties;

4) The absence of exceeding the limits of extreme necessity, that is, the proportionality of the harm. Exceeding the limits of extreme necessity is the infliction of harm to the rights and legally protected interests, if the danger could be eliminated by other means, or if the harm caused is more significant than the prevented one.

A.B.Sakharov believes that it is necessary to recognize the state of emergency even in the case when the actions taken to prevent danger did not achieve their

goal and harm occurred, despite the efforts of a person who conscientiously expects to prevent it .

We fully agree with his statement, because, as V.N. Kozak, a different solution will not encourage citizens to defend law-protected interests in a state of emergency because of the fear that in case of failure they will have to bear responsibility for this .

In Germany, the institution of extreme necessity does not apply if the person himself created the danger or was in a special legal relationship with the person who created the danger.

Exceeding the limits of extreme necessity on the basis of the absence of the condition for compelling the act is characterized by guilt in the form of intent or negligence, that is, when the person was aware or, due to the circumstances of the case, should have been aware of the possibility of eliminating the danger in a way not related to causing harm. In this case, the deed is subject to qualification as an appropriate intentional or reckless crime with reference to part 3 of Article 38 of the Criminal Code, that is, as committed in excess of the limits of extreme necessity .

Summarizing the above, we can distinguish between urgent necessity and necessary defense:

- 1) The purpose of extreme necessity is to eliminate the danger that threatened the person or rights of this person or other citizens, the interests of society or the state;
- 2) In case of emergency, the source of danger is not only human behavior;
- 3) In case of emergency, harm is caused to third parties;

4) In case of emergency, the harm is always less than that prevented;

5) An emergency is excluded if the elimination of the danger was possible without causing harm;

According to Article 988 of the Civil Code of the Republic of Uzbekistan: "Damage caused in a state of emergency, that is, to eliminate the danger that threatens the inflictor of harm himself or other persons, if this danger under these circumstances could not be eliminated by other means, must be compensated by the person who caused harm, except as provided by law.

Taking into account the circumstances under which such damage was caused, the court may impose the obligation to compensate for it on a third person in whose interests the person who caused the damage acted, or release from compensation for damage in full or in part both this third person and».

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