

Секция «Английский язык и право (на английском языке)»

On improvement of the institute of self-defense in the Criminal Legislation of the Russian Federation.

Махмудова Зарина Магомедовна

Студент (бакалавр)

Российская правовая академия МЮ РФ, Северо-Кавказский филиал, Махачкала, Россия

E-mail: Mahmudova.Zarina1996@mail.ru

Self-defense as a criminal defense, is a legitimate human behavior, resorting to protect rights by encroaching harm. The level and dynamics of crime in Russia is steadily growing. Such types of crimes as kidnapping, hostage-taking have not occurred in our country before or have been extremely rare. The number of assassinations is increasing, and most part of it is not solved by law enforcement agencies. Article 37 of the Criminal Code is devoted to the regulation of this institution [1]. This article formulates exceeding the limits of self-defense as "deliberate actions that are not consistent with the nature and the risk of abuse."

We should agree with K.I. Popov, that this situation is not entirely accurate. The fact is, that self-defense is defined in the law not as an action but as causing harm to an attacker. In Part 2 of Art. 37 of the Criminal Code it is defined as "deliberate actions". However, no actions themselves can not be recognized as excessive force if they did not cause harm to an attacker [2]. It is more correct to speak of intentionally causing harm, which is clearly not consistent with the nature and the risk of abuse. But in our view, it is not a complete definition of exceeding the limits of necessary defense. The situation of protection is determined by real possibilities and means of defender to repel an attack without inflicting grave harm to an encroach. The nature of this situation depends on the actual balance of forces, capabilities and resources of a defending and encroaching person [3]. It happens so that the defender has a clear superiority in strength over the encroaching and realizes this fact. In such a situation, for effective protection, he doesn't need to cause an attacker serious bodily injury. For example, it is quite sufficient to strike blows, beatings, to cause minor or moderate injury to the health of an encroaching [4].

It is also necessary to emphasize the fact that there is a serious problem in the investigative and judicial practice, when qualifying actions of a person who uses a firearm within the defense. In most cases, such persons are condemned for exceeding the limits of necessary defense. It would be better to develop such weapon¸ which people could use in order to defend themselves. In Russia, there is Kochkin gun shooting metal bullets and forming a shallow wound channel in which the bullet-witness allows to make identification of the weapon.

In the USA, for example, they have developed and use a highly effective, electroshock device «Air taser», which shoots two electrodes at the distance of five meters and completely neutralizes for a few minutes even the most aggressive attacker. At the same time, together with electrodes, a large number of small paper numbers is fired and it allows police to identify the fired gun. These small paper numbers can't be collected as they scatter while shooting.

We believe that the use of such weapons on the territory of the Russian Federation will be an effective method of combating crime. Summarizing above said, we can conclude that the Russian criminal legislation formulates institute of necessary defense in a very narrow framework, requiring abide the terms of legality relating to the both - the infringement and defense. In the norms on self-defense there is an estimated category at which the right to determine the proportionality of protection and encroachment is given to the discretion of court.

A defender must fulfill the conditions provided for self-defense, in order not to violate the principle of proportionality. The definition of such conditions is very difficult even for specialists, in its turn, it leads to numerous miscarriages of justice and unjustified condemnation of persons

who commit an act of self-defense. Therefore, the rules of law governing this institution, need to be improved and more precise wording.

Источники и литература

- 1) Criminal Code of the Russian Federation.
- 2) Попов К.И. Concept and legal nature of excess of limits of self-defense.
- 3) Antonov F.B. An urgent need in Criminal Law.
- 4) Tagantsev N.S. The Russian Criminal Law.