dr. Ákos Ujvári

THEORETICAL AND PRACTICAL QUESTIONS OF JUSTIFIED DEFENCE

Theses for doctoral dissertation

Director of studies: Professor Dr. Imre Békés

Pázmány Péter Catholic University, Faculty of Law and Political Sciences
Doctoral School

Budapest, 2008.

Introduction, the determined research project

Theoretical and practical questions of justified defence belong to the evergreen areas of punitive law. There isn't any social order, in which the justified self-defence of the individual – without the intervention of the state – is not regulated.
The question of disposition-like defence tolerated by the law has come to the fore of the criminalists' and social interest after the regime change. During the transition to the constitutional state, without changing the earlier provisions related to the justified defence, the judgment of the legal institution by the jurisprudence has undergone considerable changes in the judicial custom.
It is well perceivable that Paragraph 29 of Act IV/1978 adapted to the new circumstances very well. In 1989-90, not only our legal order surrounding the text of the act on justified defence has undergone significant changes, but the past nearly twenty years have brought paradigmatic changes to the legal thinking as well. Provisions set out in Paragraph 29 of Btk (Criminal Code) have adapted to the changed social conditions and have become adequate for the expression of significantly different content without legislative intervention.

I hope that with my dissertation I will be able to prove that theoretical and practical problems related to the judgment of justified defence are basically not resulted by the faulty nature of the current regulation. As a consequence, responses to the challenges around the legal institution are not or not exclusively legislative ones.

Since the changes passing off in the dogmatics of the punitive law are not the result of the internal self-movement of the dogmatics, but the social transformations – such as the change of moral approach, achievements of the natural sciences, etc. – are behind the changes observed in the meaning of concepts,[1] it is easily conceivable that besides the current regulation of justified defence, the law enforcement will be able to adequately respond to the present and future challenges with the dogmatic solutions fed by jurisprudence and enforced by the practice.

[1] Békés Imre: A büntetőjogi dogmatikáról (Budapest, 1968.)

Significant issues are qualified as legal interpretation problems; in such cases – instead of amending laws – the judicial practice must be influenced with the help of the theoretical assistance provided by the science and of the proven methods of dogmatic thinking.

Investigating the issues of justified defence I have tried to accentuate that following the regime change, the problems arising during the practical application of this legal institution are not the result of legislative omission, but of the lack of the started but unfinished shift of dogmatic and interpretation attitude. In the meantime, legislative intervention is also required at some points.

Research methodology

A have aimed at exploring the interrelations between the theoretical and practical issues and at the resolution of the rising problems. In doing so – in addition to the legal literature and processing the results of the juridical practice, I also utilized the provisions of the individual criminal codes belonging to the continental legal systems. An international outlook – through the theoretical level regulation of the justified defence – can provide ammunition for the legislation and may also have a productive influence on the dogmatic solutions tat can be transferred to judicial practice.

With respect to their relevant components, there is no significant difference between the legal provisions replacing each other from 1878 up to the present day. The similarity of the regulations allows us to refer to monographies, statements of legal literature or court decisions related to the Csemegi Codex or the Act V/1961, also from the aspect that they can be able to form the legal practice also under the presently effective regulation.
In this paper, chapters and contextures related to legal history are not merely descriptive, but they also reflect to the present situation – legal theses or positions of literature that are currently being enforced.

In the course of legal comparison carried out to take in the dogmatic solutions I saw expedient to analyze only Criminal Codes of the continental legal systems, due to the legal culture of our country.
Based on the distinctions made in the work of Konrad Zweigert and Hein Kötz: An introduction to comparative law (1977. translated from the German: Tony Weir, cf.: pages 59 to 67 of the work cited), the Hungarian legal system can basically be classified to the Roman-German law

family. According to this, I excluded from the scope of the analyzed Criminal Codes the products of the Slavic and common law based legal cultures, in order to ensure a relatively homogeneous basis for comparison.
I compared the provisions of the Codes with the Hungarian regulations and the legal theses of our judicial practice, as well as with the statements of the legal literature.

I also tried to explore the internal conflicts of the judicial practice with the help of dogmatics as method of legal logic.

Brief summary of the research findings, conclusions

Following the introduction, the theses consist of 18 chapters.

The chapter *Historic background* provides a summary overview of the justified defence from the Roman law up to our time.

Under the title *Theoretical and practical questions of justified defence in the light of the regulation of several European Criminal Codes – legal comparison* I analyze the provisions related to the justified defence of nine European Codes – belonging to the continental legal system – in the light of the Hungarian legal and dogmatic solutions.
Codification of the new Criminal Code briefly outlines the milestones of the legislative process since 2001, analyzing the legal policy objectives and scientific views the draft texts are based upon.

An action committed as justified defence is without material illicitness (dangerousness to the society), therefore such behavior is not punishable. Since the lack of illicitness is a cardinal issue in case of justified defence, I considered necessary to analyze the issue of illicitness on a more detailed level.
In the chapter *Discussion on the dangerousness to the society* I outline the discussion flaming out again in connection with the preparation of the new Criminal Code between the supporters of the formal and material criminal act, while formulating my own standpoint, as well.

The chapter *Basic concepts of justified defence* reviews and defines the dogmatic vocabulary of the legal institutions.

Under the title *Issues of drawing the border between justified defence and distress* I address theoretical and practical problems – "closely related" – arising in the intersection points of reasons excluding criminal responsibility.

The chapter *General issues of necessity and proportionality* addresses only the most basic issues related to the title, because this "main issue" has a number of subsections requiring and answer and worth an individual chapter in my paper under the head-words *Transgressing justified defence,*
Transgression in time: Making distinction between voluntary manslaughter and acts of homicide pursuant to Articles (2) and (3), Paragraph 29,
"Abetment" for justified defence (additional nature – principle of individual criminal liability),
Evasion (escape) obligation.

The chapter *Issues of provocation and mutual violence – assault against public interest* seeks the answer to the issue, in which cases both parties stand on the ground of illicitness. I will also demonstrate why it is necessary to keep public interest in the law as a legal object.

In the chapter *Alleged justified protection* I will present the interconnections between justified defence and mistake.

The chapter *Relationship between justified defence and the tools of equipment* analyzes how and using what tools can a person – finding himself in a justified defence position later – prepare himself later for a potentially illicit assault.

Under the title *Justified defence against the actions of officials* I will address the interconnections between the use of weapon by persons serving in the armed forces and the justified defence.

The chapter *Timeliness of the justified defence, stadiumic assessment of the unjustified assault* analyzes the issues arising at the meeting point of the "private arrestation right" and the justified defence regulated in Be, with the help of stadiumic concept pair of fullness-accomplishedness.

The chapter *Justified protection of property and the requirement of proportionality* analyzes the problem of relativity, the tension coming from the dissimilitude of opposed legal objects.

In the chapter *Proportionality – Constitutionality* I will analyze the constitutional criminal law implications of the issue of proportionality.

As a result of my research, I have become to the following – compressed and summarized - conclusions.

We may either maintain or discard the ***evasion (escape) obligation,*** one thing is for sure: this must be include in the text of the law.
Principle of the nullum crimen sine lege and the nulla poena sine lege implicitly includes 4 prohibitions.[2]

1. Prohibition of the retrospective effect of the more severe punitive provision (praevia)
2. Prohibition of the indefinite punitive act (certa)
3. Prohibition of the common law, judge-made law establishing punishability (scripta)
4. Prohibition of the sharpening analogy (stricta)

This means that the judge-made law broadening the liability is in conflict with the constitutional prohibition of the judge-made law constituting punishability.

The current situation is unconstitutional, because the Guideline 15 of the Supreme Court narrows the scope of a circumstance excluding criminal liability without legal authorization. By doing so it constitutes criminal liability also for situations removed by the legislator from criminalization, when writing the normative text excluding the liability.
If we intend to maintain the evasion obligation, then the legal item introduced by the judicial practice must be standardized to the level of law.

Considering the fact that the evasion obligation – although with content changing from time to time – has been enforced in the legal practice for an extended period of time, for the sake of unequivocal regulation its "dethronement" must be directly stated, when it is potentially discarded (Latvian and Estonian Criminal Codes).

[2] Vö.: Nagy Ferenc: A nullum crimen sine lege, és a nulla poena sine lege alapelvről (Magyar Jog 1995/5. 257-270.o.)

My additional remarks within the scope of legislative competence are not aiming at reforming, but conserving the currently effective wording, based on the latest codification models.

The concept of *public interest* is to be maintained.

Recommended solutions reasoning for the liquidation of public interest ignore the life situation serving as basis also for 4/2007.BJE. A situation may come up – mainly when committing truculence – that the legal basis for the action against the unjustified attacker committing the criminal act is the protection and restoration of the public order. In such cases, the person committing the factual criminal action against the public order is not necessarily commits an attack against a person or property that would in itself be basis for justified defence.

The concept of *proportionality* is to be discarded.

In case of defence against unjustified attacks against public interest or property, when physical injury occurs, the criterion of proportionality hogtying he person defending himself.
Due to their heterogeneous nature, the objects opposed to each other are not comparable. Expectation of certain level of proportionality is hidden in the concept of necessity, but this cannot be identified as the deliberately measured proportionality standard.
The person committing the unjustified attack – because of the possibility of initiating and planning the attack – has an advantage against the attacked person. The law must grant the opportunity to the person defending himself at least the protection of the normative text to compensate for this disadvantage. The category of proportionality is a purely objective criterion and can only be determined by posterior consideration of the consequences of the actions opposed to each other in a case of justified defence, while the person defending himself must in almost all cases act in a tense excitement. The legal practice also seems to draw away from the concept of objectively applied proportionality; several concrete court decision states that in the course of determining the proportionality, the intended consequences of the unjustified attacker and the person defending himself must be compared to each other.

In addition to the objective category of proportionality, the judicial practice also attaches significance to the so-called intention of defence. This is very essentially expressed by the item incorporated in Guideline 15 (III.1.) – also mentioned by Lajos Degré - i.e. the evasion of the attack – as an objective – determined the limit of justified defence. *This principle ensures that this legal institution does not become a means of retaliation.*

The judicial practice attributing relevance to the intention of defence excludes the inadvertent consequences of the evasive behavior from the scope of proportionality. When investigating the proportionality of the unjustified attack and the evasion, the court compares the intended consequences of the attack and the defence (BH 2003/50.).

It is perceivable that the requirement of the objectively interpreted proportionality and the relevance of the intention of defence is not harmonized in the legal practice.

In case of proportionality, the injury objectively suffered by the attacking person has relevance, while the inadvertent consequences of evasion should be ignored; this way the intended injury could have relevance instead of the actually suffered injury.

Summary: the requirement of the objective proportionality – with regard to the relevance of the intention of defence also accepted by the legal practice – does not comply with the internal legalities of the judicial practice, either.

In the grip of these principles, instead of the proportionality concept currently enforced (described in Guideline 15), the following could only be stated: the person in the justified defence situation may cause disproportionately more severe injury than the injury that would have been caused by the unjustified attack, if this additional injury caused only by inadvertent guilt, but no deliberateness can be identified. At the same time, despite the objective proportionality perceived in the external world, the defence qualifies as disproportionate, in the case of which – based on the intention of the person defending himself – attempt of a disproportionately severe criminal action can be identified in comparison with the unjustified attack.

From legal interpretation and theoretical points of view I consider the concept of proportionality to be discarded. However, when analyzing the legal practice, I am based on the fact that the judicial practice

acknowledges the requirement of proportionality. Because of this, I attempt to criticize this criterion through the proprietary contradictions of the judicial practice.

Considerable part of the Codes belonging to the continental legislative systems (German, Swedish, Finnish, Danish criminal codes) are unfamiliar with the terminology of proportionality; they are of the opinion that the regulation of the justified defence can as well be resolved without this concept.

Following the analysis of the provisions set out in the foreign Codes, my initial conviction has been reinforced.

Also according to the Danish example to be followed from the legal interpretation point of view, the monetary value of the opposing interests is only one of the measures of the action committed in a justified defence situation.

13.§. (1) An action committed in a justified defence situation is not punishable, if that action was necessary to evade an attack already in progress or about to be started, provided that the action – considering the danger of the attack, the attacker and the significance of the endangered interests – does not qualify as an explicit transgression.
(2) The person transgressing the limit of justified defence out of justified fear or shock, can not be punished.
(3) The above provisions are applicable to arresting or preventing the legally arrested person from escaping.

The Danish Code describes the essence of this legal institution using a very helpful terminology. The necessity of the evasion, as well as the relation between the necessity and the transgression is determined by the *danger of the attack.*
A conclusion as to the danger of the attack can also be drawn from the analysis of the two additional criteria listed in Article (1) (characteristics of the attacker, significance of the endangered interests).
The necessity of evasion, as a basic condition, can be incorporated into the category of “danger of the attack”, which is determined in a broader sense by the attributes of the attacker and the person defending himself, the endangered interests and the extent of the injury that may be suffered in case if the attack is realized.
This solution is more adequate to regulate non-schematic life situations serving as basis for justified defence, than the criterion of formal proportionality reflecting a simplified approach.

By the improvement of the judicial practice based on Paragraph 29 of the Civil Code – taking into considering the direction of the movement of the judicial practice – the arising problems can be remedied. I think, however that the judicial practice also required legislative support via the improvement of the already used legal theses.

It is an axiom serving as basis for the regulation concept of the justified defence that the attacked person evades a prohibited criminal action, and this activity of the attacked person is of public interest.
Formally disposition-like action of the person defending himself is "twofold legal", because he acts to protect himself or somebody else, and parallel to this he necessarily defends the entire society.
Another evidence: if we do not reinforce or even weaken the position of the attacked person – starting off anyway from a disadvantageous situation due to his unpreparedness or moral objections – with the use of an inadequate terminology, we inevitably provide a momentum to the attacker.
With the help of the legal regulation and the judicial practice, the person acting lawfully in a defence situation must be brought to at least an equally advantageous situation as the attacker.

Ad.1. Proportionality – the necessity of defense

The conditions of acting in a justified defence situation must be adapted to the aspects that can generally be considered by the person in a defence situation. In most cases, the comparison of the injury caused by the defensive action and the injury that is or can be caused by the unjustified attack is only possible after posterior consideration, which means that it cannot be considered in advance by the lawfully acting person.
For this reason, too – in addition to the arguments detailed earlier – we do not have to insist on the category of proportionality.
The legal system must not determine higher requirements for the person lawfully defending himself, than for the person committing an illegal action.

The premise that the unjustifiably attacking person should be protected cannot be derived from the regulation applicable to the justified defence, neither from other basic theses.

The only legal criteria applicable to the benefit of the unjustifiably attacking person are the ones protecting his life – except for assaults on life – in all cases, while his physical safety should only be protected against misused "justified" defence actions.

If the person in justified defence situation is not driven by retaliation or revenge, when choosing the tools of defence against the attacker – i.e. he is fully intend to defend himself – than he can defend himself within the boundaries necessary to defend himself.

In the meantime, with regard to certain considerations, I also have to admit the justification of criminal policy objectives behind the requirement of proportionality.
Property rights are on the bottom of the hierarchy of values protected by the Constitution. The reason for this is that the rights related to the property can be exactly expressed in money (naturally, there are exceptions in this case, too: invaluable works of art, national relics, etc.), which means that they can be repaired when injured. It is understandable that due to the replaceable nature of individual assets, from social point of view, the proportionality – that cannot be required due to the heterogeneous nature of legal objects – should be required in cases of assaults against property.

Contradictions of the legal policy objectives and the legal terminology expressing them are well demonstrated by the fact that while the rights related to the protection of life and physical safety are on the top of the hierarchy of basic rights, still in case of assaults against these rights, the enforceability of proportionality and the application of stricter standards against the person defending himself cannot be conceptually excluded.

Ad. 2. Relevance of the intention of defence

The relevance of the intention of defence and the resulting consequences should be raised to the legal level based on the legal thesis already applied in the practice, similarly to the Latvian and Estonian regulation.

Timely end-point of unjustified attack

According to my standpoint, the protection provided by justified defence should cover the person continuously and uninterruptedly pursuing the

doer of a completed assault against property, because *the assault against the legal object to be protected is not finished – neither from dogmatic nor from general life experience points of view – until the opportunity of undisturbed possession by the owner is not reached (stadium of completeness).*

Pursuant to the resolution BH 1997/512 of the Supreme Court: from the point of view of identifying the justified defence situation, also the passive behavior on behalf of the injured party aiming at further maintenance of the illicit status can be included in the concept of unjustified assault. If the persons kidnapped by armed persons defend themselves by killing the persons kidnapping them, verdict of acquittal is in place under the title of justified defence.

My opinion is that the dogmatic construction resolving the above situation with the help of stadiumic concept pair of fullness-accomplishedness would be more appropriate.
In addition to the establishment of the illicit condition and communicating it to the addressee, the criminal act of kidnapping is completed, but the action is deemed accomplished only when the illegal condition – i.e. the assault against the legal object – is terminated. In turn, the justified defence situation remains in place until the assault against the legal object is in progress. This means that the kidnapped persons are entitled to defend themselves against the unjustified assault within the framework determined by Article (1), Paragraph 29 of the Criminal Code for the entire duration of their captivity.

Analyzing the issue from another point of view, I also disagree with the practice that we only consider acceptable only the arrestation right regulated by the Be. in case of the “fugitive thief”.
Enforcement of the above would mean narrowing the extent of time excess (praetextus), the augmentation of the justified defence opportunity compared to the current practice; in fact it would only result in the return to the conventional interpretation of the legal institution.

Tools of defence

Extension of the applicability of justified defence compared to the present legal practice – or more accurately its adequate interpretation from dogmatic point of view, returning to the original legal interpretation conventions – would make criminal actions a risky business.

In this case, the social benefit identified by Löffler as *educative and generally preventive function of justified defence* can actually be enforced, i.e. if this legal institution is adequately applied by the judicial practice, and the members of the society are aware of this, then the institution of justified defence can play a distinguished role in crime prevention, because the unlawful attacker might be held back by firm defence supported by the law.[3]

Justified defence exercised via the use of the tools of defence *has no additional conditions stipulated by the law* in comparison with the generally exercised justified defence.

Excluding justified defence *with reference to the remote danger of the attack* can in the given case be correct from dogmatic point of view. On the other hand, rejection of the justified defence with reference to the remote danger of the attack must under any circumstances be discarded in case, if the actions of the given person are only directed at *the preparation against attacks that may threaten him later.*

If the attacked person later finding himself in a justified defence situation was earlier unable to prepare for the defence, he will be unable to *exercise his options provided by the law* when actually attacked and finding himself in an actual justified defence situation, therefore he will be unable to evade the attack.

I don't see any problem in a situation, when a person protecting himself and his property makes preparation to defend himself against a highly probable attack taking place at a later time, when the risk of such attack is not yet immediate. With this behavior this person establishes the real opportunity for a later justified (under direct threat) defence. *He will use force against violence only in case,* if the behavior of the unauthorized person – at least – *reaches the stadium of direct threat of unjustified attack.*
This way of thinking is in full harmony with the opinion of Pál Angyal regarding the tools of defence: *"An automatic tool of defence – so-called Selbstgeschoss, e.g.: automatic weapon, trap, snare – if the attack itself triggers its operation: defends against the direct attack."*[4]

[3]Degré Lajos: Jogos védelem az anyagi büntetôjogban (Budapest 1910) 519.o.

[4] Angyal Pál: A Magyar Büntetőjog Tankönyve, Budapest, 1943. 36.o.

The complexity of the issue includes that the tools of defence (current in the door-handle; traps, etc.) may also injure or jeopardize the life or physical safety of innocent people as well. This is quite true. However, using the words of Székely: ”let’s not build the main rule on the exception!” It would be a mistake to interpret the regulation fitting for the exceptions for the typical cases, too. *It would be a mistake to ab ovo discard the option of justified defence against unjustified attackers with reference to the protection of innocent people.*

According to my opinion we should assess separately the situation, when the tool of defence injures or jeopardizes the life or physical health of the *criminal directly threatening with unjustified attack* (in this case the issue of justified defence may arise) from the situation, when the injury is suffered by an innocent person (in this case, the issue of justified defence naturally does not apply). The current *judicial practice* does not attach importance to this evidence, does not separate the two above situations and *ab ovo excludes the possibility of justified defence in both cases.*

The legal practice enforced by the Supreme Court – with respect to this topic – interprets the options provided by Paragraph 29 of the Criminal Code in a restrictive manner.

Publications of the Author published during his research *(those related to the topic of the theses are in italic typeset)*

Adalékok a jogos védelem és a védelmi berendezések viszonyának értelmezéséhez (Jogelméleti Szemle, 2002/1.)

Hagyományok és változások a jogos védelem elvi és gyakorlati megítélésében (Magyar Jog, 2002/6. 339-345.o.)

Gondolatok a társadalomra veszélyesség (materiális jogellenesség) jövőbeli jogi sorsáról (Jogelméleti Szemle, 2003/1.)

Rövid reflexió Hollán Mikós: Megkésett búcsú a társadalomra veszélyességtől című tanulmányához (Jogelméleti Szemle 2004/4.)

A jogos védelem elvi és gyakorlati kérdései néhány európai Büntető Törvénykönyv szabályozásának tükrében (Jogelméleti Szemle 2005/2.)

Hazánk büntetéskiszabási gyakorlatának sajátosságai (IAS PPKE-JÁK jogtudományi folyóirat 2006/1-2)

Az élethez való jog és a jogos védelem összefüggései (IAS PPKE-JÁK jogtudományi folyóirat 2006/1-2)

Csépai Balázs társszerzővel: A versenyt korlátozó megállapodás közbeszerzési és koncessziós eljárásban való büntethetőségének kérdésköre (Jogtudományi Közlöny2006/6)

A tevékeny megbánás – közvetítői eljárás aktuális anyagi jogi és eljárásjogi kérdései
(Ügyvédek Lapja 2008/1)

A jogos védelem határai vagyon elleni támadások esetén (Emlékkönyv Lábady Tamás 60. születésnapjára 2004.)

A társadalomra veszélyesség (materiális jogellenesség) hiányának jogalkalmazói értékeléséről (Tanulmánykötet Erdősy Emil professzor részére, Pécs 2005.)

Sportjogi Ismeretek, Büntetőjog Általános Rész 175-190.o. (Semmelweis Egyetem Sporttudományi Kar egyetemi jegyzet, szerk.: Dr. Nemes András, Budapest, 2002.)

Literature

András Jakab – Miklós Hollán: Überreste sozialistischen Rechts (Jahrbuch für Ostrecht, 13-40.o. Institut für Ostrecht München, Verlag C.H. Beck München 2005.),

Andrew Ashworth: Principles of criminal law (Oxford 1991.)

Angyal Pál: A magyar büntetôjog tankönyve (Budapest, 1909. Atheneum).

Angyal Pál: A Magyar Büntetőjog Tankönyve, (Budapest, 1943. Grill)

Az 1978. évi IV. törvény (Btk.) előkészítése, Igazságügyi Minisztérium szerk.: dr.László Jenő

Bárándy György: Jogos védelem – segítségnyújtás elmulasztása, a jogos védelmi helyzettel kapcsolatos tévedés (Magyar Jog, 1975/11. 653-656.)

Bárd Károly-Gellér Balázs-Ligeti Katalin-Margitán Éva-Wiener A. Imre: Büntetőjog Általános Rész (Budapest, 2003. KJK.)

Békés Imre: A büntetőjogi dogmatikáról (Budapest, 1968. MTA)

Békés Imre: A jogállami büntetőjog bűncselekménytani alapjai (Nyugat-Európai hatások a magyar jogrendszer fejlődésében Budapest, 1994.)

Békés Imre: Dogmatika és büntetőpolitika (Jogtudományi Közlöny 1986/12.)

Békés Imre: Gondatlanság a büntetőjogban (Budapest, 1974. KJK.)
Békés-Bihari-Király-Schlett-Varga-Vékás: Szakvélemény (Társadalmi Szemle 1/1992. 70-76.)

Belovics Ervin: Gondolatok a jogos védelem körében kifejthető védelmi cselekményről (Rendészeti Szemle 2007/7-8. 117-124.)

Belovics Ervin-Békés Imre-Busch Béla-Molnár Gábor-Sinku Pál-Tóth Mihály, szerk.:
Békés Imre: Büntetőjog Általános Rész (Budapest, 2002. HVG ORAC)
Berkes György: A büntetőjogi felelősség feltételei (Büntetőjogi Kodifikáció 2002/3.25-27.)

Berkes György: A társadalomra veszélyesség hiányának büntetőjogi értékelése (Magyar Jog 1999/12. 730-731.)
Bibó István: Etika és büntetőjog (Budapest, 1938. MTA)

Bodrogi Károly: A büntetőjogilag releváns támadás fogalma (Magyar Jog 1971/5. 263-265.)

Borai Ákos: A privátszféra védelme-elektromos árammal! (Ügyvédek Lapja, 1994/3. 31-40.)

Büntetőjogi Döntvénytár szerk.: dr.Balogh Jenő (Budapest, 1908.)
Büntetőjogi és Rendészeti Kodifikációs Főosztály IM/BÜNT/2006/446 (Budapest,2006.október)

Büntetőjogi Kodifikáció 2007/1. Törvénytervezet a Büntető Törvénykönyvről

C. Beccaria: A bűnökről és a büntetésekről (1764.) (Budapest, 1998. MTA)

Carrara: A büntető jogtudomány programja (Budapest, 1878.)

Degré Lajos: A jogos védelem az anyagi büntetôjogban (Budapest 1910)

Edvi Illés Károly – Degré Miklós: A Magyar Büntetőtörvények zsebkönyve

(Budapest,1924. Révai Testvérek Irod. Intézete)

Edvi Illés Károly: A büntetőtörvénykönyv magyarázata (Budapest, 1894.)

Edvi Illés Károly: A Magyar Büntetőtörvények Zsebkönyve (Budapest, 1912.)
Erdősy Emil: Megjegyzések a hazai bűncselekmény-koncepcióhoz (Emlékkönyv Ferencz Zoltán egyetemi adjunktus halálának 20. évfordulójára 2004.)
Farkas Ákos: A falra akasztott nádpálca avagy a büntető igazságszolgáltatás hatékonyságának korlátai (Budapest, 2002. Osiris)

Fayer László: A magyar büntetőjog kézikönyve (Budapest, 1910.)

Fedor Attila: Gondolatok a jogos védelemről (Magyar Jog 1975/12. 722-723.)

Finkey Ferenc: A Magyar Büntetôjog Tankönyve (Budapest, 1914. Grill)

Földesi Tamás: Gondolatok a társadalmi veszélyesség kategóriájának büntetőjogi szükségességéről (Belügyi Szemle 2003/11-12. 117-120.)
Földvári József: A bűncselekmény fogalmáról - de lege ferenda (Magyar Jog 1999/1. 2-5.)
Földvári József: Magyar Büntetôjog Általános rész (Budapest,1997. Osiris)

Gellér Balázs: Rendszerváltás a büntetőjog általános részében (Állam-, és Jogtudomány XXXVIII./3-4. 339-353.)

Gerőcz Kálmán: A büntetőjogi végszükség (Budapest, 1914. Grill)

Györgyi Kálmán: Büntetések és intézkedések (Budapest,1984. KJK)

Hollán Miklós: Megkésett búcsú a társadalomra veszélyességtől (Jogelméleti Szemle 4/2/2003. www.jesz.ajk.elte.hu)
Heller Erik: Anyagi jogellenesség és büntetőjogi reform (Budapest, 1938. Grill)
Jakab András – Hollán Miklós: A szocializmus jogdogmatikai hagyatéka (Jogelméleti Szemle 4/3/2003.)

Juhász Endre – Garajszki Ferenc: Indokolt-e a jogos védelem szabályozásának reformja (Magyar Jog 1971/10. 606-609.)

Király Tibor: Elvek és kivételek a büntetőjogban és a büntető eljárásban (Jogtudományi Közlöny 1982/10. 749-754.)

Kondorosi Ferenc: A büntetőjogi jogalkotás feladatai (Magyar Jog 2007/10. 573-580.)

Konrad Zweigert és Hein Kötz: An introduction to comparative law (1977. translated from the German: Tony Weir)

Kónyáné Kutrucz Katalin: Szükséges-e az arányosság a jogos védelemhez (Magyar Jog 1985/10. 865-871.)

Kormos Erzsébet: Jogos védelem vagyon elleni támadás esetén (Ügyészek Lapja, 1/2000. 5-17.)
Kurt Seelmann: Strafrecht Allgemeiner Teil (Basel-Genf- München 2005. Helbling&Lichtenhahn)

Nagy Ferenc: A bűncselekmény törvényi fogalmáról jogösszehasonlító kitekintéssel (Büntetőjogi Kodifikáció 2001/1. 7-10.)

Nagy Ferenc: A büntethetőségi akadályok szabályozása az új büntető törvénykönyvben, különös tekintettel a jogellenességet kizáró okokra (Büntetőjogi Kodifikáció 2001/1. 26-33.)

Nagy Ferenc: A nullum crimen sine lege, és a nulla poena sine lege alapelvről (Magyar Jog 1995/5. 257-270.)

Nagy Ferenc: Gondolatok a jogos védelemről (Európai Jog 2004/4. 4-12.)
Nagy Ferenc-Tokaji Géza: A Magyar Büntetôjog Általános Része (Budapest, 1998. Korona)

Pázsit Veronika: Tájékoztató a kodifikációs bizottság üléséről (Büntetőjogi Kodifikáció 2001/2. szám 2-10.)

Peter Noll: Schweizerisches Strafrecht Allgemeiner Teil I. Allgemeine Voraussetzungen der Strafbarkeit (Schulthess Polygraphischer Verlag 1981.Zürich)

Pokol Béla: Büntetőjogdogmatika – történeti elemzések (Jogelméleti Szemle 2007/3.)

Pólay Elemér: A római jogászok gondolkodásmódja, (Budapest, 1988. Nemzeti Tankönyvkiadó)

Rácz György: Jogos védelem – az állam érdekében (Szeged, 1937.)

Rudolf von Jhering: Küzdelem a jogért (In.:Jog és Filozófia Budapest, 1998.Osiris 1-22. szerkesztette: Varga Csaba)
Sajó András: A büntetés költségszemléletű megközelítése (Belügyi Szemle 2003/11-12, 35-50.)

Schultheisz Emil: A bűncselekmény tana (Debrecen, 1948. Debreceni Tudományegyetem)

Simon Herbert: Korlátozott racionalitás (Budapest,1982.)

Sólyom László: 23/1990. (X.31) AB határozathoz fûzôtt párhuzamos véleménye
Szabó András: Alkotmány és büntetőjog (Jogtudományi Közlöny, 1999/4. 125-141.)
Székely János: A jogos védelmi helyzet (Magyar Jog 1971/10. 609-612.)

Székely János: A jogos védelem (doktori értekezés; Budapest, 1971. MTA)

Székely János: A jogtalanság talaja (Magyar Jog 1996/11. 702-704.)
Székely János: Egy betöltésre váró joghézag (Magyar Jog, 1994/3. 163-165.)

Székely János: Jogos védelem (Budapest,1983. IM tanulmánykötet)
Tokaji Géza: A bûncselekménytan alapjai a magyar büntetôjogban (Budapest, 1984. KJK.)

Tóth Mihály: Néhány gondolat Irk Albertnek a bűncselekmény „jogellenességéről" megfogalmazott nézetei ürügyén (Emlékkönyv Irk Albert egyetemi tanár születésének 120. évfordulójára 2004. 185-192.)

Varga Csaba (szerk.): Jog és filozófia (Budapest,1998. Osiris)

Varga Csaba: A jog társadalomelmélete felé (Budapest,1999. Osiris)

Varga Csaba (szerk.): Szövegek a jogi gondolkodás paradigmáinak tanulmányozásához (Budapest, 1996. Osiris)

Varga Csaba: Előadások a jogi gondolkodás paradigmáiról (Budapest,1996. Osiris)

Viski László: Tézisek a bűncselekményfogalom felépítéséhez (Állam- és Jogtudomány 1974/3. 370-385.)

Wiener A. Imre (szerk.): Büntetendőség büntethetőség (Budapest, 1999. MTA)
Wiener A. Imre: A Büntető Törvénykönyv Általános Része de lege ferenda (Budapest 2003. MTA)

Wiener A. Imre: Az átmenet büntetőjogának dogmatikája és filozófiája (Állam- és Jogtudomány 1999/3-4. 205-226.)

Wiener A. Imre: Elméleti alapok a büntetőtörvény általános része kodifikálásához (MTA Jogtudományi Intézete, Közlemények Nr. 12., Budapest, 2000.)
Williams L. Glainville: Criminal Law The General Part (London, 1953. Stevens and Sons)

Wlassics Gyula: Büntetőjogi jegyzetek (Budapest, 1892.)

Zlinszky János: Római büntetôjog (Budapest, 1991. Nemzeti Tankönyvkiadó)

COURT DECISIONS

BH 1978/227
BH 1981/215
BH 1981/303
BH 1982/224
BH 1983/261
BH 1983/304
BH 1984/5
BH 1984/84
BH 1985/170
BH 1985/367
BH 1986/169
BH 1987/337
BH 1988/170
BH 1989/467
BH 1989/2

BH 1990/1
BH 1990/367
BH 1992/566
BH 1992/670
BH 1993/75
BH 1993/133
BH 1994/577
BH 1995/140
BH 1995/262
BH 1995/685
BH 1996/70
BH 1996/292
BH 1996/347
BH 1996/350
BH 1996/405
BH 1996/508
BH 1997/321
BH 1997/322
BH 1997/427
BH 1997/428
BH 1997/512
BH 1998/5
BH 1998/158
BH 1998/570
BH 1999/5
BH 1999/434
BH 2000/42
BH 2000/136
BH 2000/238
BH 2000/522
BH 2002/42
BH 2002/212
BH 2003/50
BH 2003/140
BH 2003/394
BH 2004/91
BH 2004/92
BH 2005/308
BH 2006/1