

UDC 343

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## **EXCEEDING THE LIMITS OF SELF-DEFENCE (ANALYSIS OF THE SUPREME COURT DECISION)**

**Summary.** *The article will discuss the decision of the Supreme Court of Georgia, which reclassified the act from Article 117 of the Criminal Code of Georgia to Article 122 of the Criminal Code of Georgia. In the article, we will analyse the correctness of the judicial decision, critically evaluate the arguments on the basis of which the court assessed the act as a crime committed by exceeding the self-defence limits. In the article, we will discuss in detail the content of exceeding the self-defence limits, which will allow us to critically assess the correctness of the decision made by the court.*

**Key words:** *self-defence, exceeding the self-defence limits, proportionality, harm to health.*

### **1. The Factual Circumstances of the Case.**

Having studied the factual circumstances of the case, a reviewing Chamber found that a verbal confrontation took place between the young people, which turned into a fight, as a result of which one young man was seriously injured, and another was punched, which caused physical pain. The reviewing Chamber also found that the evidence presented in the case undoubtedly prove that one person (the accused) was beaten by several young men at the same time, which is

confirmed by the injuries inflicted on him, for which there is also a medical report. By studying the factual circumstances of the case, it was also established that the accused, in self-defence wielded a knife during a fight, causing serious harm to the health of one of the attackers.

Studying this issue of whether N.B. exceeded the self-defence limits, The Court of Appeals drew attention to the following circumstance: at the time of the attack, no one except N. B. was carrying a knife, any other sharp or highly dangerous weapon. A number of witnesses, including N. B. himself, testified about this fact. It is necessary to take into account the conclusions of the medical examination in the case, which, on the one hand, indicates a slight degree of bodily injury inflicted to N. B., whereas, on the other hand, estimates the damage caused to N. K. as life-threatening. The Court of Appeals considers the use of a cold weapon by N. B. during the attack, in circumstances where none of the participants in the fight had a similar or more dangerous weapon, to be clearly disproportionate to the nature and danger of the attack (disproportionate self-defence). In such circumstances, an appropriate legal qualification must be given to the crime committed by N. B.

Accordingly, the court concludes that, as a result of the analysis of the factual circumstances established by the evidence presented in the case, the reviewing Chamber considers it established that N. B. was in a position of necessary self-defence, although it considered that the means used by him clearly did not correspond to the character and threat of the assault, since the proportionality of the assault and defence, the ratio of interests and the need to use force in self-defence were violated. Therefore, it is obvious that N. B.'s actions show signs of a crime under Article 122 of the Criminal Code of Georgia. Based on all the above, the Court of Appeals cannot agree with the prosecution's request to qualify N. B.'s action under Article 117 of the Criminal Code of Georgia, however,

it believes that the not-guilty verdict of the Tbilisi Court of Appeals of 18 May 2023 must be annulled and the article bringing a charge against N. B. must be reclassified from Article 117 of the Criminal Code of Georgia to Article 122 of the Criminal Code of Georgia [1].

## **2. Analysis of the Court Decision.**

We share the court's decision regarding the exclusion from the defendant's actions of Article 117 of the Criminal Code - Intentional infliction of serious harm to health. As for the reclassification of the action under Article 122 of the Criminal Code, we consider the court's decision to be controversial. Article 28 of the Criminal Law Code of Georgia refers to the self-defence, which is a circumstance precluding wrongfulness, in which case the wrongdoer of legally protected interests is justified and released from criminal liability. Article 28(4) of the Criminal Code of Georgia refers to exceeding the self-defence limits, which is formulated in the Law as follows: „An excessive act of self-defence shall mean an act of the person acting in self-defence that is clearly disproportionate to the character and threat of the assault“ [2]. We are interested in how much the limits of self-defence were exceeded in the case under consideration. To better understand the issue, it is necessary to consider in detail the content of exceeding the limits of self-defence. In order to determine whether there is a clear discrepancy between the nature and danger of defence and attack, various factors are taken into account, for example, the number of attackers and defenders, their weapons, physical strength, location, time, etc. One type of exceeding the limits of self-defence is the so-called „disproportionate excess“ (excess in the means), when the self-defencer uses a means that was not necessary to stop the assault, and causes such severe damage to the violator (attacker) (an obvious discrepancy between legally protected interests) that was not expected by the violation (attack). This is a fundamentally important issue that the court must consider in detail in order to

determine the exceeding of the limits of self-defence. In the theory of criminal law, there is no doubt that, during self-defence, on the one hand, means of protection must be provided to immediately and definitively prevent or at least weaken the violation, and on the other hand, the self-defencer has the right to choose an effective means of protection that causes less harm to his/her own or someone else's legally protected interests. But in case of ineffectiveness of a less harmful remedy, a more severe remedy may be applied, since the self-defencer is not obliged to take risks protecting his/her own or someone else's legally protected interests from violation [3, p. 194-195]. In the literature on criminal law, it is rightly argued that the actions of an armed defender against an unarmed attacker may be considered as the exceeding of the limits of self-defence, but not always [4, p. 498]. O. Gamkrelidze expresses a similar opinion that „the obvious discrepancy between defence and attack does not always mean self-defence against an unarmed attacker with a weapon. At such a moment, the situation must be assessed and based on this, it must be decided whether there is an excess of self-defence“ [5, p. 225]. Similar opinions can be found in the works of B. Jishkariani and N. Songulia [6, p. 70; 7, p. 104]. Considering all of the above, the court's arguments about excess of the limits of self-defence are not convincing, since stating that none of the attackers had a knife or other sharp weapon and the injuries inflicted by N. B. were lighter than those inflicted by N. B., is not enough basis for a categorical statement about exceeding the limits of self-defence. The court had to consider and determine the extent to which N. B. could have stopped the violence against him from the attackers without using a knife, i.e. did he have other, less harmful and effective means to stop violent acts against him by several aggressors? The court itself indicates that the accused brandished a knife in self-defence when he was beaten by several young men. Therefore, the court had to specifically figure out what danger the accused faced from the criminals and what the result might have

been if he had not used a knife. The court had to determine and assess whether N. B. could have stopped the violence by using only physical force while the beating was going on, and what harm it could have caused. Only after an extraordinary investigation of these circumstances the court had to decide whether N. B. exceeded the limits of self-defence.

### **3. Conclusion.**

In summary, it is noteworthy that the court should have paid more attention to and carefully examined the factual circumstances indicating „disproportionate self-defence“. As we mentioned above, only the use of a knife and even the infliction of more serious damage than that inflicted on N. B. himself cannot be considered a „clear incompliance“. Therefore, the court's decision is not entirely convincing in terms of exceeding the limits of self-defence. It is desirable that the decision of the reviewing Court be more reasonable. This is also important that the decision of the reviewing Court has a precedent character and is binding for the lower courts while administrating justice.

### **Literature**

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