

Eötvös Loránd University  
Doctoral School of Law

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**Self-defense against domestic violence**

Criminal law's assessment of the abused person's use of deadly force against the batterer

**Summary of Doctoral Thesis**

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## **I. Introduction, objectives of the research**

Domestic violence is one of the most widespread, yet most undetected crimes and human rights violations in the world.<sup>1</sup> No one is in an easy situation to defend themselves against the abuser: a weak, defensible action only increases the aggressor's anger, thereby putting the defender in an even worse situation. Knowing this empirical fact, the abused persons often use deadly force, which is suitable to permanently end the cycle of violence. With this in mind, my research was primarily directed towards those abused persons who used deadly force against the tyrant. I analysed the stories of people who saw no other way out of hell than killing the aggressor.

The thesis analyses the relationship between domestic violence and self-defense, seeks answers to the questions: under which conditions victims of domestic abuse have access to self-defense in court, if they take the life of the aggressor, and what are the ways of making criminal law more humane in this respect.

Although both domestic violence and self-defense are considered to be particularly popular areas of research – the former, moreover, not only from the point of view of jurisprudence – and numerous scholars have been publishing studies in recent years about both topics, the relationship between domestic violence and self-defense in the Hungarian jurisprudence has not been subject to in-depth analysis, there was no research in this direction, and no articles were published about the topic. As far as foreign literature is concerned, Anglo-Saxon literature recently has been dealing with the problem of the abused who killed the aggressor and examined the legal instruments that are accessible in court for those victims who become perpetrators. German jurisprudence has also examined the problem and possible solutions.

In view of the above, I conducted extensive research, in the course of which I assessed the framework within which victims of domestic abuse who use deadly force to break free from the cycle of violence can be successful with a self-defense claim in the criminal proceedings. I have examined separately the cases in which the abused use deadly force against the batterer as an immediate response to a current attack directed to them (i.e. use of force in a confrontational situation), and the cases in which the killing takes place when the abuser is sleeping or is otherwise at rest (i.e. use of force in a non-confrontational situation). In the course of the research, I highlighted the systemic errors of the current approach and regulations and reviewed if there was a method of interpretation of the law that can be used to make the criminal justice

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<sup>1</sup> STRONG, Bryan – DEVAULT, Christine – COHEN, Theodore: *The Marriage and Family Experience: Intimate Relationships in a Changing Society*. Cengage Learning, Boston, 2010. 447.

system more humane within an unchanged framework of provisions; and also what kind of amendment to the self-defense laws would enable legal practitioners to examine the case from the abused persons' point of view and within the context of domestic abuse and thus to make fairer decisions.

The goal of my research was therefore to steer the criminal justice system towards fairer and more just decisions: the widest possible extension of the protection provided by the instrument of self-defense in relation of those abused who – after seeing no other way out of years of abuse – took the life of the aggressor. It is important to point out that I do not think it is desirable for the abused to kill the aggressor, but if the state was unable to protect them from domestic violence and, even after countless calls for help, they were not given a real opportunity to be released from the abuser's captivity in accordance with the law, they must be forgiven.<sup>2</sup>

## **II. Research methods**

In the course of the research, in addition to the classic methods of legal research, I applied empirical methods of social science research in order to gain a deeper understanding of the problem.

Among classic methods of legal research, dogmatic research could not be avoided. Dogmatics are the internal logic of the legal system<sup>3</sup> – or the given field of law – and also the most basic method of cultivating the discipline of criminal law.<sup>4</sup> Therefore it was used as a primary method during the research on which the dissertation is based. The dogmatics of criminal law try to shape the meaning of the institutions, instruments and concepts of criminal law into an uncontradictory system.<sup>5</sup> In the course of the dogmatic analysis, from the general part of the criminal law, the primary subject of my research was the instrument of self-defense (Sections 21 and 22 of the Criminal Code), but the analysis extended to the criminal offense of domestic violence (Section 212/A of the Criminal Code), the procedural instrument of the restraining order as well as other measures of the legal fight against domestic violence. During the dogmatic analysis of self-defense, I used all of Savigny's four classic methods of legal

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<sup>2</sup> DRESSLER, Joshua: Battered Women and Sleeping Abusers: Some Reflections. *Ohio State Journal of Criminal Law* 2006/3. 469.

<sup>3</sup> GELLÉR Balázs – AMBRUS István: *A magyar büntetőjog általános tanai I.* ELTE Eötvös Kiadó, Budapest, 2019. 35.

<sup>4</sup> BUSCH Béla (szerk.): *Büntetőjog Általános Rész*, HVG-ORAC Lap- és Könyvkiadó, Budapest, 2009. 33.

<sup>5</sup> GELLÉR – AMBRUS 2019, 43.; BUSCH 2009, 33.

interpretation (grammatical, logical, systematic and historical), supplemented with the teleological method by Jhering.<sup>6</sup>

Comparative law, the task of which is not only the interpretation of the legal system of a given country – including the laws, jurisprudence, principles – but also the prevention and resolution of social conflicts, was also an indispensable method during the research. To this end, it was essential to examine the solutions of other countries and to search for new regulatory models. The basic principle of the comparative method is functionality,<sup>7</sup> which seeks the answer to the question of how individual legal systems respond to certain regulatory needs.<sup>8</sup> I carried out a wide-ranging comparative research in the field of self-defense laws and criminal law's assessment of the parrying of attacks of domestic violence, which extended to the laws of Common Law and Civil Law countries. I was taking into consideration the fact that German criminal law has been a point of reference for Hungarian criminal law for centuries,<sup>9</sup> but I also examined the solutions of legal systems of other Civil Law countries that served as an example for the Hungarian legal system and followed a similar development curve, as well as the most important Common Law systems, considering that the ideal type of those systems is English law.<sup>10</sup>

It was also impossible to avoid the legal historical analysis in the course of the research, which necessarily uses the method of comparison, primarily along the time dimension.<sup>11</sup> Legal historical analysis and its chronological method<sup>12</sup> played an important role in examining the development of individual legal institutions, primarily in the exploration of the international and domestic legal fight against domestic violence and the analysis of the development of self-defence. The application of the method made it possible to outline how the problem of domestic abuse came to the center of attention of the international community and the Hungarian legislator, and how some of the results of this process have encouraged the decision makers to ensure more effective legal protection against domestic violence. In the same way, with the help of the legal historical method, I revealed how the assessment of the self-defense of the person

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<sup>6</sup> JAKAB András – MENYHÁRD Attila: *A jog tudománya*. HVG-ORAC Lap- és Könyvkiadó, Budapest, 2015. 53.

<sup>7</sup> ZWEIGERT, Konrad – KÖTZ, Hein: *An Introduction to Comparative Law*. (Third Edition) Oxford University Press, Oxford, 1998. 34.

<sup>8</sup> SAMUEL Geoffrey: *An Introduction to Comparative Law. Theory and Method*. Hart Publishing, Oxford and Portland, 2014. 65.

<sup>9</sup> GÁL Andor: *A jogos védelem teleologikus megközelítésben*. Doktori értekezés. SZTE-ÁJK Doktori Iskola, Szeged, 2015. 16.

<sup>10</sup> SZILÁGYI Péter: *Jogi alaptan*. Osiris Kiadó, Budapest, 2006. 334.

<sup>11</sup> FILÓ Mihály: *Az eutanázia a büntetőjogi gondolkodásban*. ELTE Eötvös Kiadó, Budapest, 2009. 32.

<sup>12</sup> Regarding chronological and synchronistic methods of legal historical research see e.g. JAKAB – MENYHÁRD 2015, 382.

who was wrongfully attacked evolved from ancient communities to the present day, how the modern rules of self-defense were gradually formed.

I also used the empirical methods of social science research extensively, including interviews, criminal-statistical analyses and file inspections.

The interview is the most widespread and popular source of qualitative data in the social sciences.<sup>13</sup> As part of the empirical research, in order to support the theoretical knowledge with examples and to introduce new points of view, I conducted a number of interviews. Typically, semi-structured interviews took place, which gave room for deviations from the pre-recorded questions. I talked to people who had experienced domestic violence, either as a victim or as a perpetrator, so I managed to interview several abused women and some abusive men. In addition to them, I interviewed several professionals who often come across the phenomenon of domestic abuse in the course of their profession, such as a health visitor and an employee of the family support and child welfare service, a judge who has been hearing cases related to domestic violence for a long time, and a prosecutor who has been dealing with such cases for many years, as well as an experienced researcher of the topic. With the help of the successful interviews, I was able to get to know the interviewees' own attitudes and (professional) experiences, thereby gaining a deeper and more essential understanding of the phenomenon of domestic violence. Based on the conversations, it was possible to identify some important effects and characteristics arising from the personality of the abusers and the victims, as well as the legal practitioners dealing with the case.

During the criminal statistical analysis carried out on the basis of data obtained from the police and the prosecutor's office, I examined the development of the gender distribution of the perpetrators of violent crimes committed within the family, as well as the number of registered offenses of domestic violence (Section 212/A of the Criminal Code). I was also looking for the answer to the question of who are the typical perpetrators and victims of this offense, and analysed the geographical distribution of the offenses. The statistical data analysis also included an examination of how the number of proceedings terminated on the base of self-defense (in the investigative and prosecutorial stages of criminal proceedings) developed in recent years and what proportion of these proceedings were initiated due to crimes committed against relatives.

Finally, the file inspections, which I conducted in order to learn about Hungarian legal practice, also made up an important part of the research. I identified the cases that fit into the

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<sup>13</sup> JAKAB András – SEBŐK Miklós (szerk.): *Empirikus jogi kutatások. Paradigmák, módszertan, alkalmazási területek.* Osiris Kiadó, Budapest, 2020. 383.

concept – i.e. those that were initiated due to an act committed by a person who had been abused for a long time against the aggressor – primarily in the press. I visited six courts and one archive center, studied the documents in detail on the spot, took notes about the content of minutes, expert opinions, indictments, and judgments. These documents also served as the basis for important findings regarding the characteristics of the phenomenon of domestic violence, but mainly they shed light on how legal practitioners interpret self-defense laws, that they are often unable to put the investigated act in the context of domestic violence. Based on the examined documents, I prepared ten case studies, which became part of the thesis. With these, I illustrated how the abused person's use of deadly force against the batterer is assessed in Hungary – whether the action took place in a confrontational or a non-confrontational situation.

### **III. The results of the research and their practical benefits**

I examined to what extent self-defense is an accessible instrument in criminal proceedings for those who – after enduring physical and mental abuse from a family member for a long time and seeing no other way out of the cycle of violence – used deadly force against the aggressor, whether the action took place in a confrontational or a non-confrontational situation. The research covered several Common Law and Civil Law systems and also Hungarian legal practice. Based on the analysis, I found that although we can find inspiring and progressive legislative and legal interpretation solutions abroad (e.g. the concept of battered women syndrome in Common Law countries, and the concept of lasting danger in German and Swiss judicial practice), the abused who try to defend themselves from domestic violence nowhere face significantly more favorable judicial assessment than in Hungary. I pointed out that victims who use deadly force in a confrontational situation are often exempted from responsibility in the name of self-defense, since the conditions required by law for self-defense are usually met in their cases (however, it is true that we can also encounter wrong decisions), but in the case of killing the sleeping aggressor, the history of abuse in the relationship can only be taken into consideration at the level of the imposition of penalty.

After that, I tried to offer scientific results that can also be applied in legal practice in two directions. These can make the thesis valuable not only for scholars, but also for legal practitioners.

In order to remedy unfair decisions, I have developed a legal interpretation method that can also be used in the legal practice, which makes self-defense claims accessible for a significantly wider range of victims of domestic violence if – examining the circumstances from

their point of view – they have not been provided any other possibility to escape from long-lasting violence. By implementing this method, criminal responsibility could be eliminated in most cases even without amending the law.

However, since the application of the presented progressive method currently can not be expected from legal practitioners – after a brief presentation of theories on the possible directions of legal development and the possible risks posed by the adaptation of foreign legal solutions – I have developed a *de lege ferenda* proposal, which seeks to amend the provisions of self-defense in the Hungarian Criminal Code from two directions. According to the first direction, the proposal – based on German and Swiss judicial decisions – would introduce a presumption regarding the immediacy of the threat of an attack if the risk of harm exists over a long period of time. According to the other direction, the proposal would provide guidelines for judges and other legal practitioners for the interpretation of the self-defense provisions in all cases in which there is a history of abuse in the relationship of the parties involved. The latter proposal would require a wide-ranging collection of evidence regarding the context of the act, as a result of which legal practitioners would be forced to examine the circumstances in which deadly force against the aggressor was used, also taking into account the point of view of the abused person.

Again, I point out that I do not in any way consider it desirable to use deadly force, even if it is directed against someone who has abused their family members undisturbed for years. However, knowing the nature of domestic violence, I believe that there are situations where, examining the circumstances from the perspective of those involved, there is simply no other way out. I see that if it can be proven that the state was unable to protect the victims, that it was impossible or ineffective to seek help, we must find a solution to exempt the victims who become perpetrators from criminal responsibility. From my point of view, the proposed solutions are suitable for this and, as small steps, can contribute to curbing domestic violence and making homes safer.

#### **IV. List of publications**

- Kiss Máté Jenő: Népszavazás és alkotmánymódosítás. *Bibó Jogi és Politikatudományi Szemle* 2013/1. 61-82.
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- Kiss Máté Jenő: Menekülés a partnerbántalmazás börtönéből I.: Az agresszor életére törő bántalmazottak cselekményének megítélése a kontinentális jogrendszerekben. *Ügyészségi Szemle*, 2023/2. (under publication)
- Kiss Máté Jenő: Menekülés a partnerbántalmazás börtönéből II.: Az agresszor életére törő bántalmazottak cselekményének megítélése az angolszász jogrendszerekben. *Ügyészségi Szemle*, 2023/3. (under publication)