

PSYCHOLOGY

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Assessment of the impact of acute stress in cases of necessary defense by Czech courts

Submission: 8.11.2018; acceptance: 10.01.2019

Key words: stress, necessary defense, electrodermal activity, galvanic skin response, court decision analysis, self-defense

Abstract

Background. The activity of a defender in a self-defense situation is strongly influenced by stress, which is almost always present in such situations. This is not a common type of stress, but an acute combat stress that has different manifestations. This stress significantly influences the perception and behavior of the defender, in particular limiting his perception of the whole situation, extending reaction times and worsening motor skills. This thesis also presents the “EDA” method of measuring electrodermal activity to interpret the degree and impact of stress on the performance of the affected person. This is used in teaching and innovating Specialty Education of Security Sections “SEBS”, and Applied Sports Education of Security Sections “ASEBS”.

Problem and aim. The purpose of the thesis is to describe how the Czech courts evaluate and take into account the influence of acute stress in cases of necessary defense before the courts, to evaluate these conclusions and to compare them with the theory and practice of criminal law and self-defense.

Methods. The analysis of court decisions was made on the legal status of the Czech Republic in January 2018, using the ASPi from Wolters Kluwers, as legal system. Necessary defense is a criminal law provision that allows anyone to actively defend themselves against assault without it being an act of unlawful conduct. The selected decisions were encoded by the free coding method (the principle of anchored theory) in the Atlantis program, focusing on stress codes and limits of necessary defense. In interpreting the results, the inductive and discursive writing method was used, as well as a comparative analysis of individual decisions. To measure EDA the E4 wristband from Empatica, s. r. l. was used.

Results. In 17 out of 19 cases, 89% of all cases considered, the courts dealt with the defendant’s claim that there was an episode of acute stress. In two cases (11%), the claim of the attacked person was ignored. In 10 out of 19 cases (53%), the courts assessed the mental state of the person being attacked using a forensic expert with the appropriate specialization. In one case, the court concluded that it was necessary to judge the case taking into account the attacked person’s subjective perception of either the attack or of the whole conflict situation. In two cases, the courts acknowledged that the attacked person had had reduced recognition skills under the influence of acute stress. In one of these cases, the court stated that the attacked person was obviously suffering diminished capacity, or was wholly incapacitated.

Conclusions. The results show that there is wide variation in the assessment of the impact of acute stress, by Czech courts. They usually deal with the potential presence of stress in the person being attacked, but they usually try to evaluate them with their own logical considerations instead of having them evaluated by the appropriate specialists – forensic experts. I believe that this is due to the lack of knowledge of this issue by the courts and ignorance of its importance in cases of necessary defense. It can be stated that the psychological state of the infected person under the influence of acute stress may be closer in some cases to diminished capacity or incapacity. The amount of skin resistance as one of the indicators of electrodermal activity is influenced by the acute stress of the tested person. Using this method and other complementary methods, it would be possible to measure the sensitivity of a person to stress stimuli to which other factors related to situations of necessary defense would be reflected.

Introduction

The purpose of the thesis is to describe how the Czech courts evaluate and take into account the influence of

acute stress in cases of necessary defense before Czech courts (necessary defense is criminal-legal institute which contains conditions for legal defense), to evaluate these conclusions and to compare them with the theory and

practice of criminal law and self-defense. This thesis also presents the “EDA” method of measuring for interpreting the degree and impact of stress on performance in the affected persons, which is used in teaching and innovating Specialty Education of Security Sections “SEBS” [Bugala, Reguli, Cihounkova 2015] and Applied Sports Education of Security Sections “ASEBS” [Reguli, Bugala, Vit 2015].

Methods

The analysis of court decisions was made on the legal status of the Czech Republic in January 2018, using the legal system ASPi from Wolters Kluwers, as legal system. Necessary defense is a criminal law provision that allows anyone to actively defend themselves against assault without it being an act of unlawful conduct.

The research was inspired by hypotheses by Bruce Siddle about heart pulse [1995] and neurological influence of acute combat stress [Robert, Svetlak, Damborska, Kukleta 2014]. The thesis is based on these own hypotheses: 1. What is the balance of the decisions in which the Czech courts deal with being a potential presence of stress in the assaulted person over decisions in which they do not do so?, 2. What is the balance of decisions in which the Czech courts assess the effects of the stress response on the person being assaulted, using relevant expert opinions, against decisions in which expert opinions are absent?, 3. How do the Czech courts take into account the influence of proven stress on the perception and actions of the person affected in relation to the adequacy of the necessary defense?, 4. How do the Czech courts take into account the influence of proven stress on the perception and behavior of the assaulted person in relation to the time limits of necessary defense?

The selected decisions were encoded by the free coding method (the principle of anchored theory) in the Atlas.ti program, focusing on stress codes and limits of necessary defense.

In interpreting the results, the method of inductive and discursive writing was used, as well as a comparative analysis of individual decisions. To measure EDA the E4 wristband from Empatica, s. r. l. was used.

Results

It can be stated that the courts of first and second instance deal with at least the basic way a potential presence of stress in 17 cases (89 %). The courts have not dealt with claiming the stressed person in 2 cases (11 %).

Courts of appeal in all cases with potential stress, even in the two cases mentioned above (and in the courts of first and second instance, they were wrong).

The members servants seize the opportunity to evaluate the mental condition under the expert opinions in 10 cases (53 %) and in 9 cases not (47 %).

In one case [Resolution of the Supreme Court of the Czech Republic 1 To 4/83] court in the context of stress assessment gives an opinion, which also appears in other cases where it relates only to assessment of the method of attack [Decision of the Supreme Court of the Czech Republic Tdo 1283/2014]. This opinion, respectively the principle requires that the attack could be taken by the court into account subjective perception of the attack, respectively the entire conflict situation by the assaulted person.

In two cases [Decision of the Supreme Court of the Czech Republic 11 To 27/90, Resolution of the Supreme Court of the Czech Republic 1 Tzn 25/97] the courts have acknowledged that the challenged person had reduced recognition skills due to stress. In one of these two cases court's assessment was so far apart that it stated that the assaulted person had obviously reduced sanity and that it was not excluded that she was totally insane. A similar conclusion the court pronounced still in another third decision [Decision of the High Court in Prague 1 To 55/93].

Due to above it can be stated that the courts judge the perception of the mode of attack according to how the assaulted person appeared and thereby expand its (not) adequacy necessary defense.

The analysis shows that the time limits of necessary defense are usually judged from in view of how they appeared to the assaulted person. At the same time, in the case of a reduced of sanity or complete insanity, the time limits of defense may be significantly shifted (a case in which the court found that, even if the assailant's attack had ended, he would not be attacked with respect to his or her mental state capable of recognizing [Resolution of the Supreme Court of the Czech Republic 1 To 4/83].

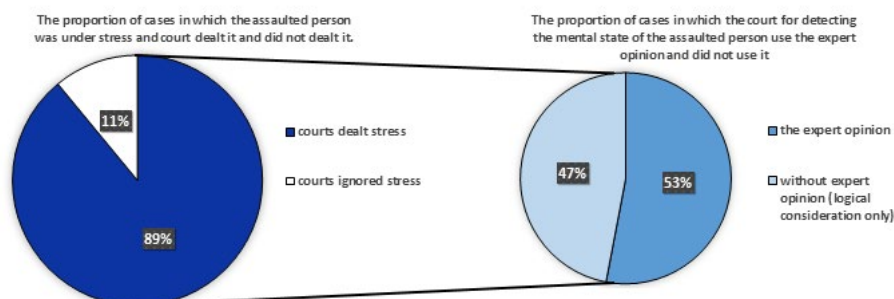


Figure 1. Proportion of cases [Novak 2018].

Due to the above, it can be stated that the courts generally assess the perception of the time interval of a directly threatening or lasting attack, depending on how the assaulted person appeared and thus extend its admissible time limits of necessary defense. These conclusions will cover both preemptive attack (defense by attack) and negotiation in the end of the attack or after it.

With the regard to the fault, it can be stated that if the person under the influence of acute stress is found to have a high level of reduced severity, the person should be attributed to the maximum of negligence, respectively. There may be situations where the fault is completely absent.

Discussion and conclusions

In my opinion the main cause of such different results of stress assessment by Czech courts lies in underestimation of the issue of the court itself. In many cases courts try to base their assessment on logical considerations, but they usually use only legal assessment. That does not have the basis of sufficiently established by the facts (on the expert opinions). However, this problem does not only concern the part of the facts relating to the psychic attack and its perception of stress, but it also appears in cases of adequacy assessment of necessary defense from the defense resources used.

A related problem is the uncritical acceptance of the conclusions of the expert opinions that the some passages contradict, they will not stand in contrast with basic logical considerations or are not supported by sufficient arguments.

Another problem is the disregard of the general principles of necessary defense, which the theory and practice of criminal law and self-defense have undergone, in particular the principle that the perception of the situation of the assaulted and of his actions is subjectively assessed – that is, what appeared to the person concerned.

It would also be very appropriate for the courts in interest in legal certainty to apply the procedures already used, in particular to investigate the level of stress of the compliance with the principle of “subjective appraisal by a assaulted person”. At the same time, they would have to examine whether the expert opinion would lead to a conclusion that the assaulted person had reduced sanity or was totally insane.

In the whole time the frame of necessary defense may be due to stress limited attendance at multiple locations. The defense may be reduced due to stress reduced already in the moment of the assessment of the situation and can be so its parties come to assessing the situation incorrectly when it will be perceived it as a major threat. All of the further negotiations, whether in terms of proportionality or time limits of necessary defense, may be affected by this initial erroneous analysis.

Another situation can occur if the assaulted person evaluates the threat properly, but the stress response, and hence a reduced incidence, will occur later, eg. during a conflict (for example, due to a new stress initiative – pulling out a gun at the attacker, injuring an assaulted person, etc.). In such a case the assaulted person will again be unable to react properly due to reduced of sanity with to assess their actions.

In the case of a high level of reduced numbness due to acute stress, the person should act only as a form of max. negligence, there may be situations where the fault is completely absent.

The amount of skin resistance as one of the indicators of electrodermal activity is influenced by the acute stress of the tested person. In my opinion using this method and other complementary methods would be possible to measure the sensitivity of a person to stress stimuli to which other factors related to situations of necessary defense would be reflected.

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