

Dutch legal aspects of entering private property pertaining legality of proportionate defense

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Theorem: if someone enters your private property in an aggressive manner, you may defend yourself with violence (under Dutch Law)

When one looks at the above theorem, one sees various aspects and underlying values that stand out immediately. It should be clear that the person who enters the house is guilty of trespassing. The question here is whether we can defend ourselves against violence and then are able to rely on the defense strategy of self-defense that justifies a particular offense. From article 41 paragraph 1 Penal Code follows the definition of self-defense, "Not guilty is he who commits a criminal offense, providing the necessary defense of their own or another's person, honor or property against immediate and unlawful assault". To be able to appeal successfully one needs to fulfill the conditions set by this section of the law, which we can apply individually to the situation as given in the statement.

Firstly, this is an immediate and unlawful assault because someone undesirable, and therefore unlawful, enters the home or the store. There is a case of sexual assault, as there will impair the right of house quiet place. The condition of immediacy and illegality is fulfilled in order to make a successful appeal to the self-defense justification.

When we look at the interests defend mentioned in the article of the law, we see: body, honor or property. In the case of our position there is no assault on the body or modesty, there is indeed no harm committed on the body or the accountability of the owner of the home or the store. It is important in this situation to distinguish the difference between a good and a right. The Dutch Supreme Court defines a good as the following: 'material object susceptible to human control', not the degradation of rights. Taking law into one's own hands is not allowed in the protection of rights. The condition person, honor or property is not satisfied in this case.

Finally, we look at the last conditional element of self-defense means necessary and provided defense. Here we look at the demands of the so-called subsidiarity and proportionality. Subsidiarity means that the defense must have a certain degree of necessity. If there is sufficient (legal) alternatives to extract an attack, then one should use one of these opportunities. We can say that there is an attack when there is sexual assault. However, it is the question whether it is necessary to resolve this matter by force. A more obvious alternative would be: calling the police, or at least threatening to do so. The law requires us to choose a legal alternative over a criminal alternative and thus we can say that defense with violence in this situation is not a necessary defense. Proportionality implies that the (necessary) defense must be provided. Even with it in this case is not met because the means used (violence) here disproportionate as to the assault (unwanted and threatening manner penetration of the house or the store). So we can say that is the condition necessary and provided defense.

A successful appeal to self-defense will only be accepted if all conditions mentioned in the article of the law have been met. This is not the case here. The

answer to the argument is: if someone undesirable and in a threatening or aggressive manner enters your home or shop, you may defend yourself against it by force.