

The Role of a Forensic Expert in the Field of Self-Defense Under Current Legislation and Beyond

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ABSTRACT

A forensic expert in the field of self-defense is a specialist with extensive knowledge in defence methods, close combat, defensive means, or coercive means. The core of the forensic expert's work in this field is the assessment of the facts of conflict situations in which physical violence between two or more persons has been used. The role of a forensic expert is to answer questions related to the parties' roles in the conflict, factors that influenced the conduct of the fight, the course of the fight and the possibility of resolving the conflict situation. Self-defense expertise is sometimes associated or confused with martial arts or combat sports expertise. This judgment is based on the assumption that most forensic experts in the field of self-defense also have experience or expertise in martial arts and combat sports. Such knowledge is an advantage for the profession of forensic expert in the field of self-defense, similar to knowledge in the field of weapons and ammunition, but it is not the same area as expertise in the field of self-defense or a condition for performing this profession. The new Act No. 254/2019 Coll., on forensic experts, expert offices and expert institutes, faces professional criticism in several areas (expert duties, sanctions, division of specializations, etc.) and is likely to lead to pressure for further amendments. The article deals with these changes and the perspective in the coming years with the expert opinion of current forensic experts in the field of self-defense on the appropriate inclusion of this specialization in the future categorization of specializations.

Keywords: forensic expert, self-defense, necessary defense, combat, martial arts, combat sports, weapons, legislation

INTRODUCTION

A forensic expert is a profession that provides expertise in the form of an expert opinion to law enforcement authorities and thereby helps to clarify questions of fact (*questio facti*). The court compares the factual situation with legal regulations (*questio iuris*) of substantive law. The activity of an expert is part of procedural and public law with private law elements (Křístek, 2013).

Forensic expertise in the specialization of self-defense is unique and can be acquired through many years of practice and theoretical studies. Self-defense is a multifactorial field that requires knowledge from many fields. Probably due to the motor component of conflict situations (physical combat), the specialization of self-defense is currently included in the field of Sport, the branch Sport – prosecution. Although this classification has some justification, it is far from accurate and leads to frequent mistakes in understanding self-defense as a field of human activity. Common mistakes include, for example, equating self-defense with martial arts or combat sports. The article aims to define the subject of investigation of self-defense specialization, to characterize the difference from martial arts and combat sports, and subsequently to recommend the inclusion of self-defense specialization in the system of forensic expertise in the Czech Republic.

METHODS

The material was processed using the focus group method. The expert group was composed of $n=5$ experts specializing in self-defense. All experts have a university degree and many years of experience in self-defense. Four experts are currently appointed forensic experts specializing in self-defense and practice this profession (while the total number of experts in the specialization of self-defense appointed in the Czech Republic is five). The last member of focus group provided expert opinion in the fields of self-defense, law and sport science (kinanthropology). The focus group was managed by the moderator. The moderator was an expert and researcher in the field of self-defense, sports science, and androdidactics. The group was managed with a low level of moderator involvement (Morgan, 2001). According to Morgan (Morgan and Krueger, 1993, cited in Morgan 2001) the focus groups don't have to be made up of people who do not know each other. In our focus group, some of the participants knew each other, and some did not. The focus group had less structure (Morgan, 2001). Following issues were discussed:

1. What is the delineation, structure, and mutual differentiation between self-defense, martial arts, and combat sports?
2. How should be the self-defense expertise included in the future experts system?
3. What are the reasons why self-defense should be included as a separate specialization within forensic science?
4. What is the typical role of a self-defense forensic expert and what are the typical challenges they face?
5. Which competences and qualification should be requested from a forensic expert?

We consider the results of the focus group analysis to be the professional consensus of a expert group which represents the majority of the professional community in the given specialization in the Czech Republic.

RESULTS

In order to describe the role of a forensic expert in the specialization of self-defense, it is first necessary to define self-defense as a field of human activity and its relationship to martial arts and combat sports.

Self-defense

Self-defense is an open system of all measures and activities used to prevent victimization, avert an acute threat by using tactical, psychological, verbal or physical means, including adequate force in accordance with the law in the conditions of necessary defense and mitigating the negative consequences of an attack (Vít, 2016). In terms of focus, self-defense can be further divided into personal and professional. While personal self-defense is for the lay public, professional self-defense is for employees whose occupations require specific self-defense skills (police, municipal police, military police, judicial guard, etc.).

Qualified self-defense training includes methods and means for acquiring the individual's tactical skills to prevent the emergence of self-defense situations, communication skills (verbal self-defense), motor skills to avert an acute physical attack, fitness skills to increase capacities to face the difficulty of the situation, and psychological methods for coping with stressful situations (coping strategies). The goal of self-defense training is to develop the necessary competencies to the maximum extent possible, optimally in the shortest possible time. Also other competencies may be useful to develop for each individual due to their natural equipment such as personality, upbringing, somatotype, fitness, mental possibilities, etc.

Many professionals provide qualified self-defense training based on their experience, often without creating their own system that had its own name and marketing. On the other hand, some systems have established themselves as globally known with an extended network of training centers and a team of instructors (e.g. Krav maga, SPEAR system, FAST Defense, Sambo, etc.).

Martial arts

Diverse ways of fighting are as old as mankind itself. The origins of some martial arts that have survived to this day are thousands of years old (e.g. kalaripayattu – India). Although their original purpose was purely utilitarian (self-defense, warfare, etc.), through gradual cultivation, they developed into complex systems enabling the development of trainees not only for combat purposes. Today, martial arts are practiced all over the world with the goal of personal development of practitioners in various spheres: biosphere (physical), psychosphere (mental), sociosphere (social), noosphere (spiritual).

Therefore, martial arts can be defined as mainly movement systems that have evolved from old ways of fighting, which are used today as part of life's journey, for sport, self-defense, or their goal is to preserve tradition and cultural heritage (Reguli, 2005).

An example of the protection of these ancient martial arts is inclusion of some of them in the list of Intangible Cultural Heritage by UNESCO (Pencak Silat - Indonesia, Chidaoba - Georgia, Tahteeb - Egypt, Taekkyeon - Korea, Pahlevani - Iran) (UNESCO, 2022).

Combat sports

Combat sports form a large group, the common feature of which is overcoming the opponent through physical contact. The intensity of contact varies according to the rules of individual sports or their disciplines. The distinction between full-contact, semi-contact, etc. is often used. Some

sports use only parts of the body for contact fighting (e.g. boxing, karate, judo, etc.), others focus on the contact created by weapons (fencing, kendo, etc.).

Combat sports are characterized by their name, development, technical means, membership and hierarchy, umbrella sports organization, training methods, competition system and rules. Among the most famous of them are the sports included in the program of the Summer Olympic Games (boxing, judo, karate, taekwondo, fencing, wrestling).

Differences and relationships between self-defense systems, martial arts and combat sports

Self-defense systems, martial arts and combat sports together make up combative systems. All three groups of combative systems are united by a unifying element, which is contact combat between two or more people. At the beginning of their creation, all martial arts performed, among other things, the function of self-defense. Martial arts were created for the purposes of warfare and self-defense. However, this function gradually receded into the background with the development of new technologies for conducting combat (typically firearms) and also with the development of modern training methods.

The relationship between martial arts and self-defense remains, however, in the sense that a number of self-defense systems to some extent draw technical repertoire from martial arts, or are partly inspired by them. However, the difference in self-defense and martial arts training today is significant. Martial arts teach trainees technically perfect movement, a higher level of coordination, mental development, spiritual development, development of social relationships and mastery in the broadest sense of the word. However, most martial arts teachers and practitioners do not make it their primary goal to learn self-defense. The path through martial arts would take longer to reach this goal than the security situation requires. Also, martial arts are trained mainly through the method of formation into patterns or a specific form of sparring. However, these methods do not sufficiently induce stressful conditions typical for self-defense situations. Martial arts practitioners may therefore be at a high technical level in their specific movement, without sufficient self-defence skills. In the conditions of real interpersonal violence, the martial arts skills are often insufficient for resolving conflicts.

Combat sports are combat systems that often arose from martial arts through narrowing the technical repertoire into the rules of the sport so that it can be safely competed in. Some of these combat systems are both martial arts and combat sports (e.g. judo, karate, muay thai, etc.). Practitioners of combat sports can have a high performance level in a given system, they can be adapted to the psychological pressure of a sports competition. However, like martial arts practitioners, they are often not adapted to face the stress of real interpersonal conflicts, as their training has other goals.

In summary, martial arts teach practitioners perfection and mastery in their combat style and have higher goals of personal development.

Combat sports teach player to apply combative movements in the conditions of a sports competition with the aim of achieving the highest possible performance within the rules of the given sport and the competition system.

Self-defense teaches trainees to achieve the highest possible competences for solving real interpersonal conflicts in the shortest possible time according to the individual capabilities. The goal

is not to achieve mastery in the long term, but to compromise between the individual personality possibilities and the requirements of practice (security situation).

Classification of forensic experts specializing in self-defense according to current legislation

The current classification of forensic experts specializing in self-defense shows Table 1.

Table 1. Classification of forensic experts specializing in self-defense

Field	Branch	Specialization	Number of experts
Sport	Sport - prosecution	Self-defense	4
Criminalistics	Criminalistics	Self-defense	1

From the above, there is a discrepancy in the inclusion of the self-defense specialization. Four of the five forensic experts are appointed in the field of Sport and Branches of Sport prosecution, while the fifth expert is appointed in the field of Criminalistics. There is also terminological discrepancy in the definition of other specializations listed by forensic experts (combative sports, fighting sports, conducting of close combat).

We can only speculate how this discrepancy arose. Our expert group believes that the inclusion of the specialization of self-defense in the field of Sport results from a traditional and inaccurate understanding of this expertise, which in the Czech Republic is often mistakenly confused with combat sports and martial arts. The difference between these areas has been explained in detail above. We also consider the inclusion of one of the experts in the field of Criminalistics inappropriate, as this field could answer partial questions in relation to self-defense (e.g. forensic biomechanics), but does not cover the entire field of self-defense specialization.

Subject of assessment of forensic expertise in the specialization of self-defense

The subject of assessment by a forensic expert specializing in self-defense is the factual nature of conflict situations between two or more persons. In the expert opinion, the forensic expert answers questions of fact (*questio facti*) he was asked. It is not up to the forensic expert to evaluate legal questions (*questio iuris*). The materials for preparing an expert opinion are for the court expert the submission of explanations, camera recordings, photo documentation, other expert opinions, etc. On the basis of the submitted material, the forensic expert assesses the conditions of occurrence, course and result of conflict situations in which physical violence by means of the body or a weapon was used etc. The complexity of judgment arises from the multifactorial nature of interpersonal conflicts. Factors influencing the emergence, development and outcome of self-defense situations include psychological, tactical, technical and fitness factors.

Aspects assessed by a forensic expert specializing in self-defense include in particular:

- circumstances preceding the emergence of the conflict
- the initial distance between the parties to the conflict and the resulting tactical options for resolving the conflict
- verbal and non-verbal communication and their relationship to the initiation and development of conflict
- a way of establishing contact between the parties to the conflict

- way to launch an attack
- way to start a defense
- the use of technical fighting means (punches, kicks, covers, dodges, etc.) during the development of the conflict
- use of weapons (cold, firearms, non-lethal, improvised, etc.)
- intensity of force used on both sides of the conflict
- tactical circumstances and conflict resolution options
- way to end the conflict

A forensic expert specializing in self-defense describes conflict situations in such a way that it is clear how the incident took place, what factors had an influence on its origin, development and termination. The core of the assessment are the circumstances of the technical course of the collision between persons, i.e. what technical means were used, with what intensity and with what result. Knowledge of combat techniques, defenses and how to use them is essential here. This expertise helps the authorities in criminal proceedings to assess whether and in what way legal norms have been violated and to determine the legal qualification of the actions of the persons involved.

Examples of questions asked by experts specializing in self-defense

For a clear explanation of what questions a forensic expert specializing in self-defense answers, we present several examples from practice. These specific questions have been asked in previous years:

- Assess how the whole situation occurred and, if applicable, how the incident developed, including its conclusion.
- Describe and define the course of the incident between the suspect and the victim, according to the available camera footage.
- Assess the individual roles of everyone involved (e.g. whether they changed during the incident).
- Assess whether it is possible to establish who was the defender and who the attacker during the incident (or assess this as part of self-defense).
- Describe and assess the self-defense techniques used in the given situation.
- Assess what methods (forms, factors, aspects) he used to solve the situation from the point of view of the victim.
- Assess what methods (forms, factors, aspects) the attacker used to solve the situation.
- State whether the victim had the opportunity to defend himself and react to the accused's attack.
- Determine the degree of aggressiveness and brutality of the attack by the examinee, if this can be determined from the available documents.
- Comment on the victim's grip, which he used to hold the suspect's right hand in the wrist area with his left hand.
- Assess whether the accused averted an imminent or ongoing attack on an interest protected by law.
- Provide additional information and facts that he considers important to include in the matter. Further expert findings.

Considering the above-mentioned questions, one can imagine how broad a scope and knowledge an expert with this specialization should have. It is also clear from the questions that the court should not make legal conclusions if these questions of fact have not been answered by the forensic expert specializing in self-defense.

Qualifications of a forensic expert in the field of self-defense

Gaining knowledge and experience for the profession of forensic expert specializing in self-defense requires many years of experience, professional study and personal training. We consider the combination of practical skills and theoretical knowledge to be essential. Without own practice and training of combative skills, handling defensive and offensive means, no person can fully penetrate the essence of self-defense. For this reason, as a group of forensic experts, we believe that for a given profession, a forensic expert should meet the following criteria.

An expert specializing in self-defense should have a broad overview of the possibilities, procedures and means of self-defense and their use in the event of a physical conflict between two or more people. Knowledge of martial arts techniques, combat sports and self-defense systems is important for assessing the combat equipment used in self-defense situations. The expert should be able to evaluate the movement of the persons involved, assess their possibilities of defense from the point of view of motor level.

Broader knowledge of used weapons (e.g. firearms license) is also beneficial for the profession of forensic expert. Furthermore, the expert must have interdisciplinary overlap in the legal field (circumstances excluding illegality, authorized use of a weapon, provision of first aid, etc.). The expert also often works with other assessments, e.g. from the field of healthcare, the field of forensic medicine, which he must understand and work from their conclusions. The specialization of self-defense is therefore very broad, and the professional level of the expert should correspond to this.

The professional competence of an expert is regulated in § 8 of Act No. 254/2019 Coll., on experts, expert offices and expert institutes and further by Decree No. 505/2020 Coll., which establishes the list of expert branches of individual expert fields, other certificates of professional competence, certificates issued by professional chambers and specialized studies for fields and branches.

Currently, the specialization of self-defense is classified under the field of sports, so it is a logical prerequisite for a university education of at least a master's degree program in the field of sports, e.g. Physical Education and Sports. We believe that the condition of secondary higher education in the field should be maintained in the future. As an optimal qualification in the Czech Republic, one can recommend fields of study that include both theoretical and practical education in self-defense, such as Applied Sports Education for Security Bodies at Masaryk University, Police Academy of the Czech Republic in Prague or University of Defense.

We consider the length of professional experience of 10 years of professional experience to be sufficient for gaining knowledge, experience and also life perspective for assessing such complex phenomena as self-defense situations. This kind of practice can be defined as the active pursuit of a security profession (e.g. police officer, constable, etc.) or pedagogical activity (e.g. head of training of a security force, teacher at a specialized school with a study field of security, etc.). In addition, the

applicant for this profession should document his qualifications in self-defense (e.g. a certificate of completion of long-term training, obtaining a technical degree or a training class in one of the combat systems, etc.).

As secondary criteria for appointment as a forensic expert in self-defense could be own scientific research activity, publishing, lecturing and teaching activities in the field.

Recommendations for the future inclusion of self-defense in the system of forensic experts

We believe that we have managed to define the main differences between self-defense and sports. These are, in particular, the multifactoriality of self-defense situations with interdisciplinary overlap and the essence of assessing conflict situations in cases of the use of physical violence. A forensic expert assessing a self-defense situation must look in a different way than an expert in the field of sports, assessing the circumstances established by the sports rules. In addition, broader knowledge and experience gained through own practice and study is needed. From this point of view, we recommend considering the inclusion of self-defense as a separate field.

Beyond the scope of expert issues, a polemic is offered as to how far the question of assessing the legality of self-defense is a purely legal issue (Sangero, 2006, Kuchta, 1999, Explanatory report to Act No. 40/2009 Coll) and how far it is a non-legal – expert one. It follows from the legislator's intention that the assessment of the necessary defense is the responsibility of law enforcement authorities. Act No. 40/2009 Coll., Criminal Code, as amended, and Act No. 141/1961 Coll., Criminal Process, as amended (hereinafter only the Criminal Code), do not combine the assessment of the necessary defense with another mandatory condition for assessment of the professional nature of the matter. Therefore, the court or law enforcement authorities can only follow their own considerations and do not have to use expert statements or expert opinions in cases of necessary defense, unless they consider it important with regard to 105 paragraph 1 of the Criminal Code:

“If expert knowledge is needed to clarify a fact important for criminal proceedings, the criminal enforcement authority will request an expert statement. If such a procedure is not sufficient due to the complexity of the question under consideration, the law enforcement authority will appoint an expert.”

We believe that the issue of personal self-defense, the legal legitimacy of which is determined by the Institute of Necessary Defense, is such a specialized and complex area that it should be customary to invite a relevant expert, not only from the field of self-defense. Self-defense is, as already mentioned, an interdisciplinary phenomenon; It is not primarily a legal issue, but much more technical or biomechanical, psychological and tactical. However, inviting an expert is not a usual act, as can be seen from the research that the author conducted in 2017-2018 (Novák, 2019).

In this case, it was not assessed how many cases an expert with self-defense expertise was invited, but in how many cases the court dealt with the claim of the attacked person that he faced acute anxiety, which affected his actions (these were cases where the attacked person defended his actions just lack of clarity of the situation, fear, etc.). Again, this was an expert question, and, due to the nature of the matter, the court cannot and cannot make an expert assessment. In 89% of cases, the court somehow dealt with this issue, but only in 53% of cases was an expert called in to assess the state of acute anxiety of the attacked person and other decisive psychological facts. The

research was carried out based on the analysis of court decisions regarding the necessary defense, which was found according to the key in the ASPi legal system (Novák, 2019).

On the basis of the above, it can be similarly stated by analogy that if law enforcement authorities do not need to require an expert opinion or an expert opinion in issues such as the issue of psychology, psychiatry, and forensic psychopathology, it can be expected that the situation in self-defense expertise will be similar, as follows from the partial analysis of the aforementioned research. We believe that this may also be one of the important reasons why individual judicial instances assess a given case of necessary defense differently (Kuchta, 1999), and it is quite common that the rejection of the application of the institute of necessary defense in a given case is subsequently corrected by the Supreme Court of the Czech Republic.

We believe that a suitable solution would be for the defense to request a professional opinion or an expert opinion in almost the majority of cases, in which questions of a professional nature would be settled (time and factual course of the encounter, intensity of the technical means used, etc.). We believe that only on the basis of the settlement of these professional questions are the law enforcement authorities able to assess the legitimacy of self-defense or the necessary defense as a matter of law.

DISCUSSION

In this article, we tried to describe the basic principles and the subject of the profession of a forensic expert specializing in self-defense. Although we believe that most of the information has been comprehensively summarized, there remain a number of unanswered questions for discussion.

First of all, it is about the appropriate inclusion of the specialization of self-defense in the systematics of branches, branches and specializations. Our expert opinion is the creation of a separate field of self-defense. By creating a specific group of experts for this field, it would be possible to establish more appropriately and concretely the qualification criteria, areas and methods of further training of forensic experts in the field of self-defense.

Another question for professional debate remains whether it is appropriate to distinguish between personal and professional self-defense. We understand that, for example, a police officer with ten years of experience, who is fully versed in the field of official interventions and the use of coercive means within the security forces, could provide the state with valuable expertise in this area as a forensic expert when assessing the intervention of police officers, etc. However, at the same time, he does not have to be equally educated to judge personal self-defense cases. On the contrary, not every expert and personal self-defense must have a sufficient overview of the specific procedures of official interventions in the security forces. The last question is the determination of qualification criteria for a given profession, which is an illustrative example of a field that, due to its specificity and size, creates a small group of experts whose qualifications should be assessed hypothetically by another group of "super-experts". However, no such group is available. We raise these professional questions for further consideration by the relevant authorities and submit this article as a contribution to further discussion.

CONCLUSION

We described the theoretical foundations for assessing conflict situations with the use of violence, defined the subject of assessment of a forensic expert in the specialization of self-defense and depicted the inclusion of forensic experts in the current legal categorization. Our effort was primarily to define the difference between self-defense and combat sports, or martial arts. We consider the inclusion of self-defense in the field of sport to be outdated and inconsistent with the current state of knowledge. As a professional group in a given field, we offer our knowledge for the purposes of forensic expertise and at the same time we feel the need to update and better define the given field. Based on the assessment of our focus group, we recommend the creation of a separate field of self-defense and further discussion on the setting of qualification criteria for this profession and the system of training forensic experts in the field of self-defense.

REFERENCES

- Zákon č. 36/1967 Sb., o znalcích a tlumočnických [Act No. 36/1967 Coll., on experts and interpreters]*, Czechia
- Zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů [Act No. 40/2009 Coll., Criminal Code, as amended]*, Czechia
- Zákon č. 141/1961 Sb., trestní řád, ve znění pozdějších předpisů [Act No. 141/1961 Coll., Criminal Procedure, as amended]*, Czechia
- Zákon č. 254/2019 Sb., o znalcích, znaleckých kancelářích a znaleckých ústavech [Act No. 254/2019 Coll., on experts, expert offices and expert institutes, as amended]*, Czechia
- Vyhláška, kterou se stanoví seznam znaleckých odvětví jednotlivých znaleckých oborů, jiná odvědění o odborné způsobilosti, osvědčení vydaná profesními komorami a specializační studia pro obory a odvětví, ve znění pozdějších předpisů [Decree No. 505/2020 Coll., establishing the list of expert branches of individual expert fields, other certificates of professional competence, certificates issued by professional chambers and specialization studies for fields and branches, as amended]*, Czechia.
- Důvodová zpráva k zákonu č. 40/2009 Sb., trestnímu zákoníku [Explanatory report to Act No. 40/2009 Coll., Czech Criminal Code]*, Czechia
- Křístek, L. (2013). *Znalectví [Expertise]*. Wolters Kluwer ČR.
- Kuchta, J. (1999). *Nutná obrana [Necessary Defence]*. Masarykova univerzita.
- Morgan, D. L. (2001). *Ohniskové skupiny jako metoda kvalitativního výzkumu [Focus Groups as Qualitative research]*. Albert.
- Novák, J. (2019). *Assessment of the impact of acute stress in cases of necessary defence by Czech courts*. Ido Movement for Culture. *Journal of Martial Arts Anthropology*. Rzeszów: Idōkan Poland Association, vol. 19, 1S, 89–91. doi:10.14589/ido.19.1S.13.
- Reguli, Z. (2004) *Combative activities*. Brno: Paido, 2004.
- Reguli, Z. (2005). *Úpolové sporty [Combative Sports]: distanční studijní text*. Masarykova univerzita v Brně.
- Sangero, B. (2006). *Self-defence in criminal law*. Hart Publishing.
- UNESCO (2022, July, 29). *Browse the Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*. UNESCO. Retrieved July 29, 2022, from <https://ich.unesco.org/en/lists>
- Vít, M. (2016). *Postavení sebeobrany v prevenci kriminality – kinantropologická perspektiva [The position of self-defence in crime prevention - a kinaanthropological perspective]*. In P. Jankovský, & K. Macková, Sebaobrana a jej súčasné uplatňovanie v praxi, Bratislava 24.5.2016 (pp.187-197). Bratislava, Slovakia: Akadémia Policajného zboru v Bratislave.

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