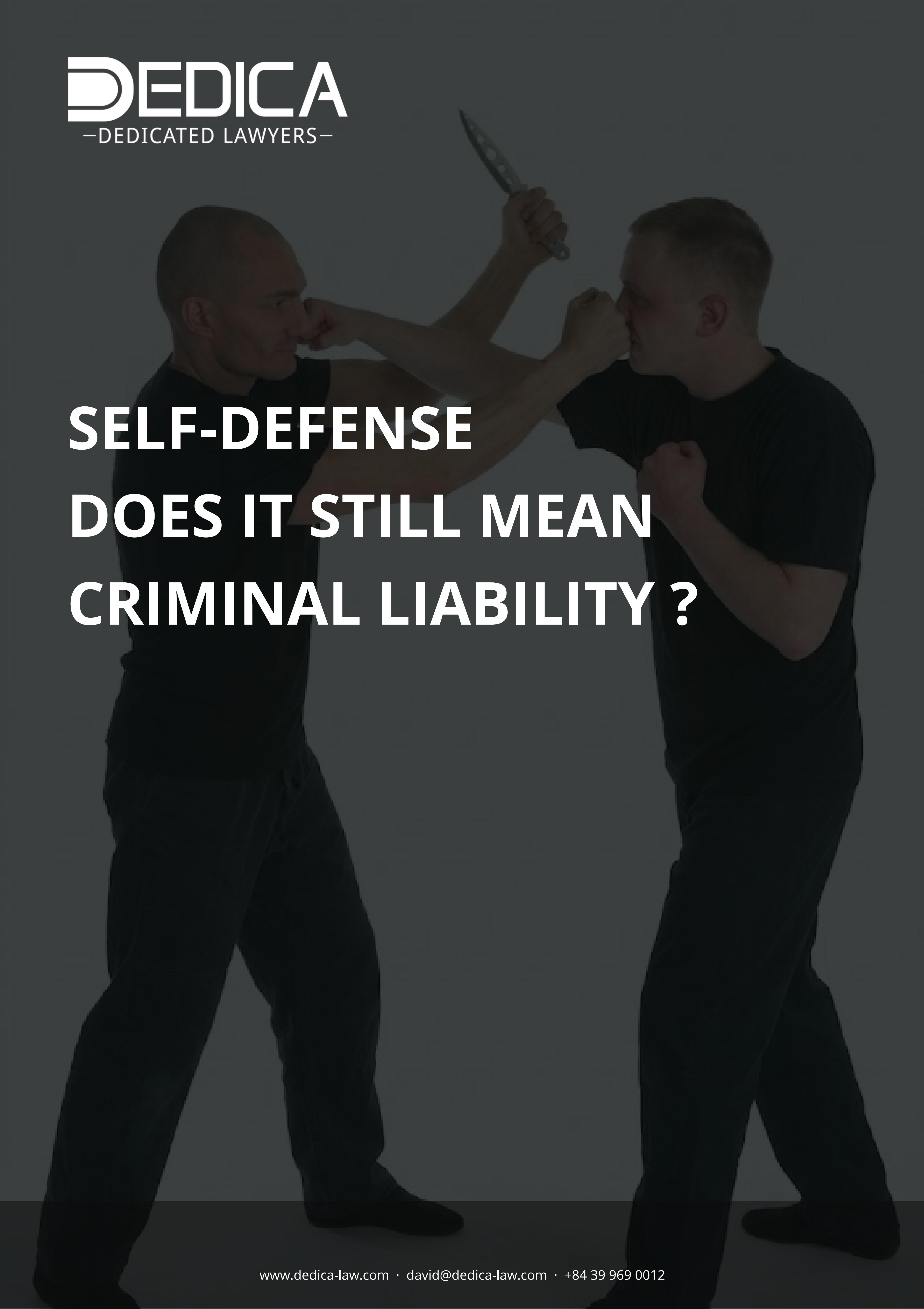


A dark, high-contrast photograph of two men in a physical confrontation. The man on the left is bald and wearing a black t-shirt and dark pants. He is in a defensive stance, with his right arm raised and hand open, facing the other man. The man on the right is wearing a black t-shirt and dark pants. He is holding a knife in his right hand, raised high, and has his left hand raised towards the first man's face. The background is a plain, light-colored wall.

SELF-DEFENSE DOES IT STILL MEAN CRIMINAL LIABILITY ?

A REAL COURT JUDGMENT IN **HO CHI MINH CITY**

JUDGMENT NO. 91/2019/HSST · HCMC PEOPLE'S COURT · 28/3/2019

Mr. L was driving a tractor-trailer and stopped at a red light when Mr. H – a complete stranger – suddenly rushed into the cabin with a knife and stabbed Mr. L once in the head. During the struggle, Mr. L seized the knife and stabbed Mr. H twice in the back, causing Mr. H to die at the scene; Mr. L suffered 22% bodily injury. The Procuracy prosecuted Mr. L under *Clause 1 Article 126 of the Penal Code*, proposing a sentence of **12 to 18 months' imprisonment**.

THE COURT'S REASONING AND RULING

Mr. H attacked first without provocation, so Mr. L was entitled to defend himself; however, using a longer knife (32.5cm against Mr. H's 15.5cm) to stab him twice in the back exceeded the necessary limit.

The Court convicted Mr. L of "Murder by exceeding the limits of legitimate self-defense" and sentenced him to **1 year and 6 months' imprisonment** (below the proposal, with mitigating circumstances under *Article 51 of the Penal Code*); it also **ordered VND 189,000,000 in compensation and monthly maintenance for the victim's 3 children until age 18**.



WHAT IS LEGITIMATE SELF-DEFENSE AND WHEN IS IT DEEMED TO "EXCEED THE LIMITS"?

CLAUSE 1 ARTICLE 22, PENAL CODE 2015: **Legitimate self-defense**

"Legitimate self-defense means an act of a person who, in order to protect his/her own lawful rights or interests, those of another person, or the interests of the State, of an agency or organization, necessarily counters a person who is committing an act of infringing upon the said interests. Legitimate self-defense is not a crime."

CLAUSE 2 ARTICLE 22, PENAL CODE 2015: Exceeding the limits of legitimate self-defense

"Exceeding the limits of legitimate self-defense means a counter-act that is clearly beyond the necessary extent and inconsistent with the nature and degree of danger to society of the infringing act. A person who exceeds the limits of legitimate self-defense shall bear criminal liability in accordance with this Code."

CRIMINAL LIABILITY AND CIVIL LIABILITY EXIST IN PARALLEL

ARTICLES 584, 585, 586, 591, CIVIL CODE 2015: Grounds for non-contractual damage compensation

- A person who infringes upon another's life or health must compensate for the damage; the level of compensation is based on the actual damage and the degree of fault.
- Damage caused by infringement upon life includes treatment costs, funeral expenses, maintenance payments for those the deceased had a duty to support, and compensation for mental suffering.

HOW IS EXCEEDING THE LIMITS OF LEGITIMATE SELF-DEFENSE HANDLED?

ARTICLE 126, PENAL CODE 2015: Where the consequence is death

- Clause 1: non-custodial reform for up to 02 years or imprisonment from 03 months to 02 years.
- Clause 2: committing the offense against 02 or more people, imprisonment from 02 years to 05 years.

ARTICLE 136, PENAL CODE 2015: Where only injury is caused, without death

- Clause 1: bodily harm of 31% to 60%, a fine of VND 5 to 20 million or non-custodial reform for up to 03 years.
- Clauses 2 and 3: more serious harm (from 31% to 60%, or 61% and above) or multiple victims, or resulting in death, imprisonment from 03 months to 03 years.

ARTICLE 126 (EXCEEDING THE LIMITS)

**3 months – 5 years'
imprisonment**

ARTICLE 123 (ORDINARY MURDER)

7 - 20 years/life/death penalty

The penalty under *Article 126* is considerably lower than under *Article 123* (murder without any element of legitimate self-defense), because the law recognizes the triggering factor: the offender was in fact exercising the right of self-defense, and merely countered beyond the necessary extent.

Three easily confused grounds excluding criminal liability

	Article 22: Legitimate self-defense	Article 23: Urgent circumstances	Article 24: Arresting an offender
Context	Countering a person who is infringing upon lawful interests	Causing lesser damage in order to avoid greater damage	Using necessary force to arrest an offender
Party affected	The person committing the infringing act	May be a common interest, not aimed at a specific person	A person who has committed or is committing a crime and must be arrested
When criminal liability arises	Countering clearly beyond the necessary extent	The damage caused is clearly beyond the requirements of the situation	Using force clearly beyond the necessary extent

What all three have in common: a damaging act is excluded from criminal liability only when it stays at the "necessary" level; once that level is exceeded, the person performing the act still bears criminal liability under the corresponding provisions.





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