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Risk acceptance and its consequences in criminal law

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ABSTRACT

The doctoral dissertation focuses on the issue of risk of infringement of legal goods and the way it influences the shape of the model of criminal liability. The category of risk – to be more precise: the acceptance of risky behavior – is used as a tool allowing to determine as clearly as possible the limits of the public penal law. Although criminal law may be seen as – characterized by numerous specificities – "risk management instrument", the danger of infringement of legal goods is an inherent element of functioning in the modern world. Acknowledging that the admission of a certain quantum of risk in social life is not only advisable but above all inevitable, allows the search for criteria that would make it possible to determine under which conditions combating this kind of risk justifies the existence of criminal law. The dissertation confronts two competing, and in a sense complementary, perspectives: social acceptance of risk and individualized acceptance, which takes the form of consent of the disposer of a legal good (in other words, the so-called "consent of the aggrieved party"). This makes it possible not only to define the criminal-law consequences of social assessments of risk of infringement of legal goods, but also to examine to what extent the individual's will influences the shape of criminal liability.

In the first chapter of the dissertation, preliminary assumptions were formulated regarding selected institutions of criminal law which appear to be significant for the discussed topic. They refer in particular to the normative structures decoded from criminal provisions, the central role that in criminal law should be assigned to the category of infringement of a

legal good and the characteristics of unlawfulness as this plane of criminal-law evaluation which shows the strongest link to the risk of infringement of legal goods.

The second chapter of the dissertation focuses on the analysis of the concept of social (un)acceptability of risk, the importance of which is analyzed on various levels – starting from constitutional regulation, through normative structures decoded from penal regulation, finally including also the context of the most important dogmatic institutions centered around the so-called dogmatic structure of a crime. The presented analysis leads to the conclusion that the social unacceptability specifies which behaviors from the entire spectrum of human activity may be regulated by the norm the breach of which is sanctioned by penal law, thus co-delineating the boundaries of the area of criminalization. At the same time, its visible emanation in the structure of the above mentioned norm are the precautionary rules enriching the disposition of every legal norm of this type. In this part of the dissertation, an attempt is made to delineate the scope of socially acceptable behaviors and to define a catalogue of criteria for its determination, with particular emphasis on the factors leading to a modification of the threshold of social acceptance of risky behaviors.

The third chapter contains a comprehensive analysis of the institution of consent of the disposer of a legal good, which is seen as an act of individual acceptance of risk. The considerations focus primarily on most fundamental issues which are – on the one hand – an adequate concept of structure of the disposer's consent and – on the other hand – a catalogue of prerequisites of its criminal-law importance. In this regard the opinion was formulated that the subjective concept (identifying the essence of disposer's consent with a specific state of his mind and will) corresponds better with the function of the analyzed institution and the specificity of criminal law regulations.

The fourth chapter of the dissertation discusses the issue of the criminal-law consequences of the disposer's acceptance of the risk that threatens his legal goods and reaches the conclusion that in criminal law the categories of social and individual acceptance of risk are closely related, to some extent mutually conditioning their meaning. First of all, it is established that as long as a certain legal good is at the disposal of an individual the limits of social acceptance of risk are shaped by acts of individual acceptance which take the form of the disposer's consent to infringe the legal good or to expose it to danger. This part of the dissertation focuses also on the significance of the consent which is expressed by the disposer from an *ex post* perspective, in other words after the risky behavior of a potential perpetrator has taken place.

The final chapter of the dissertation contains final conclusions that try to answer three basic questions: (1) how the social acceptance of risk influences the content of the obligations decoded from criminal provisions, (2) what are the criminal law consequences of the act of individual risk acceptance and (3) what is the mutual relationship between social and individual risk acceptance and how does it affect the shape of the model of criminal liability?

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