

So called non-statutory countertypes in Polish criminal law

My purpose of the conducted researches in PhD thesis was to decode the criminal law character of circumstances classified as so called non-statutory countertypes, established by representatives of the doctrine and judicial practice. I aimed to determine the criminal law character of specific selected circumstances in the catalogue of so called non-statutory countertypes, namely consent, custom, punishing of minors, sport risk and artistic activity, which is necessary from the point of view of the principal purpose presented above. The choice of the catalogue of so called non-statutory countertypes was a consequence of most frequent occurrence of such situations in everyday life and, in turn, in judicial practice. This “popularity” translates as well into their common presence in the literature of criminal law. Moreover, the initial researches which I had carried out indicated that the selected circumstances are interrelated.

I hypothesized that circumstances collectively classified by most criminal lawyers as non-statutory countertypes are heterogenous in nature. A part of them may refer, as some representatives of the doctrine claim, to acts which are primarily – and not secondarily – legal. On such occasions, the perpetrator’s behaviour, upon fulfilment of certain conditions, does not violate any legal prohibition, which means that such behaviour is irrelevant to criminal law. However, it cannot be ruled out that a part of those circumstances relate to situations in which the act violates a prohibition – then it is unlawful. Such situations may involve circumstances which secondarily legalize the perpetrator’s behaviour.

The most important aim that I wanted to achieve was to resolve the question of admissibility of applying such construction in the light of the indicated norms of the Constitution of the Republic of Poland and selected pieces of international legislation, which enshrine the principles of legality, separation of powers and determinacy, which represent the guarantee function of criminal law – restricting the possibility of the state’s intervention in life of an individual.

An additional goal was to draw conclusions concerning the structure of crime, unlawfulness, primary legality, countertype construction, whose universally accepted model has not yet been developed in the doctrine of criminal law. It has seemed especially important to discuss the problem of monistic or pluralistic grasp of unlawfulness and determine the directly related nature of circumstances excluding unlawfulness.

In the first section (four chapters) I set out the problem of monistic or pluralistic conceptualisation of unlawfulness. Next I put forward the criteria indicating that we have to do with a countertype situation. Then I described more precisely an idea of socially acceptable behaviors. Later I critically analysed the institution of so called non-statutory countertypes and I assumed that

they are incompatible with the principle of a democratic state of law.

In the second section (five chapters) I evaluated situations in place within the scope of the selected so called non-statutory countertypes, namely consent, custom, punishing of minors, sport risk and artistic activity. Their characterization was given from the point of view of previously made assumptions and findings concerning the structure of crime, unlawfulness, primary and secondary legality and the impact of the principles of legality, separation of powers and determinacy on the enactment and interpretation of norms deriving from criminal law provisions.

I can venture to say that my research in the dissertation achieved the purpose set out in the introduction. I confirmed the allegations of non-statutory countertypes and established the legal nature of the most popular circumstances included in the catalog of so-called non-statutory countertypes, demonstrating that most of them are primarily legal behaviors, and thus not violating the rules of dealing with legal interests adopted in society.

In addition, I verified the hypothesis that some of these circumstances have a dual nature - depending on certain variables, they are either of primal legality or show all or part of the premises of the countertypization. It was proved in relation to custom, punishing of minors and artistic activities.