

THE INFLUENCE OF NON-STATUTORY FACTORS ON CRIMINAL LIABILITY

ABSTRACT IN ENGLISH. KEYWORDS

The thesis focuses on the impact of non-statutory factors on criminal liability. These non-statutory factors are understood as factors not directly recognised either by statutes or by other sources of codified law. The thesis is based on the general assumption that the law, also in the system of codified law, is inherently affected by phenomena not regulated by the legislator, and the field of criminal law (traditionally reduced to statute law) is no exception in this respect. The thesis also presents two specific hypotheses which were eventually verified positively. The first hypothesis presupposes that criminal law in practice can function even thanks to non-statutory factors. The second one is based on the assumption that the impact of non-statutory factors in the sphere of criminal law can take place both in favour and against the perpetrator of a criminal act (the accused).

The non-statutory factors under analysis are those that can be examined from an exclusively or primarily legal perspective, without the interdisciplinary research. These factors are: custom, non-statutory justification defences, the shaping of criminal policy by the courts' judgments (including non-statutory excuse defences as a way of shaping of criminal policy in the courts' judgments), and the freedom to choose and apply methods of interpreting the law.

Although the thesis includes an analysis of each of these factors, its main objective is to examine the impact of non-statutory factors on criminal liability as a generic phenomenon, i.e., primarily: to identify the grounds for such impact (in this respect, reference is made to philosophical concepts noting that law as a real, dynamic phenomenon cannot be identified with a statute), and an attempt to identify its general boundaries (the conclusion of the thesis in this respect boils down to the fact that the fundamental boundary for non-statutory factors affecting criminal liability is a statute, i.e., these factors have an impact on the sphere left to them by the positive legislator). These issues are addressed in chapters one and six, respectively. The remaining chapters focus on the analysis of individual non-statutory factors affecting criminal liability. They draw attention to the multidirectional impact of custom on criminal law and to the fact that in contemporary Polish criminal law the examples of the presence of customary law may be found; an individual definition of a justification defence has been adopted and the admissibility of non-statutory justification defences and non-statutory excuse defences has been accepted, with specific examples of non-statutory excuse defences being given; it has also been

concluded that any decision of a criminal court preceded by an interpretation of the statute, which the court as a rule makes in a discretionary manner, not only directly shapes the criminal liability of the accused in a given case, but may have an impact on criminal law as such and thus on the criminal liability of other perpetrators in the future as well.

The thesis is based on a philosophical rather than a theoretical or legal dogmatic approach to the issue under analysis. As such, although a formal and dogmatic method was used in the research, a topical argumentative method was also employed. Subsidiarily, an empirical and historical method were also used.

Keywords:

non-statutory factors in law, custom, customary law, non-statutory justification defences, criminal policy, non-statutory excuse defences, interpretation of law