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UNLAWFULNESS AND COUNTERTYPES AS A CIRCUMSTANCES PREVENTING ITS ATTRIBUTION WITHIN THE STRUCTURE OF CRIME - BASED ON THE EXAMPLE OF POLISH CRIMINAL LAW

Abstract:

In the article, the author attempts to collectively characterize one of the two types of circumstances precluding attribution of unlawfulness to the perpetrator's behavior, thus exempting him from criminal liability. The author presents circumstances (referred to as countertypes) which, by way of exception, exempt certain behaviors from criminal law prohibition. In the system of Polish criminal law, they correspond to justifications made as defenses. Despite the existence of different cultures and legal systems, both in specific parts of the world and in specific countries, relations in the reality are the same. A crime committed by a person in all countries of the world will be the same undesirable act occurring in the real world, regardless of how it is perceived by legal dogmatics. In all places, the structure of crime is based on similar elements. Therefore, an analysis based on the Polish legal order and conclusions derived from the normative structures and the criminal model adopted in our legal system will be valuable for all lawyers and representatives of the judiciary, regardless of the country in which they live.

□ These considerations are based on the model of crime adopted by the Author, derived from the concept of conjugate norms, widely accepted among Polish criminal lawyers. At the beginning, the author discusses the meaning of such terms as “legal provision,” “conjugate norm,” “sanctioned norm” and “sanctioning norm,” which make basic concepts in Polish criminal law. Then he moves on to the nature of criminal unlawfulness and shows the sources of conjugate norms. He discusses the related doubts and tries to solve them.

□ In the second part of the article, the author outlines problems connected with the legal nature of circumstances referred to as countertypes. He discusses five possible ways of accounting for their legal nature, rejects the incorrect ones and adopts his own position. The most important issues relating to the essence of countertypes are also highlighted. For example, the author argues that a subjective element is a necessary part of each countertype.

Keywords:

criminal law, model of crime, justifications, defenses

JEL Classification: K14, K40, K49