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Abstract of the doctoral thesis

„Non-punishment clauses in Polish criminal law”

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The subject of the doctoral dissertation is the analysis of the regulations of the Penal Code referred to as non-punishment clauses, i.e. regulations in which the legislator uses the formula "is not subject to a penalty". Their realization results in a negative procedural premise that makes it impossible to find the offender guilty. This far-reaching effect, which excludes the application of criminal repression, pause for reflection on the essence of non-punishment clauses, in particular on the reasons why the legislator decides to waive his ius puniendi, despite the fact that the perpetrator has committed an offence that fulfils the elements of a prohibited act.

The primary purpose of the thesis is to verify the hypothesis that in the provisions of Polish criminal law, the formula “is not subject to a penalty" is adopted on the basis of diverse justifications, serves various functions, and in some cases, there are insufficient reasons supporting its applicability. Such a research problem arises from the diverse definition of the premises with which the legislator associates non-punishability.

This dissertation consists of five chapters and a summary. The first chapter provides an overview of introductory issues. In particular, the subject matter is specified by explaining the term of non-punishment clause. Subsequently, the development of the regulations in question based on the Polish modern codifications is presented. In this part of the work the consequences of updating provisions foreseeing non-punishment on the grounds of criminal and related proceedings are also outlined. The introduction to the subject matter of this work also requires the presentation of other instruments resulting in the reduction of the criminal law response. The initial part of the paper also takes a stance on the impact of decriminalization on the existence of a crime, as well as the placement of the described construction in the structures of sanctioned and sanctioning norms distinguished in the science of criminal law. Attention is also drawn to the relationship between the concept of penal populism and the mechanism of establishing certain non-punishment clauses.

The second chapter of the thesis reviews the Penal Code regulations within the scope of analysis. This required a description of situations in which obligatory waivers of punishability were provided, and therefore a presentation of the characteristics of criminal acts in relation to

which non-punishment clauses have been established to the necessary extent. The discussion in this part of the work have been divided on tentatively distinguished groups of regulations being the subject of the study, with the proposed classification serving only as an auxiliary measure to organize considerations common to various regulations.

The consideration contained in the third and fourth chapter is of crucial importance for the established research goal, focusing respectively on the criminal policy and doctrinal rationalization of non-punishment clauses. The formula "is not subject to a penalty" is often treated as a tool of criminal policy, serving the purpose of combating crime. This assertion is particularly formulated in relation to the regulation of active repentance relating to attempt, which is of wide interest to legal doctrine. This justifies devoting fundamental attention to the analysis of the criminal-political justification of non-criminalization provided for Article 15 § 1 of the Criminal Code.

The dogmatic-legal justification of non-punishability in the fourth chapter is based on the construct of the social harmfulness of the act and fault. The choice of these two elements as the perspective for consideration is justified by their impact on the admissibility of establishing the commission of an offence and the dimension of punishment. The considerations carried out required presenting the significance of the indicated concepts to the necessary extent. A separate section of this chapter is devoted to the justification of non-punishment in the case of active repentance relating to attempt, due to the significant role that Article 15 § 1 of the Criminal Code plays in the criminal law discourse.

The theoretical analyses presented in the thesis were supplemented by the results of the conducted empirical research, the subject of which was the frequency of application of particular non-punishment clauses in the practice of law enforcement agencies. The statements on the criminal-political impact of specific norms should not be abstracted from their actual functioning. The data presented in the fifth chapter, obtained over ten-year period of activity of units within District Prosecutor's Office in Katowice, provided an opportunity for partial verification of conclusions developed in the earlier chapters of the thesis.

The dissertation concludes with a summary, serving as a recapitulation of the previous considerations. While in the third and fourth chapters, particular grounds for the waiver of punishability were described, the final section synthetically repeats the partial conclusions reached, this time from the perspective of the specific regulations that were the subject of the study. This was necessary in order to verify the correctness of the initially assumed hypothesis and to take a stance on the existence of sufficient justification for the decriminalisation of behaviours covered by a given non-punishment clause.