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**Summary of doctoral dissertation „Dissemination and possession in computer offences”
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Together with the technological development a new kind of prohibited acts emerged in criminal law – computer offences. A significant part of the legal norms, at the time concerning only „traditional” offences, had their scope of application broadened incorporating behaviors present in virtual life. The same happened the offences consisting in disseminating and in possession, because many perpetrators began disseminating and storing contents in digital form. On this occasion it was noted that common courts exhibit substantial difficulties in assessing whether dissemination took place when the act was committed online. Moreover, it was doubted whether possession of a digital content is possible without commanding the data storage device (physical object), constituting an issue of substance in judicial practice dealing with a common use of hosting services. On the basis of the observations combined with knowledge of electronic media operations nine theses were formulated. These assertions both discover reasons of the mentioned difficulties and aim at overcoming them. It was, however, necessary to prove the theses by conducting a thorough analysis of their accuracy, which served as purpose for the doctoral dissertation at hand.

The theses were proven with the use of dogmatic method, often with interdisciplinary approach. The analysis covered legal norms in force, interpretation views of the legal doctrine and those of case-law (of the Supreme Court and the common court). The doctoral dissertation, because of its subject, contains interdisciplinary elements, combining law with technical disciplines, especially informatics. It also raises issues from the point of view of various criminal law specializations, in particular substantive criminal law, criminal procedural law, forensics and criminology. The research had qualitative character. At the same time activist elements were present in the form of developing new features of dissemination and possession as well as formulating proposals *de lege ferenda* and *de lege lata*. A case study was also conducted in order to assist the work of courts and to present the method of use of developed interpretation tools.

The content of the dissertation – leaving the introduction and the conclusion aside – is divided into six chapters (parts). The first part was dedicated to giving an insight of the notion of computer offence and the division of computer offences into computer *sensu stricto* and *sensu largo*. The chapter 2 and 3 focuses on those prohibited acts whose features include disseminating (chapter 2) or possessing (chapter 3) and which may be committed with the use

of computer. Each of these offences was individually analyzed with a reference to the understanding of the mentioned notions by the legal doctrine and the Supreme Court. The goal of the analysis was to establish whether the notions are defined uniformly regardless of provision they are used in or of offence they help to define as well as to find whether there are divergent interpretations of the notions. Finally, a general presentation of the notions of dissemination, possession and possession with intent of disseminating, as created by the legal doctrine and case-law of the Supreme Court on the basis of analyzed regulations, was extracted.

In the end of both chapter 2 and chapter 3, the definitions mentioned above, so constructed underwent a reasoned assessment, which included indication, which opinions are – in authors opinion - to be followed and why. Two theses were being proven at this point. The first one presupposes that the notion of dissemination should be understood as making a content publicly available, that is as an act committed in front of an undefined group of people and an undetermined number of people, as well as that the understanding of the term should be uniform no matter what offence definition includes it as one of its features. It should be, however, taken into account that the feature of undetermined number of people is not unconditional, as in certain rare sets of circumstances it may not be present despite a dissemination taking place. The second thesis is based on an assumption – contrary to the existing views of legal doctrine – that possession should be referred to the content and not to the data storage device holding the content, leading to an assertion that it is possible to possess illegal content without simultaneous command of the data storage device holding the content. So complemented the notion of dissemination and that of possession were compared with other synonymous terms used by the lawmakers with the goal of verifying their accuracy and reaching a full clarity.

Interpretations resulting therefrom served in chapter 4 for the purpose of analysing judgments of common courts dealing with computer offences of disseminating and possessing. It was argued and reasoned at this point that the courts exhibit difficulties with legal classification in case of computer offences (consisting in disseminating and possessing) despite having no problem with establishing a legal classification in case of “traditional” offences (thesis number 3). For the purpose eight case-law assumptions were presented, which author do not agree with. Further presentation also embraced reasons for significant difficulties faced with in the process of application of law existing despite a relatively uniform views expressed by the legal doctrine and in case-law of the Supreme Court. Among them a

forefront importance should be attributed to problems with legal classification and establishing the facts of a case, often resulting from insufficient knowledge of IT systems (thesis number 4). It is important to note that the courts were familiar with the views of the legal doctrine and the case-law of the Supreme Court but used them incorrectly most probably due to the lack of precision of the developed features. In this part of the dissertation an attempt was made to prove that the courts – similarly to the legal doctrine – refer the possession to the command of the data storage device, and not that of the content (thesis number 5).

The noticed difficulties with application of regulations on offences of disseminating and possessing proved the correctness of assumption that it is necessary to formulate new, additional features for classifying a certain behaviour as dissemination (thesis number 6) and to create factors, upon which indication of the possessor of the digital content in world wide web should be based (thesis number 7). Those features were formulated and presented in chapter 5. In conclusion a “test of dissemination” and a “test of possession” were compiled, giving the courts tools helping them to exercise a legal classification by answering a couple of questions, and by doing so assisting the judicial practice. This part shall be the substantial core of the doctoral dissertation.

Chapter six is dedicated to a case study. The study covered most popular methods of disseminating and possessing of files in world wide web. Within each of them an indication was made of situations to be considered as dissemination or possession, and which should not be granted such a classification. A detailed verification confirmed another assumption in the matter of dissemination: IT systems are characterised with a tremendous diversity and therefore making any general remarks is not advisable (thesis number 8). It was also proven that when establishing the identity of possessor in world wide web it is of key importance to verify if the suspect had commanding power over the content and if the suspect was aware of this or her command of the content (thesis number 9).

In the final part of the dissertation proposals *de lege ferenda* and *de lege lata* were formulated. Part of the regulations currently in force – in authors opinion - requires amending, allowing to rule out the difficulties linked with their application. It was also necessary to pay attention to the manner, in which the courts carry out the process of case examining, particularly by emphasising the importance of diligent analysis of operation of the IT systems used by the offender and by encouraging a more often of IT expert evidence in court

proceeding. The dissertation was culminated with a presentation of conclusions made on the basis of research carried out for the purposes of writing of the paper at hand.

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