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Abstract of the doctoral dissertation of MA Krzysztof Fila entitled "Presumption in Polish criminal law"

The concept of presumptions in criminal law often mingles in the various statements formulated either in both theoretical and practical discourse. It seems that especially the presumption of innocence, deeply anchored both in the systemic norms and in the criminal procedural law, is an exemplification of the construction that even by its very name defines the concept called presumption. Also in the area of substantive criminal law, the defendants of doctrine of presumption have recently pointed out both the benefits and the dangers of using presumptions in assigning criminal responsibility to the perpetrator, as well as — sometimes — in imposing measures of legal action against him. Nevertheless, the analysis of such statements may give rise to a serious doubt as to: does the term "presumption" mean the same thing in each of the above-mentioned contexts?

The first part of the dissertation, which focuses on theoretical and legal issues, introduces a certain order in terminology, organizing phenomenological and accountological issues. It is also in this part that the presumption is defined, i.e. a linguistic expression, to which legal studies ascribes a specific meaning, strengthened by centuries of tradition, radically different from the meaning used in everyday language. A legal presumption is always a reasoning from facts about facts, i.e. a statement essentially devoid of any evaluative element, which makes it relevant particularly in the context of evidentiary proceedings. Moreover, within this definition the presumption is perceived in terms of a legal norm, classified by legal theoreticians to the group of prescriptive norms. Nevertheless, the above outlined line of considerations was preceded by a determination of what constitutes the evidence in the judicial model of law application. Stating that such evidence are the facts relevant for resolving the case, it is impossible to disregard the characteristics of particular groups of facts, as well as the language with which these facts may be described.

The considerations in the second, main part of the dissertation appear to exhibit a two-level character. First of all, there is an analysis of whether particular levels in the dogmatic structure of the criminal offence are interdependent, to the extent that facts relevant for a given level could be deduced from facts established in order to ascertain the realisation of elements relevant for another level. On the other hand, it is also recognised that within the

same level certain elements are linked to each other by presumption. However, while focusing in this part of the work on the analysis of presumptions appearing in the substantive criminal law, the analysis was limited to the threads that are basically within the scope of the science of crime, excluding those constructs dealt with by the science of punishment. This does not imply that various presumptions, which are created in the provisions regulating the means of criminal law enforcement, have not been noticed. Because it was assumed in the dissertation that the complicated matter of presumptions requires exemplification, therefore in the legal-material and procedural part of the deliberations each attempt to "read" them from the provisions of the acts and from the commonly existing beliefs was illustrated with a scheme of reasoning based on an example referring mostly to behaviour exhibiting the characteristics of manslaughter. Minor modifications of this example, reflecting the specificity of the analysed elements of the dogmatic structure of the crime, allow to grasp these variables, which prove that each of the proposed presumptions is distinguishable from similar constructs.

The third part, devoted entirely to the criminal presumption of innocence, is by no means a comprehensive study of this issue. The presumption of innocence appears only as a kind of counterpoint, i.e. first of all in order to confront its essence with presumptions related to particular elements of the dogmatic structure of crime. It is also in this direction that the considerations have been conducted, within the framework of which an attempt has been made to reconstruct those elements which would make it possible to call the presumption of innocence a presumption in the theoretical and legal meaning of this term.

Presumptions in Polish criminal law, as a not yet comprehensively elaborated issue either in legal theory or in criminal law dogmatics, seem to be overshadowed in comparison with their civil law counterparts, which are otherwise model constructions. Therefore, the aim of the dissertation is, on the one hand, to draw attention to the ambiguous schemes in the area of criminal law, and, on the other hand, to interpret these relations, which, intuitively referred to as presumptions, have not been properly described so far in the science of criminal law. The research hypothesis outlined at the beginning of the dissertation oscillates around the statement that the theoretical-legal construction of presumption does not generally correspond with the interpretative realities of criminal law due to the fact that it is a branch of law in which judgements — i.e. phenomena that escape reasoning from facts about facts — play a dominant role.