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**Personified models in criminal law**

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**ABSTRACT**

The doctoral dissertation includes reflections on personified comparative figures, for which the term "personified models" or "standard figures" is usually used in criminal law. They are used in order to determine the state of awareness of a perpetrator of a prohibited act, possibility of predicting certain events (reasonable foreseeability) or compliance with the required standard of dealing with the legal interest (due care). Personified models are therefore helpful in solving many theoretical, dogmatic and practical problems of criminal law. The purpose of the thesis is to answer how these figures should be constructed and whether and in which areas they prove useless. It is divided into six chapters, which are preceded by an introduction and followed by a brief presentation of final conclusions.

In the first chapter of the dissertation a preliminary assumption is formulated, according to which it is possible to distinguish two types or varieties of personified models. For a tool in a form of a model used to ascertain facts that potential perpetrator is aware of is something manifestly different than a model used to determine the standard required in this regard. The first one is used only to reconstruct a fragment of reality. It does not answer the question of how a given state of affairs should be presented but how it actually did present itself. The second model – on the contrary – is used to determine the expected and positively evaluated but merely required standard. The first model thus serves to reconstruct reality whereas the second model to impersonate the duty. This observation allows to distinguish a

reconstructive model and a normative model. The first one refers only to the realm of being – answering the question of ‘how it is’ (or ‘how it was’) – and the second one to the sphere of obligation, allowing to determine ‘how it should be’; therefore it presents a postulative character. The further part of the dissertation concerns primarily the normative model.

The second chapter of the dissertation contains a reference to some of the most commonly used arguments against the use of personified standards in criminal law. Their detailed analysis shows that the vast majority of them does not refer to the comparative models themselves but to significant problems of criminal law, which could not be solved by turning away from using these standard figures. This chapter also analyzes the concept of objectification of criminal responsibility.

The third chapter includes a look at personified standards as dynamic constructions which are dependent on cultural and social transformations as well as the variables of assessments formulated by the legislator. It also contains an observation about the tendency to shift some terms of criminal liability to the foreground of statutory regulation, which summarizes in a statement that some provisions of the Act, once considered necessary to be expressed in the criminal code, are currently perceived to be so obvious that they do not require a clear statement of the legislator.

The structure of personified standards – one of the most fundamental problems put forward in the dissertation – is discussed in the fourth chapter. It covers both the issue of the "capacity" of the model, determined by the criteria that allow distinguishing its essential features, as well as its "content", referring to the level of requirements that can be reasonably demanded. A culmination of the chapter is the proposal to perceive aforementioned models as tools helping to establish an objective or subjective justification of the perpetrator's behavior which usage leads to a conclusion that a deed may not be seen as unlawful or it is impossible to attribute guilt.

One of the most compelling issues for the study of attribution of criminal liability is the problem of a perpetrator with special knowledge or skills who is called ‘*Besserwisser*’ by German scholars. The issue of the basis and scope of his liability, alongside with the proposal of certain modifications, is discussed as broadly as possible in chapter five, considering the lack of deliberations on this subject in the Polish penal law.

The last, sixth chapter includes a closer look at the basic field of application of the normative model – reasonable foreseeability. It proposes to refer this criterion to crimes not resulting in relevant consequence and to perceive the aforementioned factor as objective. Based on previous conclusions a look at the objective foreseeability as a criterion determining

the essence of due care is proposed, assuming that due care (perceived as criterion of attribution) loses its meaning when the consequence of an act is not reasonably foreseeable. It is also assumed that, in a certain variant of interpretation, objective foreseeability might include some of the so-called negative criteria of attribution.

The final part of the dissertation contains its conclusions. The example of a ruling of Polish Supreme Court in the case of so-called "burning angel" is used in order to present most crucial of them.

A handwritten signature in cursive script, likely reading "Dariusz Szust" or similar, positioned to the right of the text.