

Mateusz Filipczak

**Summary**

***Lack of danger to a legal good versus abstract exposure to danger crimes  
(Brak zagrożenia dla dobra prawnego a przestępstwa abstrakcyjnego  
narażenia na niebezpieczeństwo)***

Doctoral dissertation prepared  
in the Chair of Criminal Law  
under the supervision of prof. UŁ dr hab.  
Agnieszka Liszewska

Łódź 2020

The objective of this doctoral dissertation is the analysis of the crimes of abstract danger with regards to the danger to a legal good and its lack.

In Polish criminal law doctrine an essence of an abstract danger to legal good offence was taken primary as a criminalisation problematics in the foreground of the violation of the legal good. Therefore, first of all, the problem of the lack of the abstract danger to the legal good was taken in the context of the normative theory of criminalization, not the legal doctrine or the theory of criminal law related to the internal and normative structure of a crime. The legal doctrine only partly referred to this issue and did not constitute a separate monography addressing the issue of no danger to the legal good in relation to the offenses of abstract exposure. At the same time, interest in the subject of no danger to the legal good is noticed in the doctrine of criminal law in connection with other monographic studies concerning, among others, the importance of a legal good in the structure of a crime (Szymon Tarapata), issues of specific and abstract danger to the legal good (Elżbieta Hryniewicz) or the function of danger in the criminal law (Andrzej Spotowski).

For the reasons mentioned above detailed theoretical-dogmatic analysis of no abstract danger to legal good in structure of formal offence (so called conduct offence or no specific effects offence) is the issue not yet widely discussed in the legal doctrine in Poland, even though its importance is crucial because the meaning of abstract danger has influence on the understanding of offence marks and the *de lege lata* limits of assessment of social harmfulness.

Therefore, it requires consideration of both theoretical and dogmatic foundations of criminal law, including the limits of the interpretation of criminal law.

The objective of the study is giving an answer to the question, whether the absence of a danger to the legal good can be considered under the category of abstract exposure to danger offenses. The analysis of this problem, however, need not concern only the theory of criminalization, but it can also be considered on the level of crime structure and doctrine of the criminal law. Therefore, the issue under consideration may be defined as a problem of the nature of the legitimacy of criminal law norms (sanctioning norms), which does not amount to the issues of the theory of criminalization (the level of creation of criminal law), but to the issues of interpretation norms and premises of criminal liability (the level of application of criminal law). However, the problem is not whether the danger to the good is related to the category of abstract exposure offenses, but whether the assessment of the abstract danger can be made more specific in relation to the formal offenses of abstract exposure, and if so, what is the verification of the abstract danger to the legal good?

The dissertation consists of six chapters, conclusions and the bibliography.

In Chapter I the research problem is defined and also the issue of no danger to legal good in the theory of criminal law is presented taking into account Polish and German doctrine of criminal law.

Chapter II presents issues related to criminal law norms. It consists of five subsections, which contain an analysis of the concept of a legal norm, the structure of the sanctioned and sanctioning norm, the normative nature of criminal law regulations, as well as the concept of normative connection between the sanctioned and sanctioning norms (conjugated norms) in the context of its importance for the axiological justification of the establishment of the criminal law norm. The last subsection contains conclusions of normative assumptions which are adopted in the dissertation.

Chapter III discusses the issues related to the danger to the legal good and its absence in the structure of crime from theoretical, dogmatic and constitutional perspectives. It consists of six subsections which deal with discussing the figure of the danger to legal good in the five-element structure of the crime based on the concept of conjugated norms, typing of social harmfulness of behaviour in the context of the principle of separation of legal powers, the importance of rules of conduct with legal good in relation to formal crimes of abstract danger to legal goods. In this chapter the assertion that an attack on the legal good is an attribute (feature) of every offence is also presented, including formal (conduct) crimes. Last subsection contains conclusions on the verification of the lack of danger to the legal good in relation to the structure of crime and comments on constitutional doubts in the context of abstract danger.

Chapter IV deals with the role of danger term in the criminal law. It consists of four subsections which contain comments on the relationship between danger and dangerousness, the objective and subjective nature of danger, and the presentation of arguments for an objective understanding of danger. Last subsection relates to conclusion on the definition of danger as the possibility of negative consequences for the legal good.

Chapter V discusses issues related to the legal good in the criminal law. It consists of five sub-chapters in which the analysis of the concept of the legal good, division into collective goods and individual goods, constitutional significance of the protection of the legal good, as well as the figure of the rules of conducts with the legal good in the context of types of legal goods are discussed.

Chapter VI concerns the main issues, i.e. analysis of the danger to the legal good and its lack in relation to criminal liability for the abstract danger crimes. It includes the meaning of rule of conduct with the legal good in the context of assessing the danger to the legal good. It was also explained what the abstract danger to the legal good contains. It was pointed out that

the *de lege lata* situation is permissible when a side subject of the sanctioned norm protection is a main subject of the sanctioning norm protection. The method of assessing the social harmfulness of the act and the *de lege lata* limits of this assessment with the prospects of danger to the main and side object of protection was also discussed. In these issues it was asserted that not dangerous behaviour for the side subject of protection cannot lead to its recognition as being socially harmful in negligible degree if this behaviour is at the same time socially harmful to the main subject of protection (dangerous to it). However, this circumstance has the influence for the degree of social harmfulness and can decrease it. As for legal doctrine issues, it was indicated, first of all, that within the assessment of the degree of social harmfulness of behaviour the verification of the influence of the degree of intoxication on the psychomotor skills of the driver is not permissible, but only a general assessment of the use of a vehicle under the influence of alcohol on the possibility of violation of goods, and secondly the irreparably damaged firearms is not a mark of an act of art. 263 § 2 of the Penal Code.

Chapter VII presents a summary of the conclusions that are the result of the analysis from the previous chapters. The concept of the so-called counter proof danger to the legal good in Polish criminal law can be understood as follows.

Firstly, it refers to the level of the interpretation of the criminal law, under which it is permissible to limit the scope of designations of marks of the criminal act by choosing an alternative meaning of the language expressions which denote the statutory marks of an act. Consequently, while respecting the linguistic limits of the interpretation of law, legally permissible, and even necessary under the postulate of pro-constitutional interpretation, is to exclude from the scope of the meaning of statutory features of *ex ante* and *in abstracto* behaviour unable of violation of the legal good (pro-constitutionally restrictive interpretation).

Secondly, the lack of suitability for infringing legal good, which is the main object of the criminal law norm protection, must be taken into account at the level of the assessment of the social harmfulness behaviour degree, recognizing its negligible degree if the conduct is not *in concrete* able to infringe this legal good.

21.02.2020 r.  
Filipczak