PENAL LIABILITY FOR AN OMISSION IN POLISH LAW – SOURCES OF GUARANTOR'S DUTY TO ACT

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The following article discuss question of penal liability for omissive offences and concentrates on the subject of a status of a guarantor of not-occurrence the result. In the first part of the article it brings closer an overview of opinions of polish penal law researchers on the nature and definition of an omission. Than the article presents polish regulation of penal liability for omissive offences enclosed in article 2 of Penal Code. After that it describes status of a guarantor in polish penal law. In the end the following paper indicates and describes sources of guarantor's duty to act, and problems connected with that catalogue.

1. Omission definitions – short overview of doctrinal opinions

An issue of criminal liability for an omission is one of the most controversial questions in history of penal law. As one of polish researchers – W. Wolter states – everything is doubtful in that matter, starting from the question of qualification of omission as an act, through the issue of causation, and illegality of an omission, as to the question of attempt, aiding and abetting[1]. Such ambiguity is noticeable even in the basic issue of a definition. Notion of an omission is usually defined in terms of "directional inactivity" – a lack of activity, required by a ruling of law in a certain situation[2]. But definition quoted above isn't the only and even isn't widely accepted by the polish doctrine of penal law. Different opinions on the nature of an omission may be divided into four categories:

1. opinions that identify an omission as a kind of an act;
2. opinions which assume that a notion of an omission is a kind of legal fiction of an act;
   a) opinions based on social (sociological) theory of an act;

[1] W. Wolter, „zestępcze przeszkodzenie" „asopismo Prawnicze" t. XXXII, p.18

[2] „awo karne w zarysie. Nauka o ustawie karnej i przestępstwie" ed. by J. Waszczyński, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, 1992.

b) opinions based on final conception of an act;

3. opinions which assume that a notion of an omission should be examined in context of the characteristic of the type of prohibited act;
4. opinions that define omission in context of its linguistic analysis[3].

Ad) 1 First group of omission definitions refers to traditional causal (naturalistic) theory of an act. According to that an act is should be define as such directed by a free will manifestation of one's behaviour that can be perceptible. An act is a bodily movement that causes a change in an external world, or lack of activity preventing occurrence of a change in an external world, directed by an impulse of a free will[4]. Naturalistic definition of an act indicates mutual relationships between an act, an action, and an omission. That relationship is based on the assumption that notion of an act is superior to the notions of an action and an omission. Therefore, following this reasoning omission is always an act, and some of acts are omissions. Aforesaid opinion is presented for example by L. Kubicki who states that both an action and an omission are equal, objectively perceptible categories. According to his reasoning it can be reasonably stated that one is acting, as well as it can be reasonably stated that one isn't acting. Both that statements are true and also both of them are simply observations of objective phenomenon which is one's behaviour. Basing on this presumption Kubicki creates omission definition, that emphasize that nonfeasance, understand as a failure to undertake objectively possible action, in a specific time and place, is a kind of an act.

Another representative of naturalistic theory of an act, and – what is inseparably joined – equal position of an action and an omission is W. Wolter. In context of omission he remarks that in the light of physiological analysis of human's behaviour both an action and an omission are equivalent. Basing on Pawlow's study on human's behaviour Wolter states that lack of activity – constitutive feature of nonfeasance, is in fact an activity – such brain activity that inhibits a bodily movement. It has to be emphasized that notion of psychologically directed activity in the form of inhibited internal operation, presented above is correct only in case of intentional offences. In case of negligence Wolter's construction is dubious[5].

Ad) 2 Second group of opinions emphasize that a notion of an omission is a kind of legal fiction of an act. They are basing either on the social (sociological) theory of an act or the theory of finalism. Social (sociological) theory of an act states, that an act should be taken into consideration in its social and legal context. Therefore only that behaviour that is defective in context of social expectations connected to it may be relevant to the penal law. Acceptance of that reasoning leads to definition of an omission in which nonfeasance

[3] M. Rodzynkiewicz, ,,jęcie zaniechania a odpowiedzialność za przestępstwo popełnione przez zaniechanie w projekcie kodeksu karnego" Przegląd Prawa Karnego, 1994, vol. 11. p. 21.

[4] L. Kubicki „zestępstwo…", p. 13.

[5] L. Kubicki „zestępstwo…", p. 36.

is described as a lack of activity required in view of social expectations[6].

Final theory of an act, created by H. Welzel, and promoted in Poland by W. Mącior presupposes that the essence of any human's behaviour is its purposefulness. A person acts in a certain way in order to gain a specific goal[7]. Therefore according to that conception an act is a behaviour conducted in order to achieve a specific, pre – determinate goal. The same statement isn't correct in case of an omission, because nonfeasance in contrast to an action isn't an objective phenomenon. Therefore penal law has to create a legal fiction of an omission defined as a lack of an action ordered by the statutory ruling[8].

Ad) 3 Third group of opinions points out that notion of an omission should be defined on the basis of features of a statutory type of an offence. Such view created by A. Zoll emphasizes that any human behaviour may be described in context of fulfilment of characteristics indicated on the grounds of statutory features of an offence. Any human behaviour may be described in two ways: first in context of such positive characteristic of behaviour that were manifested, or in context of negative features of that action – those which didn't occur, although the legal ruling required their occurrence. With reference to omission A. Zoll stresses that omission should be described on the grounds of lack of bodily movement in a certain direction. Therefore nonfeasance isn't just an absolute immobility, but it's rather a feature of one's behaviour (activity) described and judged in context of expectations, that statutory regulation binds with that activity[9].

Ad) 4 An interesting and innovative approach to a problem of definition of an omission has W. Patryas who left traditional doctrinal disputes concerning the nature of an act, an action an omission, and its interrelationships, for linguistic analysis of that notions[10]. Basic conclusion that emerges from his studies is that words "an act" and "an omission" are two different linguistic categories. That linguistic analysis transferred into the penal law theory leads to a statement that an omission can not be treated as a kind of an act. As W. Patryas stresses, distinction (between an act and an omission – K. K.) is so significant that in an effect many fundamental constructions of the penal law, created for offence committed by an action, can not be used in case of an omissive offences[11]. Besides linguistic analysis, Patryas creates his own definition of an omission – so called conditional definition of an omission. According to that definition if entity *X* in time *t* was able to perform an act *C*, than entity *X* in time t omitted to perform an act *C* if

[6] Representatives of social (sociological) theory of an act in polish penal law doctrine are among others W. Świda, A. Zębik, B. Kunicka – Michalska, and M. Cieślak; see also K. Indecki, A. Liszewska, „uka o przestępstwie, karze i środkach penalnych" Dom Wydawniczy ABC, Warszawa, 2002, p. 110–11.

[7] L. Kubicki, „Przestępstwo…", p. 17–8.

[8] M. Rodzynkiewicz, „Pojęcie…", p. 24; W. Macior suggests that in thelight of final theory o final of an act any offence should be described as a forbidden behaviour, or lack of ordered behaviour.

[9] „Kodeks karny. Część ogólna. Tom I. Komentarz do art. 1–116 k.k."ed. by A. Zoll, Kantor Wydawniczy Zakamycze, Kraków, 2004, p. 78.

[10] W Patryas „Zaniechanie. Próba analizy metodologicznej" Wydawnictwo Naukowe UAM, Poznań, 1993.

[11] W Patryas „Zaniechanie…", p. 84.

and only if, when entity *X* in time *t* didn't perform act *C*[12].

2. Polish regulation of penal liability for omissive offences – art 2 of Penal Code

Doctrinal disputes on the nature of omission were significant in the light of a lack of statutory regulation of the issue of penal liability for omissive offences. Neither penal code of 1932, nor code of 1969 has a regulation that would stipulate, in detail, principles that govern liability for nonfeasance. In practice penal liability for criminal omissions was formed through judicial decisions and thesis formed by representatives of judicial doctrine[13]. Such situation was unacceptable in the light of *nullum crimen sine lege* principle. Therefore creators of the 1997 Penal Code took into consideration question of placing into the text of the new code principles governing penal liability for omissive offences. Result of such decision is article 2 of the Polish Penal Code, which stipulates that: "**Penal liability for an offence with criminal consequences committed by omission shall be incurred only by a person who had born a legal**, **special duty to prevent such a consequence**[14]". Regulation, quoted above, concerns specific kind of omissive offences – those, which provide specified effects ensued (also defined as *delicta per omissionem comissa*). They are characterized, besides nonfeasance, by necessity of occurrence of a consequence, described in the text of a ruling. They are comitted only when perpetrator's omission leads to arising of a result. Specific character of that category of offences is a result of placing in the text of a ruling an expression that indicates occurrence of a result, such as for example: kill (article 148 § 1 [15]), deprive liberty (article 189 § 1[16]) cause (article 155[17], article 156 § 1[18], article 173

[12] W Patryas „Zaniechanie…", p. 43.

[13] A. Zoll „Kodeks karny…", p. 74.

[14] Ustawa z dnia 6 czerwca 1997 r. – Kodeks Karny (Dz. U. Nr. 88, poz. 553).

art. 2 „Odpowiedzialności karnej za przestępstwo skutkowe popełnione przez zaniechanie podlega ten tylko, na kim ciążył szczególny prawny obowiązek zapobieżenia skutkowi".

[15] Whoever kills a human being stall be subject to the penalty of deprivation of liberty for a minimum term of 8 years, the penalty of deprivation of liberty for 25 years, or the penalty of deprivation of liberty for life. (art. 148 § 1 k.k. Kto zabija człowieka podlega karze pozbawienia wolności na czas nie krótszy od lat 8, karze 25 lat pozbawienia wolności albo karze dożywotniego pozbawienia wolności).

[16] Whoever deprives a human beung on their libertyshall be subject to the penalty of the deprivation of the liberty for a term of between 3 months and 5 years (art 189 § 1 k.k. Kto pozbawia człowieka wolności podlega karze pozbawienia wolności od 3 miesięcy do lat 5).

[17] Whoever unintentionally causes the death of a human being shall be subject to the penalty of the deprivation of the liberty for a term of between 3 months and 5 years (art 155 k.k. Kto nieumyślnie powoduje śmierć człowieka, podlega karze pozbawienia wolności od 3 miesięcy do lat 5).

[18] Whoever causes grievous bolidy harm in in form, which:

1. deprives a human beeing of a sight, hearing, speach or the ability to procreate, or
2. inflicts on another a serious crippling injury, an incurable or prolonged ilness, a permament total or substancial incapacity to work in an occupation, or a permament serious bodily disfigurement or deformation shall be subject to the penalty of the deprivation ogf liberty for a term of between 1 and 10 years

(art 156 § 1 k.k. Kto powoduje ciężki uszczerbek na zdrowiu w postaci:

1. pozbawienia człowieka wzroku, słuchu, mowy, zdolności płodzenia,
2. innego ciężkiego kalectwa, ciężkiej choroby nieuleczalnej lub długotrwałej, choroby realnie zagrażającej życiu, trwałej choroby psychicznej, całkowitej albo znacznej trwałej niezdolności do pracy w zawodzie lub trwałego, istotnego zeszpecenie lub zniekształcenia ciała, podlega karze pozbawienia wolności do lat 3.

§ 1[19])[20]. Liability for committing such offences arises only if that consequence occur. If there is no consequence indicated by a legal ruling perpetrator can be called to account only for attempt. Besides category of omissive offences described above, polish penal law distinguishes also formal omissive offences (*delicta mere omissiva*). That category of offences covers those cases of nonfeasance that didn't require occurrence of a specific result outwards. Formal omissive offence is committed, when the behaviour described in the ruling is accomplished. The most classical example of such offence is failure to render assistance described in art 162 § 1 of polish penal code. That regulation determines liability of a perpetrator that does not render assistance to a person who is in a situation threatening an immediate danger of loss of life, serious bodily injury, or a serious impairment thereof, when he so do without exposing himself or another person to the danger of loss of life or serious harm to health[21].

Article 2 of polish penal code indicated in this paragraph, applies only to the first category of omissive offences – those, that assume specified effects ensued from the text of a ruling. Therefore following remarks concerning the status of a person liable for nonfeasance of required action, in polish penal law theory named a guarantor of not – occurrence the result can be indicated only to that group of omissive offences.

3. Status of a guarantor in polish penal law

Legal rulings that penalise omissive offences with criminal consequences prohibit undertaking such behaviour that can create a danger for a legal interest, or lead to the infringement of that interest, and indicates a duty to act in order to prevent the threat to the legal interest. An important question is arising at this point – who has this duty of prevention. Can the obligation of preventing the danger to the legal interest be reasonably imposed on any person? Or maybe it should be limited to a specific group of people? The answer to those questions in case of omissive offences can be only one – that legal ruling can not reasonably oblige indefinite general public to protect legal interest and prevent infringement of that interest. Legal regulation has to precise the group of people connected with the interest by some kind of specific link, bond that gives axiological justification for imputing on them liability

[19] Whoever causes a catastrophy on land or warter or to air traffic which imperils life or health of many persons or property of a considerable extent shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years (art 173 § 1 k.k. Kto sprowadza katastrofę w ruchu lądowym, wodnym lub powietrznym zagrażającą życiu lub zdrowiu wielu osób albo mieniu w wielkich rozmiarach, podlega karze pozbawienia wolności od roku do lat 10).

[20] L. Kubicki, „Przestępstwo…", s. 93.

[21] Whoever does not render assistance to a person who is in a situation threatening an immediate danger of loss of life, serious bodily injury, or a serious impairment thereof, when he so do without exposing himself or another person to the danger of loss of life or serious harm to health shall be subject to the penalty of the deprivation of liberty for up to 3 years (art 162 § 1 k.k. Kto człowiekowi znajdującemu się w położeniu grożącym bezpośrednim niebezpieczeństwem utraty życia albo ciężkiego uszczerbku na zdrowiu nie udziela pomocy, mogąc jej udzielić bez narażenia siebie lub innej osoby na niebezpieczeństwo utraty życia albo ciężkiego uszczerbku na zdrowiu, podlega karze pozbawienia wolności do lat 3).

for not preventing a consequence[22]. Such limitation is made by article 2 of Polish Penal Code. According to that regulation liability for omissive offences with criminal consequence is imposed on a person who had born a legal, special duty to prevent a consequence – a **guarantor** of not – occurrance the result. Therefore there are two necessary prerequisites of guarantor's duty – it nas to be legal and it has to be special. First condition excludes moral, social and customary duties from the possioble sourtces of guarantor's obligation to act. Notion "legal" in this context implies that only those obligations that are enclosed legal acts that has a status of source of law. Catalogue of that sources and criteria deciding about the status of source of law are given by the Chapter III of Constitution of Republic of Poland. Second prerequisite pointed out by article 2 of Polish Penal Law is special character of guarantor's duty. That notion must be understood in context of individualisation of such duty. It limits catalogue of possible addressees of an order given by the ruling of law only to those who are connected to the legal interest by some kind of special link, as for example parents and a child, medical doctor and his patient, guardian and protected good.

Status of a guarantor is not sufficient prerequisite of imputing penal liability for omissive offences – guarantor must have a physical possibility to prevent the result. He or she would be liable for an omissive offence if occurrence of a result indicated by penal ruling was objectively possible to prevent – regulation imputing a duty of prevention the result can not oblige to preventing such threats that a human being can not neutralize[23]. Moreover guarantor have to be physically capable of preventing the result, and have the necessary means to prevent the result.

4. Sources of guarantor's duty to act

Polish penal code states that a source of guarantor's duty to act is legal, special duty to act. Facing with the lack of statutory specification indicating a catalogue of such events, that brings about a duty to act doctrine of polish penal law had to elaborate it. Widely accepted are three sources of guarantor's duty|:

1. statute
2. contract
3. previous behaviour

Ad) 1

Guarantor's duties derived **from a statute** are the less controversial category of sources. But this doesn't mean that it is clear and inevitable. Basic problem that concerns question of statutory sources of guarantor's duty to act is indicating which statutory obligations can be treated as a source of penal liability. Facing enormous number of statutes and obligations created by them, we have to decide how to point those that are relevant to the status of guarantor. First of all statutory obligation have to concern limited circle of subjects. Statute has to define what subjects are obliged to action either by pointing specific feature of those subjects – based on their personal

[22] A. Zoll „Kodeks karny…", p. 80.

[23] A. Zoll „Kodeks karny…", p. 79–80.

attributes or describing de facto situation in which they are. Moreover statutory regulation that is a source of guarantor's duty to act has to create person's obligation to undertake such actions that protect legal interest from infringements or prevent causing a harmful consequence connected with potentially dangerous activity[24].

Among others good example of statutory sources of guarantor's duty to act in polish law may be Polish Family and Custody Code of 25 February 1964[25]. Its regulations indicate considerable group of duties that could be sources of guarantor's duty to act. First of all article 23 of that code which consider a question of mutual help and support between a husband and wife[26]. Aforesaid regulation generates few questions. First of all what is the range of obligation of husband's and wife mutual support? Are they guarantors of their health and safety, or are they obliged only to moral support in everyday life difficulties? In my opinion regulation of article 23 of Polish Family and Custody Code creates a status of guarantor. That ruling stresses husbands and wife mutual duty of help and support, and emphasize special character of bond between them. In order to analyze if that regulation creates guarantor's duty we have to consider notion of mutual support (wzajemnej pomocy) used by a legislator. Does it bear obligation to care and protect necessary for arising guarantor's duty? To answer that question we have to consider provisions of article 162 of polish penal code, which stipulates liability of any person who does not render assistance to a person who is in a situation threatening an immediate danger of loss of life, serious bodily injury, or a serious impairment[27]. That ruling stipulates liability of any person that is in a situation described above, also a husband and wife. If legislator decided to stress mutual obligations of a married couple in article 23 of Polish Family and Custody Code we may presume that basing on specific bond between them – made them guarantors of their safety. Such assumption creates more problems. What happens with mutual guarantor's duties in case of irretrievable breakdown of the marriage? And what about informal relationships that live together like a married couple but without a marriage? It is reasonable to state that irretrievable breakdown of the marriage finishes status of a guarantor, becuse basic condition of guarantor's liability is possibility of acting. In case where there was no possibility to prevent a consequence there is no liability. Irrevitable breakdown of the marriage make it impossible to prevent a harm of a husband's or wife's goods. As for the informal relationships In the grounds of polish law informal relationships – concubinage is not legally regulated, therefore there is no *legal*, special duty imposed on common-law husband and wife.

[24] Similar opinion is presented by M. Kliś „ Źródła obowiązku gwaranta w polskim prawi karnym" Czasopismo Prawa Karnego i Nauk Penalnych 1999, vol 2, p. 174–75.

[25] Polish Family and Custody Code of 25th February 1964, Dz. U. Nr. 9 poz. 59 z późn. zm.

[26] Art. 95 §1 ustawy z dnia 25 lutego 1964 r. Kodeks Rodzinny i Opiekuńczy – Małżonkowie mają równe prawa i obowiązki w małżeństwie. Są obowiązani do wspólnego pożycia, do wzajemnej pomocy i wierności oraz do współdziałania dla dobra rodziny, którą przez swój związek założyli. Husband and wife have equal rights and duties.They are obliged to conjugal life, mutual support and faithfulness and to co – operations for the good of the family, that they have created by their relationship.

[27] See footnote number 24.

Article 95 § 1 of Polish Family and Custody Code stipulates that paternal authority includes particularly parent's duty and right to execute care of a person and care of child's property and to raise that child[28]. That regulation generates numerous doubts. Do provisions of that article bear a guarantor's duty of care after life and health of a child imposed on their parents? Are parents obliged to prevent any threats and danger that child's behaviour creates? The answer to both these questions has to be positive in my opinion. Parents are guarantors of their child's health and life. Moreover they are guarantors of other people's legal interests which may be threatened by childs actions and therefore they have to prevent any infringements of those interests made by their child. Such duty lasts until the child stays under paternal authority.

There are many statutes that create guarantor's duty to act. Among them there may be pointed: article 431 of Polish Civil Code that indicates liability of the person who raises an animal or uses it for the damage made by that animal. There are no doubts that the owner of an animal is a guarantor of not occurrence a result caused by an animal. Article 30 of the statute on the medical doctor's occupation, stipulates that a medical doctor has a duty to give medical help in any case when the delay could use danger of death, grievous bodily harm or grievous bodily dysfunction, and in other urgent cases[29].

Ad) 2

Second category of sources of guarantor's duty is a **contract**. In order to create guarantors duty to act obligation taken by the party to the contract have to entrust something or somebody to that person's care, or establish a requirement of controlling a specific source of peril[30]. Such obligations have to require undertaking activity necessary to avert the danger threatening to the interest or to turn away the danger created by controlled source of peril.

Polish penal law theory stresses, that notion of a contract in context of establishing guarantor's source to act can't be analysed on the basis of civil law. Researchers point out that even such contract that is valid in the light of the civil law regulation can create guarantor's duty to act. Basic criteria important for the judgement if the guarantor's duty arises are: voluntariness of the contract[31]. As L. Kubicki stresses obligation relevant to the guarantor's duty to act have to be clear and it have to be actually undertaken[32]. Those two criteria voluntariness and actual undertaking of duties imposed by contract determines creation of guarantor's status.

Ad) 3

The last and most controversial source of guarantor's duty to act is **previous behaviour** of a person. According to this one's behaviour that creates a danger to legal interests should create an obligation to prevent possible infringements of goods. That source, although traditionally accepted, in

[28] Article 95 §1 of Polish Family and Custody Code of 25th February 1964 – Władza rodzicielska obejmuje w szczególności obowiązek i prawo rodziców do wykonywania pieczy nad osobą i majątkiem dziecka oraz do wychowywania dziecka.

[29] Statute of 5th December 1996 on the medical doctor occupation Dz. U. 1997 nr 28 poz. 152 z późn. zm.

Art 30 – Lekarz ma obowiązek udzielać pomocy lekarskiej w każdym przypadku, gdy zwłoka w jej udzieleniu mogłaby spowodować niebezpieczeństwo utraty życia, ciężkiego uszkodzenia ciała lub ciężkiego rozstroju zdrowia, oraz w innych przypadkach niecierpiących zwłoki.

[30] L. Kubicki, „Przestępstwo…", p. 176.

[31] P. Konieczniak „Czyn…", p. 314.

[32] L. Kubicki, „Przestępstwo…", s. 178.

the light of requirement described in the article 2 of the Polish Penal Code is doubtful. Thus provisions stipulate that guarantor's duty to act arises when there is a legal, special duty imposed on that person. Statement that previous behaviour creates such legal duty is controversial. Therefore we have to find different solution that will not be dubious in the light of nullum crimen sine lege principle and requirement that guarantor's duty to act has to be specific legal duty. That solution can be using articles of Polish Civil Code of 23 April 1964 concerning delict liability, especially article 439 that concerns preventing damage[33].

Conclusions

Although a question of omissive offences in polish penal law is widely described and discussed there are still significant unsolved doubts. Most of them concern a problem of a catalogue of guarantor's duty to act. First of all without a statutory catalogue of such sources there is no certainty which obligations bear guarantor's duty. Possible solution to that problem, controvertial in the light of *nullum crimen sine lege* principle would be indicating in the text of a statute possibly precise enumerative catalogue of duties, that born a requirement of preventing a specific consequence[34]. In my opinion such solution is in practice not possible. Therefore I would limit that postulate to exclusion from the sources of guarantor's duty to act category of previous behaviour, and basing all that sources on two grounds – statute and a contract[35].

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9. W. Wolter, "Przestępcze przeszkodzenie", Czasopismo Prawnicze, t. XXXII, s.18.

10. Statute of 6th June 1997 – Penal Code (Dz. U. Nr. 88, poz. 553 with amendments)).

11. Statute of 25th February 1964 – Family and Custody Code (Dz. U. Nr. 9 poz. 59 with amendments).

12. Statute of 5 December 1996 on the Medical doctor occupation Dz. U. 1997 nr 28 poz. 152 with amendments).

[33] That opinion is presented by L. Kubicki „Przestępstwo…", p. 179, and M. Kliś „ Źródła…", p. 193–196.

[34] P. Konieczniak „Czyn, jako podstawa odpowiedzialności w prawie karnym", Kantor Wydawniczy Zakamycze, Kraków 2002, p. 300.

[35] Guarantor's duty based on previous behaviour would be based on article 439 of Polish Civil Code.

BAUDŽIAMOJI ATSAKOMYBĖ UŽ NEVEIKIANT PADARYTAS NUSIKALSTAMAS VEIKAS – SPECIALIOJO NUSIKALSTAMOS VEIKOS SUBJEKTO PAREIGOS VEIKTI ŠALTINIAI

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Santrauka

Straipsnyje apžvelgiamos Lenkijos Respublikos baudžiamosios teisės mokslininkų pozicijos dėl neveikimo sąvokos ir esmės, nurodoma neveikimo samprata, remiantis kauzaline, socialine, finaline veikos teorijomis, taip pat neveikimo sampratos, atskaitos tašku laikant teisinio draudimo charakteristikas, be to, neveikimą analizuojant pagal jo lingvistinę analizę.

Autorė straipsnyje analizuoja 1997 m. priimto Lenkijos Respublikos baudžiamojo kodekso 2 straipsnio nuostatas, reglamentuojančias baudžiamąją atsakomybę už neveikimu padarytas nusikalstamas veikas, taip pat pateikia specialiojo nusikalstamos veikos subjekto teisinius požymius, remdamasi konkrečiais pavyzdžiais pagal Lenkijos Respublikos baudžiamąjį kodeksą. Straipsnyje daug dėmesio skiriama ir specialiojo subjekto pareigą veikti reglamentuojantiems šaltiniams: įstatymams, sutartims, ankstesniam asmens veikimui. Autorė daro išvadą, kad pirmieji du šaltiniai, atsisakant trečiojo, nors teismų praktikoje ir pripažįstamo, labiausiai užtikrintų *nullum crimen sine lege* principo įgyvendinimą.

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