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Ius puniendi. The essence, grounds, boundaries and aims of the right to punish as a method of resolving conflicts - abstract

The dissertation addresses the broad issue of the right to punish, which is currently under the exclusive jurisdiction of the state, making it very often synonymous to 'state right to punish".

The first chapter of the thesis deals with the problem of the origins of *ius puniendi* and focuses on a historical analysis of this phenomenon. It analyses models of punishment in three distinct periods: before the establishment of the state organisation, during its creation (transitional period) and during the period when the state obtained a monopoly on punishing its citizens. From this analysis, it can be deduced that the phenomenon of punishment predates the creation of the state organisation by a considerable margin. Originally, the holder of the right to punish was exclusively the community, which over time ceded this right to the state - partly voluntarily, partly as a result of a top-down takeover by the state authority. As a consequence of the monopolisation of the right to punish, its scope also included such behaviours that were harmful only to individuals exercising state power. In view of the results of the historical analysis, it can be concluded that the right to punish has a collective character. The state only disposes of it on behalf of the community, which should be taken into account at every level - the creation, application and execution of the law.

Chapter two discusses the issue of the concept, essence and aim of the right to punish. This part of the dissertation defines the concept of *ius puniendi* based on the assumption of its two-component nature and then, by referring to general theories of responsibility, its essential aim is reconstructed. The right to punish is the right (*ius*) of the community to conventionally express condemnation of particularly socially harmful behaviour of individuals, the implementation of which has over time been ceded to the representatives of the community exercising power. Nowadays, the function of symbolic social condemnation of the perpetrator's act finds its deepest expression and culmination at the moment of judgment, i.e. at the moment when the criminal trial ends with a sentence assigning criminal responsibility for the offence. The second component of the right to punish, i.e. criminal punishment, is now distinguished from other forms of repression by the fact that it is the consequence of the condemnation of a specific act in a symbolic way by the entire collective, which is publicly and conventionally communicated precisely in the conviction. The necessity of answering a criminal charge constitutes a separate type of nuisance, at the heart of which lies the provisional assumption that the person subjected to this nuisance is criminally responsible for the offence charged. The purpose and, at the same time, the mandate for the enforcement of criminal liability, and thus the purpose of the *ius puniendi*, is a two-way impact, oriented, firstly, towards the offender charged with the offence and, secondly, towards the consequences of the evil caused by him. In both cases, the aim is to cancel out the negative values created by the crime.

The third chapter deals with the issue of the boundaries of the *ius puniendi* in three levels: lawmaking, law application and law enforcement. The primary factors determining these limits

are the principle of proportionality and the theory of the protection of the legal good. These factors should also be complemented by what follows from the collective character of the right to punish. This is of particular relevance in the creation of law (criminalisation). Criminal conduct should be limited to that which, within a particular community, is regarded as clearly reprehensible and blameworthy. Determining the scope of such behaviour can be done using J. Rawls' theory of justice. Taking into account societal beliefs about punishment is undoubtedly important, but nevertheless it cannot proceed unconditionally. It is therefore necessary to examine what stands behind these beliefs and whether they are the result of prejudice, and to examine whether they are compatible with the principle of proportionality. The boundaries of the right to punish should also be adjusted accordingly at the stage of application of the law. All nuisances related to the offence, including those in retrospect (i.e. experienced by the offender even before the conviction), both procedural and extra-procedural, should be reflected in the scope of the punishment. The limits of the right to punish can also be analysed in international terms. The disposer of the international *ius puniendi* is the international community. It seems that also within it, it is possible to reconstruct a certain minimum range of behaviour on which there is an international consensus on the necessity to condemn and punish it, which is the task of international tribunals.

The fourth chapter discusses the issue of the resignation of the *ius puniendi* with reference to its two-component nature. From this perspective, a distinction is made between the reasons for resignation on the grounds of resignation from condemnation of the act, resignation from punishment for the act and on the grounds of release from the obligation to answering to the charge. With this systematisation, the category of primary and secondary non-criminalisation was distinguished. Based on the conclusions formulated in this section, the issue of the relevance of procedural decisions on the resignation of the right to punish was also analysed. As regards each of the distinguished categories of resignation, it was pointed out the content and form of the ruling so that it would correspond to the substantive meaning of each ruling.

The fifth chapter refers to the issue of the model distribution of nuisance between the components of the *ius puniendi*. The typical way in which *ius puniendi* is implemented is through the collective condemnation of the offender in the form of a conviction and the subsequent application of a criminal response to the offender. While this is the typical solution, it is not the only one possible. Indeed, the system of reaction to crime has been equipped with instruments that allow each of the two components of the right to punish distinguished in the thesis to be expressed in different ways and to distribute the emphasis of the severity of each of them. Methods of implementing the right to punish that are different from the typical ones can lead either to a weakening or to an intensification of the ailment of each component, doing so either "at the expense" of the ailment of the other component or independently. Acknowledging these characteristics also makes it possible to realise that, within the boundaries of the *ius puniendi*, it is possible to modulate the *ius puniendi*, sometimes reducing the resulting discomfort and sometimes strengthening it. This is not limited solely to the criminal response, which can be relatively easily measured. Also with regard to the first component of the right to punish, the related disadvantage can be expressed in different forms and thus adapted to a generally abstract category of cases or to the needs of a particular case.

In the last, sixth chapter, the problem of an alternative model to the right to punish is discussed. In certain situations, the negative value of an offence may be compensated - in whole or in part - by means other than the implementation of the state *ius puniendi*, so that the need for punishment ceases or is significantly reduced. In particular, this can occur as a result of positive behaviour of the offender, with the result that the balance in the relation between offender-victim and offender-community, which has been disturbed as a result of the offence or an act aspiring to be an offence, is restored - in whole or in part - without involving the state and its organs. The acceptance of such an alternative to the tradition of *ius puniendi* is part of one of the central tenets of restorative justice. The confrontation between these two models of responding to crime, on the one hand, emphasises their differences, but, on the other hand, demonstrates that, since it is possible to synthesise them and benefit from each other's assumptions, they must aim at the same goal, which is justice, understood as compensating the negative value of a crime with a positive value. The interplay of these paradigms can provide for three different approaches to the problem of the location of restorative justice in the system of reacting to crime - a minimalist approach, a maximalist approach and an intermediate approach that assumes the simultaneous coexistence of restorative justice and the traditional *ius puniendi* model. The determining factor for the possibility of using an alternative paradigm of restorative justice should be defined as the 'social need to punish', understood as the need to use, in response to a crime, the traditional paradigm of *ius puniendi*. An analysis of the interdisciplinary research carried out on the perceived need to punish shows that the restorative justice model could be applied to unintentional offences, offences against property, offences targeting so-called relative goods and minor and medium crimes. Importantly, the distinction given under this chapter to a mechanism by which the offender could apologise to the whole community does not limit the application of the restorative justice model to only those offences involving an individually designated victim.

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