

good, i.e. the patient.

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## **CHARACTERISTICS AND MUTUAL RELATIONSHIP OF PERSONAL AND PROPERTY BENEFITS IN POLISH CRIMINAL LAW**

Every action taken by a person serves to achieve an individual goal. Each time it will be some kind of benefit. Its task is to satisfy the needs of a specific person, having a direct impact on the situation of the entity it concerns. Defining the nature of the benefits is very important, but in practice it proves to be extremely difficult. As people who are constantly involved in relationships with other people, we receive many benefits with different characteristics every day. In most cases, they are indifferent to the provisions of criminal law, but sometimes we get those which achievement is against the law. Only then do we begin to reflect on their character. Such an addition is not accidental, it always has a specific cause and is expressed in a strictly defined way. However, these properties should be known in order to correctly assess the behavior of the

perpetrator of the crime, and then indicate whether he has obtained a personal or material benefit. It is difficult to indicate the criteria for such an analysis. The concepts of personal and property benefits are defined in many ways to this day. For dozens of years, representatives of Polish criminal law have not been in agreement regarding to the essence of the indicated concepts, their definitions and their mutual relationship. However, uncertainty in this matter is not a positive development. It is influenced by the constantly progressing development of our world, which determines the more and more intense exchange of goods and services between entities. Consequently, the more people participate in the turnover of various goods, giving material or non-material benefit, the more people will be willing to gain an unlawful benefit to the detriment of honest people. The lack of detailed and exhaustive arrangements with regard to personal and material benefits causes disorder and difficulties in applying the law in the above-mentioned scope.

It is on the above-mentioned issues that the author focused on the basis of this study, assuming a general characterization of personal and material benefits and recognizing their most important properties. An additional subject of the study, constituting its summary, will be a comparison of personal and property benefits. All the considerations apply to the current content of Art. 115 § 4 of the Polish Penal Act and is based on doctrine and jurisprudence concerning its views.

Benefits – personal and material – have been known to Polish criminal law since the penal code of 1932 was in force. Their universality has never been denied, but their characteristics have been briefly described. It was not until the 1969 Penal Act that they were formulated as legal definitions. They have the same shape until today, in the current wording of the Penal Code of June 6, 1997, they are included in Art. 115 § 4, according to which the personal and property benefits may be achieved for the perpetrator himself as well as for another person. Adopting the understanding of these terms in the manner proposed by the legislator does not allow, however, to define their character, let alone to make a distinction. It can only be indicated that both types of benefits should be treated as independent of each other, because the act distinguishes both a personal benefit and a material benefit. However, there are no criteria on the basis of which such a division should be made. The definition proposed in Art. 115 § 4 of the Penal Act seems to be, as J. Giezek rightly pointed out, only «a pretext to consider the subject of material and personal benefits – in fact, by not defining their essence at all».

Moving on to further considerations regarding personal and material benefits, it should be pointed out that when assessing and distinguishing them in the Polish criminal law doctrine, the position expressed by Z. Sobolewski is indicated, according to which "an important feature of any benefit is its ability to satisfy a need", thus it should be considered as a goods that can satisfy this

need. Benefits in this sense can be divided into those of a material nature, serving to satisfy human physical needs (the needs of the body) and immaterial (related to the spiritual sphere), aimed at satisfying intellectual and moral needs, etc. In the presented position, the concept of the need is a distinguishing and necessary feature for the existence of an advantage within the meaning of criminal law. This is where the benefit is expressed. It is a profit that improves the situation of the perpetrator of the crime or another person for whom it was obtained. As a result, material or non-material needs were satisfied. The benefits may be goods constituting separate material objects, as well as human behavior, especially consisting in the provision of services, action, omission or removal. For their recognition as an advantage, however, the existence of a certain effect in the form of not only satisfying the needs, but also objectively improving the situation of the perpetrator or the person receiving the benefit, as well as the unlawfulness of the behavior, is necessary.

The division of benefits into property and personal is a complete division, it is exhaustive, other identifiable benefits should be included in it. However, it is important to analyze each of the indicated forms of benefits and see their most important features.

A separate definition of the concept of personal gain is very important. Its individual character should be emphasized, which has been forgotten for years in the science of criminal law. As it seems to be «less tangible» compared to its financial counterpart, for decades, it has been abandoned from defining it, only indicating that it occurs – «in the absence of a financial advantage», i. e. on the negative side. The fact is, as P. Palka pointed out, "on a closer analysis of personal gain, it turns out that there are few determinants which characterization would be universally agreed upon. «This is due to the presence in the doctrine of Polish criminal law of two contradictory views on when we are dealing with a personal gain. On the one hand, it is indicated that in order to exist, it must serve to satisfy a human need of an immaterial nature. On the other hand, it is everything that, even in the subjective opinion of the perpetrator, results in usefulness, but does not contribute to increasing his wealth. This makes it difficult to indicate the criterion for assessing the occurrence of a personal benefit, which, however, cannot be the basis for its complete omission. In the science of criminal law, it is sometimes indicated that the type of need being satisfied is a “not very diagnostic» criterion, creating a number of doubts, especially with regard to the proper qualification of the charges and their nature. This situation is not facilitated by the complexity of the personal benefit itself, sometimes expressed in difficulties in correctly distinguishing it from material benefit. It is sometimes possible to define a personal gain in money. It can also improve the economic situation of the host entity. This is the basis for presenting an alternative method of qualifying a personal benefit, taking into account the criterion of economic value and

convertibility into money. According to its supporters, such accounting allows to eliminate the previously noticed problem of low diagnostics of personal benefit. It applies in particular to dual benefits – property and personal. For example, here it is possible to indicate the payment of someone else's trip, paid services aimed at satisfying human needs, including in particular sexual needs. However, it should be emphasized that an unequivocal definition of a personal benefit always requires referring to specific examples of its occurrence – making a kind of illustration, while emphasizing that in any other factual state it may take various and hitherto unknown forms. In order to create any possibility of general acceptance of what this type of benefit is, it is assumed that it has no economic value, but satisfies intangible needs.

The property advantage is a much less problematic concept and, in addition, the most comprehensive one. From the linguistic point of view, attention should be paid to its main element – the adjective «property», referring directly to the state of possession. The very concept of financial advantage is only partially considered by criminal law. Civil law pays particular attention to it, therefore it should be used here. Therefore, assets should be considered «(...) all property rights vested in a specific entity and all property obligations incumbent on that entity, and in a narrower sense – all property rights only». Achieving a financial advantage, without legal justification, in civil law will lead to an obligation for unjust enrichment. It is reasonable to use this structure in criminal law. The material benefit will thus be any increase in assets or reduction of liabilities that the perpetrator has obtained as a result of committing the crime. It is also indicated that it finds its realization in avoiding the reduction of wealth. Such a state of affairs does not have to be permanent. It is enough that even temporarily it increases the assets of the person receiving it. The only feature of a material benefit is that it satisfies a material need. Obviously, it is usually expressed through goods of a certain value. In the science of law, this value is illustrated with the use of money, securities, prices for the perpetrator or another person, and property rights. As shown by criminological research, the most common form of financial gain in the practice of justice is money.

Summarizing these hermetic considerations on the concept of personal and material benefit, it should be emphasized that determining what constitutes each of them should be based on several criteria: not only the need they satisfy or the possibility of expressing the benefit as a monetary value, but also the assessment of the benefit obtained in the realities of a specific factual state. When analyzing the concepts of personal and material benefits, the same interpretation cannot be used, because the financial benefit has a countable form, while a personal benefit is any good that is not material, directly uncountable into money, but convenient for the recipient or satisfies some of its needs. The allocation in relation to this very advantage is not the same as that in the case of a financial advantage. It consists in approving and taking what

someone offers. Undoubtedly, a financial advantage plays a more significant penal role, it is more often a hallmark of a prohibited act than a personal one, and thus, it causes the effects provided for in criminal law in more cases than a personal benefit, which is always somewhat alternative to financial gain. A characteristic feature of a personal benefit, its penal character, is the indicated accessory accessibility in relation to material benefit, the lack of independent meaning designations and the derivative, a secondary relation to material benefit, because it is most often assessed from the perspective of the features that are opposed to it.

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### **POSSIBILITY TO COMMIT CRIMINAL ATTEMPT BY *DOLUS EVENTUALIS* IN GEORGIAN AND AMERICAN CRIMINAL LAW**

One of the most disputed issues in contemporary criminal law of Georgia is the possibility to commit criminal attempt with *dolus eventualis* (indirect intent). Traditionally in Georgia it has been thought that criminal attempt can be committed only by direct intent. However, the possibility of attempt by *dolus eventualis* has been recognized in the latest academic literature as well as court caselaw.

In American criminal law, the concept of reckless attempt is generally rejected. On the other hand, Georgian criminal law as well as American criminal law do criminalize reckless endangerment, which can cover those situations where reckless attempt is not punishable per se.

In Georgian criminal law, the *dolus eventualis* (indirect intent) is defined by art. 9.2. of the criminal code, according to which an act shall be considered to have been committed with indirect intent if the person was aware of the unlawfulness of his/her action, was able to foresee the occurrence of the harmful consequences and did not desire those consequences, but consciously permitted them or was negligent about the occurrence of those consequences. *Dolus eventualis* should be distinguished from conscious negligence which means that the defendant hopes that harmful results will not occur (art. 10.2 of the criminal code of Georgia).

American criminal law is familiar with following kinds of *mens rea*: Purpose, Knowledge, Recklessness, Negligence.

In Model Penal Code, recklessness is defined in following words: A person acts recklessly if he is aware of a substantial risk that a certain result will occur as a result of his actions. The risk must be substantial enough that the action