

Conceptualising the Legal Interest to Health in Criminal Food Law and Formularising Its Elements: A Research on Legislative Legitimation of a Risk-Based Criminal Law

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Abstract

It is undisputed that the legal interest of health is the core and starting point of criminal food law. The content of the legal interest in health is not entirely identical to the offence of bodily injury. While the offence of bodily injury presents itself as a criminal offence of injury for the protection of health, criminal food law is a risk-based criminal law with the same objective. This is so self-evident that the legal interest of health in criminal food law does not seem to require explanation.

This article aims to return to the most original point of criminal food law, to point out the importance of the qualitative nature of health legal interests protected in criminal food law, and to discuss the normative and practical basis of health legal interests to conceptualise their specific connotations. The concept of the legal interest in health at issue is considered as an individual legal interest which aims to protect people from the risks in relation to problems arising from consuming food. Through this, it is possible to delineate the minimum requirements for individual risks mastered by the criminal food law, and its justification as a risk-based criminal law. Ultimately, it can be confirmed how the criminal food law can systematically formulate its constituent elements through the hierarchical conception of actual and dangerous offenders in order to protect the health legal interests. On the basis of the principle of determination and the principle of proportionality, it is suggested to use the type of offence of suitability

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when applying the abstract hazardous offences. In this case, the essay will clarify how the elements of fitness should be formed in the constitutional requirements of the criminal food law. Through the future legislative guidelines of these criminal food laws, it is possible to point out the lack of penal provisions in the current Act Governing Food Safety and Sanitation and the reference basis for their provisions in the future re-legislation.

In view of the principle of clarity and the principle of proportionality, in the application of abstract dangerous offenders, it will be suggested to use the appropriate offenders as the legislative model. Here we will clarify how the elements of fitness should be formed in the constitutional requirements of the criminal food law.

Keywords: Criminal Food Law, risk-based Criminal Law, Criminal law legislation, legal interest to health, food risk, offence of endangerment, offence of suitability, Act Governing Food Safety and Sanitation