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Research Article

ON THE ISSUE OF CRIMINAL LIABILITY OF LEGAL ENTITIES

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ABSTRACT

The article characterizes the ratio of types of responsibility of legal entities in the Republic of Uzbekistan in the modern legal order, as well as some issues of corporate criminal responsibility.

KEYWORDS

Corporate criminal responsibility, legal entity, public danger, punishment.

INTRODUCTION

One of the main tasks of the modern criminal legislation of the Republic of Uzbekistan is to increase the level of protection of the rights and legitimate interests of subjects of legal relations.

Today, in Uzbekistan, only individuals can be brought to criminal responsibility, while legal entities are not the subjects of a crime and, in accordance with national legislation, civil and administrative responsibility can be applied to legal entities that have committed offenses. This practice was also in other neighboring countries, but over time it began to change.

Our country did not know the institution of criminal responsibility of legal entities. It is not

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traditional for us. During the Soviet period, criminal legislation and the theory of criminal law in general proceeded from the inadmissibility of bringing legal entities to criminal responsibility.

Only at the end of the XX century, this topic began to rise again in the scientific literature. To some extent, this was due to the need to reform criminal legislation in general.

Currently, the problem of criminal responsibility of legal entities is widely discussed in the legal environment and the criminal law considers only an individual as a subject of a crime.

An individual, being one of the main elements of the composition of crime in criminal law, has a number of specific features that are important for resolving the issue of bringing him to criminal responsibility.

As mandatory signs of a subject of criminal law, it is recognized that subject is represented as a physical, sane person who has reached a certain age established by criminal law. An facultative sign characterizes a special subject of a crime defined by the doctrine of criminal law.

The qualification of a crime can be influenced only by two of these signs - age and the sign of a special subject. The analysis of various points of view of legal scholars [1], allows us to come to the conclusion that an agreement with the authors is necessary, claiming that the legislative consolidation of a legal norm in the Criminal Code created insurmountable obstacles to the qualification of the actions of persons who do not have the sign of a special subject of a crime, but who took a direct part in its commission.

The legislative provision formulated in the criminal law is not absolute, applicable to all, without exception, cases of complicity in a crime committed by a special subject. In this regard, there is serious doubt about the expediency of including this and similar provisions of the theory of criminal law in the law, which need additional clarifications and reservations.

It should also be borne in mind that in a number of crimes, a special subject is characterized not only by the presence of additional signs, but also by specific conditions for recognizing a person as a special subject of a crime. The mere fact of a person's formal presence in the sphere of special public relations does not mean that the violation of special duties committed by him should entail criminal responsibility.

In the question of the qualification of such situations, it is necessary to pay attention to the acquisition by a person of the status of a special subject against his will. It is assumed that if a person acquired the status of a special subject against his will, and the duties of a special subject were assigned to him, he must be recognized as an improper subject of this crime and cannot be held responsible for it. If a person voluntarily assumed the rights and obligations inherent in a special subject of a crime, he must answer as the perpetrator of the crime with a special subject. This situation has been reflected in cases of abuse of power and exceeding of power.

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In general, criminal responsibility is a type of legal responsibility related to measures of state coercion that can exert the necessary influence on subjects of various spheres of legal relations that allow misconduct.

Currently, the problem of corporate social responsibility (CSR) is the subject of discussion by many scientific communities, mass media, creative, scientific research of various scientists.

It is necessary to understand that the social responsibility of business is much broader than is commonly believed. When making decisions, companies should not be guided solely by a sense of their own benefit, but must take into account the possible consequences of their actions on the well-being of all stakeholders. The social responsibility of business also implies economic, legal, ethical and philanthropic types of responsibility.

If economic responsibility is basic and includes the ability of a company to earn sufficient profit, create new jobs and produce goods and services demanded by society, then legal responsibility means that profit must be achieved legally in accordance with the requirements established by the state, which in turn is the legal responsibility of the business. An important role is played by ethical responsibility, which implies the moral behavior of the organization in relation to all interested parties and, first of all, to society. Ethical behavior, although not established by the law, but many companies independently develop "codes of ethics" based on standards of fairness and equality, so that their employees can distinguish between ethical and immoral behavior. Philanthropic responsibility - philanthropic obligations are exclusively voluntary activities of organizations that contribute to improving the quality of life of society, for example, such as charity, donations, sponsorship, gratuitous financing of social projects.

Civil torts and administrative offenses are fundamentally different from legal acts in the criminal legal order. Civil legislation, defining the legal status of participants in civil turnover, is designed to regulate relations between persons engaged in entrepreneurial, business activities and protect civil rights and obligations. Therefore, the main distinguishing feature of civil responsibility from any other legal responsibility is that it is presented as a sanction for violation of civil laws and is established to ensure the conditions for the normal development of public relations regulated by civil law.

The issue of civil responsibility becomes particularly relevant due to the fact that such entities as legal entities with a complex internal structure take part in civil turnover. Based on this factor, it seems expedient to need an approach that would divide the solution of emerging issues of responsibility into two categories: identification of the guilty subject, as well as the definition of the subject of responsibility.

Since when conducting a study of all the circumstances of a particular violation of civil rights, it is possible to determine whether a legal entity is really guilty of committing this offense,

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and what measure of responsibility should be chosen in relation to it.

The civil responsibility of legal entities is considered as a generic concept, which also includes the behavior of individuals. Yes, as we know, for the most part, the responsibility of a legal entity is characterized by a property character. But responsibility may also have a non-material form (for example, in the case of protecting business reputation).

Legal entities may be held responsible: acting as the founder, owner of the property of another legal entity. This kind of responsibility should be provided for by civil legislation: in case of non-performance or improper performance of the contract (contractual responsibility); in case of damage, in most cases, which is not related to non-performance or improper performance of contractual obligations (that is, non-contractual responsibility).

For the most part, in order to bring a legal entity to civil responsibility , it is important to have the following factors: violation of the requirements established by regulatory acts, or the terms of the contract with which the occurrence of civil responsibility is associated; illegality of the act; the presence of harm or loss to the injured party; causal relationship between the illegal act of the violator and the consequences that have occurred; the fault of the violator.

The legal entity will be held responsible in accordance with the general rule in the amount of losses or harm caused. Nevertheless, the onset of responsibility takes place even in the absence of losses – for example, it may be the recovery of a penalty.

In the case of non-contractual responsibility, the opposite situation arises, in which a law or contract may establish the obligation of the harm-doer to pay compensation to the injured party, in an amount higher than compensation.

Proceeding from the above, we can say that the civil responsibility of legal entities has its impact directly on the owners and officials of the organization, aiming to ensure compliance with the applicable legal norms on the part of the latter, thereby preventing possible losses of a legal entity, primarily of an economic nature.

The civil responsibility of a legal entity becomes possible because the legal consequences of actions committed by physically authorized persons are transferred to the legal entity: the chairman or a member of the management board who sign a contract on behalf of the latter and this contract is considered binding for the legal entity.

Regarding the application of criminal sanctions to legal entities, many scientists consider it inappropriate to establish criminal responsibility, since in the case of the legitimate activity of a legal entity, it can be liquidated in a civil order. But the liquidation of a legal entity in a civil procedure is connected only with the application of a set of property-related measures to make settlements with persons who worked under an employment contract, creditors and other persons.

But in case of violation of public relations protected by criminal law, it seems that the

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application of civil law measures is not enough. For example, the committed act exceeded the harm to human health or caused significant damage to the natural environment. Recognizing that individual illegal activities of legal entities can be dangerous and capable of causing harm to society, the degree of which is quite large, it seems that such activities should be considered a crime and, therefore, criminalized and entail criminal responsibility.

Another significant factor is that recently countering various types of illegal activities of legal entities increasingly requires international cooperation in this area. In general, we can talk about the steady trends of transnationalization of crime, especially organized, extremist, terrorist, economic and even corruption. For example, in the UK, the Bribery Act criminalizes companies for failing to prevent an act of bribery[2].

Treaties on legal assistance, intergovernmental agreements and charters of international organizations make it possible to implement cooperation on these issues as effectively as possible in relation to the fight against criminal activity. Back in 1929, the International Congress on Criminal Law in Bucharest called for the introduction of criminal responsibility for legal entities. In 1946, at the Nuremberg Trials, individual organizations were recognized as subjects of international crimes, among others. Then in 1978 The European Committee on Crime Problems of the Council of Europe adopted a recommendation on the establishment of criminal responsibility of legal entities. The Istanbul Anti–Corruption Action Plan (hereinafter - IAP) is a sub–regional mutual evaluation program that was launched within the Network in 2003. The IAP supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of countries' efforts to implement recommendations in support of the implementation of the UN Convention against Corruption of October 31, 2003 [3] and other international standards and good practices, which also provided reviews on responsibility of legal entities. Thus, in general, various international documents recommend providing for criminal responsibility of legal entities in one form or another.

Consequently, the need for criminal, and not only administrative and civil responsibility of legal entities is dictated not only by purely theoretical considerations, but also by the real needs of the practice of combating crime. Crimes differ from administrative offenses not by the nature and (or) the amount of punishment and not even by the type of illegality (this is rather a consequence), but by public danger. Public danger is an objective category, if we recognize its presence in the actions or omissions of any person, including a legal one, then we are simply obliged to prohibit such an act as a crime.

Foreign experience shows that, depending on the chosen model of establishing criminal responsibilityof legal entities, we can talk about both the consolidation of specific types of crimes that can be committed exclusively by legal

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entities, and the extension to legal entities of certain already criminalized acts or even all socially dangerous acts prohibited by criminal legislation. In general, most often they write about the need to hold legal entities accountable for environmental, economic, and corruption crimes. This list can be safely continued by pointing to crimes against public safety, public health and public morality, in the field of traffic safety and operation of transport, extremist orientation, etc.

Another aspect that must be emphasized is the ratio of responsibility of legal entities and individuals. A legal entity cannot actually commit a crime, it is always committed by some individuals and a legal entity can commit crimes through the use of these individuals, who act as a kind of living tools, however, reasonable tools that can bear criminal responsibility independently. The introduction of criminal responsibility of legal entities can lead to the irresponsibility of individuals guilty of specific crimes.

Just as the responsibility of an individual should not replace the responsibility of a legal entity, so bringing a legal entity to criminal responsibility does not mean the irresponsibility of specific individuals. It should also be noted that it is often very difficult to identify a specific individual who, for example, committed illegal actions that caused environmental pollution by an enterprise. And in this case, the involvement of at least a legal person, of course, guilty of this crime, will avoid complete irresponsibility and achieve compensation for the damage caused.

It is necessary to emphasize the fact that criminal law norms when bringing individuals to criminal responsibility, in addition to the forms of objective imputation, also determine subjective forms of imputation, in the form of guilt, goals, motive, which is absent with respect to legal entities and not the legal entity itself, but its representatives, are brought to criminal responsibility. The necessity is dictated when determining the responsibility of legal entities to characterize the grounds for imputing forms of both objective and subjective nature. Thus, as a result of an emergency situation, namely the breakthrough of one of the dams of the Sardobinsky reservoir of the Syrdarya region of Uzbekistan, several settlements were flooded, roads were destroyed, 70 thousand people were evacuated in Uzbekistan and 30 thousand in Kazakhstan. The total damage from the tragedy is estimated at $148.5 million. As a result of this man-made disaster, only officials of organizations that participated in the construction of the reservoir on the basis of the legal norms of criminal law were brought to criminal responsibility (art. 207, 258 of the Criminal Code (official negligence resulting in the death of a person, violation of safety rules for mining, construction or explosive work).

The accident at the Chernobyl nuclear power plant on April 26, 1986, in terms of its scale and consequences, was the largest man-made disaster in the history of mankind, which led to serious environmental problems.

The State Commission formed to investigate the causes of the disaster assigned the main

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responsibility for it to the operational personnel and management of the Chernobyl nuclear power plant, who were brought to criminal responsibility under articles of the Criminal Code for violating safety rules at explosive enterprises and in explosive workshops, abuse of power or official position, for negligence.

However, in 1990, as a result of a second review, the commission concluded that "the Chernobyl accident, which began due to the actions of operational personnel, acquired catastrophic proportions inadequate to them due to the unsatisfactory design of the reactor."

Consequently, the establishment of criminal responsibility in relation to legal entities also implies the need for a thorough study and investigation of the causes and conditions of the deed and the guilt of those persons who represent a legal entity, taking into account the nature and degree of public danger of the crime, the motives and goals of the deed, the identity of the perpetrator, the nature of the harm caused, while observing the principles of legality, justice and humanism.

CONCLUSION

In conclusion, it should be noted that criminal law measures are important, but not the only methods of combating illegal acts of legal entities, which is supposed to be effective when combining all types of responsibility: civil law, administrative law and criminal law. It seems that the criminal prosecution of legal entities should be carried out only in cases where civil and administrative measures are not able to restore social justice and prevent the commission of new acts that cause or are capable of causing damage, harm to public relations protected by criminal law.

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