

Abstract

It is more than 6 years as of the moment when Act No. 418/2011 Coll., on penal liability of legal entities and proceedings against them, entered into effect, however, in spite of it inland legal regulation still offers a number of key application and conceptional issues. The achieved objective of the dissertation work submitted was to provide comprehensive and detailed interpretation of the existing legal regulation of the conditions when criminal liability of legal entities is established and to point out, in that interpretation, to some of its particularities, deficiencies or ambiguities in the interpretation. In order to achieve that objective, the author dealt with not only Czech legal regulation as such, however, also with wider topics that clarify the origination of this form of penal liability but that can also help interpreting problematic legal institutes or be the basis for next amendments to the law, if any. For this purpose, the presented dissertation work is divided in four main chapters.

The first part contains introductory and fundamental issues of the criminal liability of legal entities. As the *sine qua non* condition of the topic under investigation, it defines the term of “legal entity” and outlines the historical development of the concept of penal liability of legal entities in continental Europe. The first chapter further clarifies reasons for and against the implementation of the criminal liability of legal entities. These reasons are analyzed by the author, while paying special attention to reasons consisting in international legal obligations of the Czech Republic and in criminogenic influence of the environment of the legal entity on committing a crime by a person that is in a specific position in respect of the legal entity.

The core of the work submitted is the second chapter which deals with the conditions of the origination of the criminal liability of a legal entity in the Czech Republic. Having presented the process of enacting the act, the author deals with the legal constitutional issues of this form of criminal liability with regard to the results of legal institutional review by foreign courts, including a specific issue of criminal liability of one-member companies. The interpretation of the scope of the act follows. In the area of personal scope, the inland act excludes criminal liability of the Czech Republic as well as of territorial self-governing units when exercising public power. A special phenomenon is constituted by so-called “empty boxes”, which is related to the issue of the usefulness of exercising criminal liability against them. The interpretation in the sub-chapter dealing with the material scope focuses on the list of criminal acts for which a legal entity cannot have criminal liability. Nevertheless, the existing interpretation cannot be regarded, in the opinion of the author, as suitable and it

would be appropriate, *de lege ferenda*, not to define such criminal acts. The key construct of the criminal liability of legal entities is the attributability of a criminal act committed by an individual to a legal entity. The author deals here with certain deficiencies related to the definition of persons whose acts can be attributed to a legal entity. The wording of the provisions of Section 8 (5) of Act on penal liability of legal entities and proceedings against them, enabling the exculpation of a legal entity if it made every effort that can be reasonably required to prevent committing an illegal act, can be considered to be very problematic. The existing wording not only suggest the conclusion that the criminal liability of legal entities is an objective liability but, at the first sight, it is also not very clear whether “making every effort” should be proved by the legal entity or prosecuting authorities. The interpretation of the existing legal regulation is followed by the interpretation of its concept. In the passage in question, the author deals with the issue whether it is the concept of objective or subjective liability and in which way to adapt the legal regulation *de lege ferenda* even better to the stipulated concept.

Special attention is also paid to the legal regulation of the transfer of the criminal liability to a legal successor of a legal entity. The existing legal situation is on the edge of the observation of the principle of *nullum crimen sine lege certa* while the act does not define any detailed conditions of such transfer. Abroad it is usual to specify criteria at least by the form of legal succession, however, the form of legal succession should not be, in my opinion, the decisive factor when determining the conditions of the transfer of criminal liability. It is necessary to start from specific relationships between the original legal entity and the successor legal entity that should be summarized in a legal regulation as a requirement for the transfer of criminal liability.

The third chapter deals with the particularities of the criminal liability of legal entities that are regulated by special acts besides their general regulation of the Civil Code. At the same time, this chapter concluded excessive focus of the act on the criminal liability of legal entities on business corporations while, in relation to certain forms of legal entities, certain conditions of the criminal liability are not sufficiently dealt with (in particular, the cases of political parties, trade union organizations and churches).

In the fourth chapter, the author deals with the topic of legal criminal compliance. The term “compliance” means the observation of legal standards by business corporations as well as the establishment and observation of the applicable internal standards. The importance of the compliance of systems and their implementation into corporate culture increased even more when the lawmaker enabled legal entities to exculpate themselves from criminal

liability. Special attention is paid to the issue of internal investigation within a legal entity. It is not only a part of corporate culture compliance but also an efficient procedure to obtain vindicating evidence in relation to a legal entity.