

CRIMINAL LIABILITY OF LEGAL ENTITIES

Abstract

Although it has been more than seven years since the adoption of Act No. 418/2011 Coll., on the criminal liability of legal entities and proceedings against them, by criminal liability of legal entities which the Czech legislators introduced, it remains a controversial issue. Thus the aim of this thesis is not only to analyse this legislation and provide a comprehensive and clear interpretation, including a critical evaluation of selected institutes, but also to introduce the process leading to its adoption, including a comparison of the arguments in favour of adopting such a decision with the arguments presented by the opponents of the criminal liability of legal entities. An equally important aim of the thesis is an analytical evaluation of application knowledge and the presentation of potential *de lege ferenda* proposals. However, such considerations require a sufficient command of terminology, as well as of the basic principles of criminal law, which is the content of Chapter One of the thesis.

Chapter Two is dedicated to the fundamental change in the concept of legal entities brought about by the new Civil Code, which leans towards the theory of fiction, thereby causing considerable tension.

On a global scale, the institute of the liability of legal entities is nothing new. Chapter Three is devoted to its historical development, followed by Chapter Four, which profiles foreign legal systems. As a result, there is a variety of theoretical models of the tort liability of legal entities, which is also due to the different legal roots and varying approaches of legislators. More general characteristics of the same can be found in Chapter Five.

Although the criminal liability of legal entities was mainly introduced into the Czech legal system as a result of international pressure to put in place “effective, proportionate and dissuasive” sanctions for legal entities, the reasons for introducing the criminal liability of legal entities with regard to social and economic changes were multiple, particularly the fact that individual criminal liability alone had already ceased to be sufficiently effective. Chapter Six is devoted to international commitments and Chapter Seven provides a mutual comparison of the arguments for and against the introduction of the criminal liability of legal entities.

In the end, the Czech legislators opted for the model of what is termed the “true criminal liability of legal entities”, i.e. the punishment of legal entities in criminal proceedings. I deem this approach to be correct, although a comprehensive review of

administrative sanctions could also have been considered. Chapter Eight introduces administrative sanctions, while Chapter Nine deals with the process of the enactment of the criminal liability of legal entities.

The greatest attention in Chapter Ten is devoted to a critical evaluation of the existing legal provisions of Act No. 418/2011 Coll., on the criminal liability of legal entities and proceedings against them, as amended. As a result of amendments, the concept of imputability underwent a series of changes, including the possibility of a legal entity “being exempted” from criminal liability altogether. Likewise, the extent of criminalisation has changed from an exhaustive list of crimes to a fairly unique concept of corporate liability for all crimes, supplemented by an exhaustive definition of exceptions. The procedural provisions of the law also deserve the attention of legal theory and decision-making practice.

The analysis of statistical data from real-life criminal liability of legal entities shows that the criminal liability of legal entities may be applied in practice, even in the Czech legal environment. One may observe a trend of a gradually increasing number of finally convicted legal entities, facing a wide array of penalties that the law has at its disposal. Chapter Eleven, at the very end of the thesis, deals with this data and its evaluation.

In summary, it may be stated that what is termed the “true criminal liability of legal entities”, despite partial difficulties, has proved to be the most appropriate solution. However, it must be borne in mind that the existing legislation will continue to evolve.

Keywords: legal entity, criminal liability, criminal liability of legal entities, imputability, exculpation, compliance