Criminal liability of legal entities - comparison of legal regulations in the Czech Republic and Poland

Abstract

The criminal liability of legal entities still raises emotions and is still the subject of both expert discussions and lay comments. Moreover, the application of the Law on the criminal liability of legal entities in practice is still problematic and law enforcement bodies are not only unsure how to apply individual institutes and when to consider bringing charges against a legal entity but often still do not initiate proceedings against legal persons because they consider such course of action a complication in proceedings against an individual. Thus, the greatest application problems relate firstly to assessing whether the legal conditions for initiating criminal proceedings against a legal entity are met, and then the question of the so-called exculpation and the problem of the possible transfer of the evidence obligation to a legal entity. Last but not least, from the point of view of the application practice, the limitation of the legal entity's right to choose a legal representative.

Despite the fact, how critically it is possible to look at the regulation of criminal liability of legal entities, it cannot be overlooked, that one of the closest neighbors, Poland, has even greater problems in prosecuting and punishing legal entities.

In its introduction, the thesis provides a brief overview of known and implemented models of criminal liability of legal entities in countries of continental law. It was no coincidence that the Netherlands was chosen as the first country in continental Europe, which has been working with this institute since 1881, albeit in a very limited form. The Czech Republic was the last country to introduce this institute into its legal system. Thus, it could learn from both the historical development and the application practice of all countries in continental Europe.

The essence of this thesis is the comparison of the Czech and Polish legal regulations, including a comparison of historical development, constitutional legal bases and especially differences in the conception and application practice of the valid legal regulation, which is clearly unfavorable to the Polish one.
The Czech and Polish regulations are analyzed both in terms of compatibility with the norms of the highest legal force and in terms of the effectiveness of proceedings against legal entities, problems related to the issue of local and material jurisdiction of individual courts, the issue of imposing sanctions and its enforcement.

The greatest attention is then paid to the specifics of proceedings in Poland, including the issue of initiating proceedings against a legal entity, which is subject to the force of a judgment condemning a specific individual who de facto acted on behalf of or in the interest of the legal entity, or was entitled to act as a result of a mistake by a person authorized to act on behalf of a legal entity.

Conclusions de lege ferenda are then focused on the evaluation of the comparison with regard especially to the government proposal of the new law on criminal liability of legal entities in Poland.

**Key words**

legal entity

imputability

criminal liability

proceedings