

Abstract

The aim of the present thesis was to determine the problems of the current legislation of the criminal liability of legal persons and to consider whether it is possible to adopt the legislation as it is applied in England and Wales and use it into the legal order of the Czech Republic in compliance with the development of Czech legislation and England and Wales. Due to the extensiveness of the issue, only certain problematic parts of the legal order of the criminal liability of legal persons in the Czech Republic were selected. Attention was focused on the questionable parts selected only from the substantive part of the law.

The approach to criminal liability of legal persons is diverse in the Anglo-American system. Variation can be seen at the level of individual states belonging to the system and at the federal and state levels. The first part of the thesis summarizes the development of the legal liability of legal persons in England and Wales, which were selected as the representatives of the Anglo-American system of legal culture. These countries were chosen because of the author's personal experience, which was gained during studies abroad, specifically in the United Kingdom.

The first selected problem is the personal scope of the law, which is problematic due to the large range of persons to whom the law applies, i.e. persons whose actions can be attributed to a legal person. Personal scope is defined by a negative enumeration, i.e. a list of persons to whom the law does not apply, and therefore to the person who cannot commit a crime. In determination of not only this enumeration, but also in determination of the whole legal order, the principle of subsidiarity of criminal repression should be taken into account and the enumeration should therefore be effectively determined in compliance with the principle "ultima ratio", which means that the criminal law should only be used as a last resort.

Another problem is with the legal persons termed as "empty boxes". Those legal persons are legal persons without property, whose criminal prosecution is not expedient and thus violates the principle of subsidiarity of criminal repression. Including these legal persons in the negative enumeration could be a plausible solution to the situation. However, it would also be desirable to further narrow the personal scope, and thus to expand the negative enumeration in legal order.

Another issue concerns the material scope of the law, and therefore the extent of the criminalization of the actions of legal persons. This regulation went through a major change, when the positive enumeration of criminal offenses for which a legal person may be criminally liable was replaced by a negative enumeration, i.e. the list of criminal offenses which are by their nature unacceptable to the legal person. European legal order on the extent of criminalization varies widely, however the chosen model seems to be the appropriate solution. On the other hand, the

problem is also the observance of the principle of subsidiarity of criminal repression, and thus the definition of the legal regulation so that it includes cases whose criminal prosecution is expedient. The negative enumeration is not very precisely defined. The question therefore arises as to whether it would not be a better solution to define the extent of criminalization of legal acts for all crimes listed in a special part of the Criminal Code and to evaluate individual cases taking into account specific circumstances, in accordance with the principle of subsidiarity. However, this solution would place extensive demands on law enforcement authorities. Indeed, law enforcement authorities would have to decide when prosecuting legal persons is appropriate in view of the principle of subsidiarity of criminal repression.

Other issues arise from the principle of simultaneous and independent criminal liability of legal persons for the criminal liability of natural persons. This principle has justification in the legislation. It makes it possible to deal with situations, which used to be very complicated before the adoption of the legislation. Due to this principle, legal persons can be convicted of criminal offenses even in cases where the natural person of the offender cannot be identified, i.e. especially in large corporations where the question “which natural person committed the crime” is not always clear. The difficulty of identifying the natural person of the offender was one of the reasons for the introduction of the legal regulation of criminal liability of legal persons. Although the legal regulation leaves space for certain abuse, especially due to the non-punishment of the perpetrator of a natural person, the abuse of legal persons to commit a criminal offense is a sufficient argument to defend this legal regulation. Thus, this is not an ambiguous question as such, but the principle rather raises the question of whether criminal liability defined in this way is the right solution.

The biggest prevailing controversy, especially during the time of the adoption of the legislation, was regarding the institute of the imputability of legal persons. A legal person, as a construct without will, is unable to fulfill the free component and the scientific component, which are necessary for the fulfillment of the requirement of fault. Thus, a construct was created where the legal person is responsible for the actions of a natural person whose actions are attributable to a legal person. In order for the conduct to be attributable to a legal person, the formal and material condition of imputability must be met, i.e. the person stated in the enumeration of § 8 (1) Act on Criminal Liability of Legal Persons and Procedure against them, must commit the crime and at the same time this person must act in the interest or within the activities of a legal person. Furthermore, the conduct must be attributable to the legal person according to § 8 para. 2 TOPO.

A related issue is the "institute of immunity from criminal liability of legal persons", which allows a legal person to acquire criminal liability in a situation where there has been a criminal

excess of persons whose actions can be attributed to the legal person. Act No. 183/2016 Coll., TOPO, incorporated this institute in legislation, therefore it is a relatively new institute, which contains many ambiguities and hence causes problems with its interpretation. Due to the absence of an explanatory memorandum to the statutory amendment, the terms and purpose of the law are not defined by the legislator. However, additional clarification by the legislator seems to be the only solution, which would clarify this problematic legislation. Leaving the filling of gaps in the legal regulation for the interpretation of the court can be considered as a violation of legal certainty. However, the potential positive impact of legal uncertainty on the practice of legal persons could place more emphasis on crime prevention.

The last selected problem represents the compliance programs, which are to act as prevention programs against criminal activity by a legal entity. These programs are also intended to enable a legal entity to evade a legal person from criminal liability if the legal person has complied with the set program and has therefore made all the efforts that could be justly demanded of it. The problem, however, is the lack of a model that would be a guide for legal entities on how to create an effective compliance program. Another problem is the cost of the program for smaller legal entities.

The final chapter is devoted to a summary of the legal regulation of criminal liability of legal persons in England and Wales and the final evaluation of whether this legal regulation can be incorporated into the Czech legal system.

Keywords: Criminal law, criminal liability of legal persons, imputability

