

Abstract

The Criminal Corporate Liability

The definition of legal person is not outlined in criminal law, but can be found in Section 18, Subsection 2 of the Civil Code. Corporate criminal liability is then a concept that has been newly introduced to the Czech statutory criminal law, what has caused a certain intrusion of the system of basic principles of criminal law, mainly the principle of individual criminal responsibility. The term “imputability” appears, which means that a conduct of agents or other persons designated in the Act on Criminal Liability of Legal Persons and Proceedings Against Them (further as “the Act”) can be imputed to a legal person, if the physical person is culpable for the conduct and the conduct causes imputability of the criminal offence to the legal person.

Intensive discussions on necessity and suitability of implementation of the concept of corporate criminal liability into the Czech legal system had preceded the adoption of the Act in 2011. Such discussion can now be considered as overcome, as it is obvious that the Czech Republic has opted for the direction towards the “true” corporate criminal liability. Arguments for and against the adoption of the Act can nevertheless help to better understand the concept itself, as well as the context in which it has been introduced. It is also important to see which factors influence legal persons and their decisions and lead them to commission of crime.

Corporate criminal liability is an institute that draws its origins from the Anglo-American legal culture. It historically developed in England and Wales and was later adopted in other jurisdictions in various forms. Analyses of historical and current development of the concept in these countries indicate that its legal character differs from the Continental legal culture which has brought basis of imputability of the criminal offence of legal person.

It is undisputable that corporate criminal liability has evolved in European countries on the basis of pieces of legislation adopted by the international community, European Community and European Union, which require the member states to introduce the concept so that the sanctions it would impose would be effective, proportionate and dissuasive. Yet the way the member states choose to achieve this goal is left on their discretion. They may opt for using the sanctions in criminal law, administrative law or proceed through civil liability for torts. Clearly, the most preferable model is so-called true corporate criminal liability, where the states apply the norms of criminal law for sanctioning legal persons for criminal

conduct. These norms are enacted either directly in penal codes or in a separate special piece of legislation.

The Czech Act on Criminal Liability of Legal Persons and Proceedings Against Them has been in force since 1. January 2012. It is based on the principle of specialty – the Act is applicable in circumstances different to those regulated by the Penal Code or the Code of Criminal Procedure, unless the nature of the case does not allow so. The Act consists of substantial as well as procedural norms. The most important parts of the law are the definition of the personal jurisdiction of the law, the scope of criminalization of corporate criminal liability, imputability of a criminal act to a legal person and the sanctioning of legal persons.

The personal jurisdiction of the law is defined in negative according to Section 6 of the Act, where the Act stipulates that the Czech Republic is not criminally liable, as well as the Self-Governing Units, when exercising public powers.

The scope of criminalization is defined in Section 7 of the Act, which stipulates that legal persons are liable for a list of criminal offences, which have been chosen according to the requirements of the international treaties and the regulations of the European Community or the European Union. Tax crimes have been added as well. It must be observed that the list of criminal offences has not been established so we could speak of an ideal regulation of corporate criminal liability, in light of the illegal acts legal persons commit in practice. Absence of certain economic crimes and crimes against property is simply inexcusable.

Imputability of a criminal act to a legal person belongs to the core of the regulation, as the concept sets the concrete conditions of corporate criminal liability, i.e. under which circumstances it is possible to impute a criminal offence to a legal person for a conduct of its agents or other persons defined in Section 8, Subsection 1 of the Act. As far as agents are concerned, the Act recognizes a few categories of persons. The regulation of employees can be considered as well stipulated, although, as the term “it is just to require” is not further defined or explained, difficult problems in applying the law can appear in practice.

The sanctioning of legal persons is another substantial issue governed by the Act, which requires a detailed analysis. It needs to be said that the Act regulates a broad scale of sanctions, which can be a suitable tool for punishing legal persons with adequate, proportionate and distractive sanctions. Some partial imperfections of the Act in regard to the sanctioning of legal persons are further discussed in Chapter 7.4.

The Act has been in force for considerably short period of time. At the moment, the concept of corporate criminal liability lacks relevant case law, although it cannot be said that the Act is not being applied at all – 10 legal persons have been accused and 3 convicted so far.

Despite the imperfections of written law, most importantly in regard to imputability of a criminal act and to the absence of some important criminal offences in the list of offences for which legal persons can be criminalized, the Act can be considered in a whole as a positive step forward. An important aspect of enacting the law is its preventive character. Legal persons are required to act preventively, which means to put certain effective internal mechanisms in force, which would prevent criminal activity of its agents and employees.

To conclude, certain hopes need to be expressed that the number of cases applying the Act in practice will rise and that the Czech Republic will avoid certain experiences from abroad, where only a small fragment of accused legal persons have been convicted before a court of law. So far there is no indication and it seems that the time of an application of the Act is coming.