



## **CRIMINAL LIABILITY OF LEGAL ENTITIES: ISSUES OF THEORY, LEGAL REGULATION AND LAW ENFORCEMENT PRACTICE**

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<b>Received:</b> October 7 <sup>th</sup> 2023 <b>Accepted:</b> November 6 <sup>th</sup> 2023 <b>Published:</b> December 11 <sup>th</sup> 2023	The article is devoted to analysis of corporate criminal liability. The article also analyzes the prospect of the introduction of such responsibility in criminal law. Like any other innovation it has its advantages and disadvantages, which is also discussed in this article. In addition, the article author analyzed the positive and negative features of the introduction of this institution. The author used different research methods such as: method of system analysis, the historical-legal method, and comparative legal method.
<b>Keywords:</b> Legal person, liability, criminal liability of legal entities, foreign practice, the system of punishment, the fault as a basis of liability, business activities of legal entities.	

In Uzbekistan, special attention is paid to improving criminal legislation as a priority area of reforms carried out in order to democratize society and modernize the country. In particular, in recent years there have been significant changes aimed at implementing advanced international standards and foreign practices to create an effective system for applying criminal law, as well as reliable protection of human rights and freedoms, the interests of society and the state, peace and security.

In this regard, on May 14, 2018, the Resolution of the President of the Republic of Uzbekistan "On measures to radically improve the system of criminal and criminal procedural legislation" was adopted. This resolution approved the Concept for improving the criminal and criminal procedural legislation of the Republic of Uzbekistan, the main directions of which identified such issues as the unification of criminal legislation; improving the system of criminal liability and punishment; ensuring effective and reliable protection of the rights and freedoms of citizens, the interests of society and the state.

At the same time, the Concept lists a number of problems and shortcomings of the current criminal legislation that hinder the effective implementation of the country's criminal legal policy. In particular, such problems include: the presence of legal gaps in the criminal legislation system that impede the effective protection of the rights, freedoms and legitimate interests of citizens; insufficient regulation of crime prevention and prevention mechanisms, as well as instilling in citizens a high legal culture and respect for the law; disproportion of sanctions for certain types of crimes to the nature and degree of social danger of the acts, including insufficient and ineffective use of

alternative types of punishment, incentive norms and measures of social influence; insufficient implementation of criminal law institutions recognized in international law and foreign practice, including in the area of establishing criminal liability of legal entities.

Based on this, the issue of determining the criminal liability of legal entities in criminal law requires the study and analysis of the experience of foreign countries in this area, the definition of the criminal legal concept of a legal entity and its main features, as well as the creation of effective mechanisms for its implementation in the legal system of national law.

It should be noted that today there are two different approaches to the issue of determining the criminal liability of legal entities. In particular, according to the *first approach* [1, p. 36; 11, p. 140], legal entities lack the ability to feel and think, and they cannot be educated in the spirit of compliance with the law, the collective cannot be made responsible as a subject of a crime, a legal entity does not have a conscience, soul and body to feel punishment, to In addition, a legal entity is considered a legal fiction; they cannot be brought to criminal liability. According to this approach, "as a result of criminal liability of legal entities, the likelihood of the following negative organizational, economic and social consequences is very high:

the share of thousands of entities engaged in business activities and having the status of a legal entity in the gross domestic product of our country is impressive, and they cover a large part of the active population - there is a possibility of a social explosion;

the situation may lead to an imbalance in the specialization of courts and a change in the quality of



case considerations in a negative direction. When considering the liability of legal entities, problems may also arise in matters of judicial attribution in criminal cases compared to economic courts, which can harm the quality of the courts' consideration of cases. In practice, economic courts consider the liability of legal entities; criminal courts, in addition to these cases, are forced to consider other criminal cases;

this situation contradicts the policy of freedom of activity of business entities and leads to the consequences of repressive liability of business entities. Also, determining the liability of legal entities in criminal law can lead to distrust between business partners, a decrease in the number of partners and ultimately to bankruptcy. This could lead to job loss and unemployment" [1, pp. 40-41].

However, in our opinion, such an approach cannot be fully supported and justified for some reasons. The results of the study and synthesis of information on offenses committed by legal entities show a low level of effectiveness of law enforcement practice within the framework of civil legislation in relation to these entities. This creates the need to study and implement the issue of establishing criminal liability of legal entities within the framework of criminal legislation.

As for the *second approach*, it is based on the fact that it is advisable to establish criminal liability in relation to legal entities engaged in illegal activities that cause harm to public relations protected by criminal law or create a real threat of harm.

Consequently, "socially dangerous acts committed by a person or persons responsible for fulfilling the rights and interests, powers and duties of a legal entity in the interests of a legal entity or on its behalf are considered crimes committed by a legal entity" [8, p. 18]. Therefore, based on this, we can say that for a legal entity, the form of guilt of the subjective side of the crime arises through the guilty behavior of employees who control the implementation of the rights and obligations of the legal entity itself. However, opponents of the issue of criminal liability of a legal entity argue that the determination of the criminal liability of a legal entity and punishment contradicts the traditional principles of criminal law, namely the principle of criminal law - culpable liability [7, p. 12]. However, at the moment, illegal acts in the field of civil legal relations for legal entities are considered in a manner similar to the issue under discussion. That is, the issue of determining the subjective side of a legal entity is considered an issue positively resolved within the framework of the current civil legislation.

It should be noted that according to judicial practice, as a result of the commission of crimes by a legal entity, only its manager or other employees are

held accountable, and the legal entity itself that directly committed the crime is not held accountable. However, the amount of damage caused by the illegal activities of legal entities is several times greater than the damage caused by individuals, and the sanctions applied to such actions within the framework of civil or administrative legislation do not correspond to them [5, p. 36; 6, p. 29].

In addition, bringing legal entities to criminal liability has positive experience in foreign countries such as Australia, England, Belgium, Hungary (since 2001), Denmark, Israel, Ireland, Iceland (since 1998), Canada, China (since 1997), the Netherlands (since 1976), Norway (since 1991), Poland (since 2002), Romania (since 2004), Slovenia (since 1999), USA, Finland (since 1995), France (since 1992), Switzerland (since 2003), Scotland, Luxembourg, etc. This practice is used to prevent corruption offenses, as well as to resolve issues related to damage to the assets of creditors and investors and their illegal trafficking.

At the same time, the public danger of offenses committed by legal entities directly poses a serious threat to the economic security of the state, as well as to the interests of bona fide participants in the economic process. In particular, this situation negatively affects investment attractiveness and leads to an outflow of capital from the country. The crime of a legal entity destroys the fundamental factors of the economy, indirectly causes a decrease in basic economic indicators, including causing an increase in inflation, a decrease in production rates, and the transfer of capital to the shadow economy. The sharp increase in prices for basic consumer goods in the country is due not only to the world price environment and other economic factors, but also to a large extent to speculative transactions and manipulation of prices in the market for goods and services, as well as monopolistic collusion of unscrupulous companies [2, p. 42].

In addition to the above, some sources propose that legal entities bear criminal liability for their involvement in the commission of a crime, and not for their culpable commission of a crime [9, p. 78]. This concept is expressed in the commission by an individual of a crime in the interests of a legal entity or concealment of its consequences, including the financing of a crime using funds or accounts of a legal entity in order to simplify the commission of a crime or property obtained as a result of illegal actions.

It should be noted that when deciding whether to bring any person to criminal liability, the person must be recognized as the subject of a crime, and he must be a sane and conscious person [10, p. 58]. However, this situation should not prevent a positive solution to the issue of bringing legal entities to criminal liability. Therefore, when determining the



criminal liability of legal entities, it is advisable to define them not as the subject of a crime, but as a measure of criminal law applied to them.

In this case, there is no need to define the concept of a legal entity in the criminal law, since the concept of a legal entity is disclosed in Part 1 of Article 39 of the Civil Code of the Republic of Uzbekistan. For this reason, the concept of a legal entity, which will be in the criminal law, will acquire a blanket character, and its definition is revealed through the Civil Code of the Republic of Uzbekistan. Thus, according to civil law, a legal entity is recognized as an organization that has separate property in ownership, economic control or operational management and is liable for its obligations with this property, can, in its own name, acquire and exercise property and personal non-property rights, bear responsibilities, be a plaintiff and a defendant. in a court.

It should be emphasized that, although the criminal liability of legal entities is not defined in the current criminal legislation of Uzbekistan, its "quasi-criminal" features are reflected in other legal acts. For example, according to part three of Article 27 of the Law of the Republic of Uzbekistan "On Combating Corruption" dated January 3, 2017, legal entities are subject to liability for committing corruption offenses in the manner prescribed by law; according to article three of the Law of the Republic of Uzbekistan "On Combating Trafficking in Persons" dated April 17, 2008, legal entities are also included in the category of human traffickers; According to Article 14 of the Law of the Republic of Uzbekistan "On combating the legalization of proceeds from criminal activities, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" dated August 26, 2004, transactions with funds or other property are subject to reporting to a specially authorized state body and suspension in accordance with this Law in the presence of information received in the prescribed manner that one of the parties to these transactions is: a legal or natural person that is involved or suspected of participating in terrorist activities or the proliferation of weapons of mass destruction; a legal or natural person who directly or indirectly owns or controls an organization engaged in or suspected of carrying out terrorist activities or the proliferation of weapons of mass destruction; a legal entity that is owned or controlled by an individual or organization engaged in or suspected of engaging in terrorist activities or the proliferation of weapons of mass destruction. Also, according to Articles 40.41 of the Law of the Republic of Uzbekistan "On Narcotic Drugs and Psychotropic Substances" dated August 19, 1999, a legal entity that has committed illegal trafficking in narcotic drugs, psychotropic substances and precursors, as well as carried out a financial

transaction for the purpose of legalizing income received as a result illegal trafficking of narcotic drugs and psychotropic substances can be liquidated by court decision.

Legal entities associated with a crime and having the status of a legal entity in accordance with the established procedure and recognized in accordance with international treaties of the Republic of Uzbekistan by an international organization are subject to criminal law measures. In our opinion, in accordance with the legislation of Uzbekistan, legal entities established on the territory of the country (with the exception of state bodies, self-government bodies), foreign legal entities, international organizations, as well as individual divisions of foreign legal entities and international organizations operating in the territory of Uzbekistan, criminal law measures may be applied.

Consequently, when forming the grounds for applying criminal law measures against a legal entity, it should be reflected that the crime was committed in the interests of the legal entity. From this point of view, in the following cases when a legal entity commits acts for which liability established by criminal law is provided, criminal law measures are applied to them: *a) if such actions (inaction) were committed by a person authorized to perform such actions (inaction) on the basis of legal documents, an agreement or a power of attorney on behalf of a legal entity; b) if the action (inaction) was committed by a person holding a corresponding position in management or control matters, in the interests of a legal entity; c) if the action (inaction) was committed in the interests of a legal entity by a person who has the right to give instructions to the legal entity for execution, or, depending on other circumstances, who has the right to determine the activities of the legal entity on the basis of legal documents, contracts or the charter of the legal entity, and also who has the right make decisions regarding the activities of a legal entity; d) actions (inaction) in the interests of a legal entity, if they were committed by other persons at the direction, knowledge or consent of the above persons.*

Also, if the committed criminal act is not based on a decision of the governing body of a legal entity, but lies in the criminal intent of its officer or employee, provided that it does not bring any benefit or advantage to the organization, the legal entity is not liable for such an act, and the persons who committed it must bear responsibility. Today, there are different approaches to the question of what types of punishments or criminal measures should be applied to a legal entity. The first states that in relation to a legal entity, "a fine, restriction of engaging in certain activities, termination of the activities of a legal entity" should be applied as the main punishment, and as



additional punishments – “restriction of engaging in certain activities and confiscation of property” [3, p. 180; 12, p. 123]. According to the second approach, in relation to a legal entity, the main punishment should be “a fine, the closure of all institutions of the legal entity used in the commission of a criminal act, the liquidation of the legal entity”, as an additional punishment – “confiscation of property and placing it under judicial control”, as well as “liquidation of the activities of a legal entity and deprivation of the right to engage in certain activities” - as both primary and additional punishment [4, p. 54].

In our opinion, when determining the liability of legal entities, such criminal law measures as fines, deprivation of a special right (license) or benefits, deprivation of the right to engage in a certain type of activity, restriction of activities on the territory of the Republic of Uzbekistan and their forced liquidation are provided for them. When choosing these measures of criminal law, one should take into account the social danger of a crime committed by a legal entity, the size and severity of the criminal consequences that have occurred, the degree of its involvement in the crime, and the elimination of the consequences of the crime. At the same time, it is advisable to provide in the draft law the rules for recognizing a legal entity as having been convicted when a court decision on the commission of a crime by the legal entity enters into legal force.

At the same time, it should be noted that emissions of harmful and toxic substances into the atmosphere by large industrial enterprises in the course of their activities, which have a negative impact on the ecology and environment and pose a serious threat to human health, is a process that is often encountered in our everyday life. In addition to the human factor, the main factors are outdated technologies, their non-compliance with standard requirements and the lack of criminal liability for legal entities. That is, in the mentioned cases, despite the presence of a serious threat to human health and life (as well as subsequent generations) and the existing criminal consequences, which resulted in various types of serious illnesses, the lack of responsibility increases the scale of damage to humanity and nature.

In this regard, when determining the liability of legal entities, it is advisable to take into account their individual and special properties and determine them according to certain categories of crimes.

In conclusion, we note that in modern conditions the issue of determining the criminal liability of legal entities is becoming important in the processes of socio-economic development of society. This, in turn, requires expanding international relations in the fight against corporate crime, improving and unifying existing legislation. From this point of view, it seems

appropriate to supplement the current Criminal Code with chapter seven<sup>1</sup> “Criminal measures against legal entities” with the following content:

**Chapter XVII. Grounds for applying criminal law measures against legal entities**

**Article 96<sup>1</sup>. Grounds for applying criminal law measures against legal entities**

The provisions of the General Part of this Code, which determine the criminal legal consequences of committing a crime for individuals, apply to legal entities, unless other provisions are provided for in this chapter, or they do not arise from legal relations with the participation of legal entities.

According to the legislation of Uzbekistan, legal entities formed on the territory of the country (with the exception of state bodies and self-government bodies), branches of foreign legal entities and international organizations operating on the territory of Uzbekistan are held accountable in cases provided for by this Code.

Legal entities are held accountable for crimes provided for in the articles of the Special Part of this Code.

If a criminal act was committed not by a decision of the governing body of a legal entity, but by the criminal intentions of an interested person or employee, and does not bring any benefits or advantages to the organization, then it is not the legal entity, but the person who committed this act who is responsible for such an act.

When legal entities are reorganized in accordance with the procedure established by law, their legal successors are held liable.

Criminal law measures against a legal entity are applied in cases of committing acts for which the Special Part of the Code provides for the liability of a legal entity, if:

a) such actions (inaction) were committed on behalf of a legal entity by an authorized person on the basis of legislative acts, an agreement or a power of attorney;

b) committed by a person who occupied, for personal interests, a corresponding position in the management or control bodies of a legal entity;

c) committed in the interests of a legal entity by a person who has the right to give instructions to the legal entity that are binding, in the interests of the legal entity or in other cases to determine the actions (inaction) of the legal entity on the basis of legislative acts, an agreement or the charter of the legal entity, as well as directly or make decisions indirectly;

d) committed by other persons in the interests of a legal entity at the direction, information or consent of the persons specified in paragraphs “a”, “b” and “c” of part two of this article.



In relation to legal entities, criminal law measures are applied only for the commission of criminal acts provided for in the relevant articles 130–130<sup>1</sup>, 133, 135, 155–155<sup>3</sup>, 184, 186, 194–196, 201–202, 210–212, 242–243, 270, 273, 278<sup>3</sup>–278<sup>4</sup> and 278<sup>6</sup> of the Special Part of this Code.

#### **Article 96<sup>2</sup>. Criminal law measures applied to legal entities**

The following criminal law measures can be applied to a legal entity found guilty of committing an act:

- a) fine;
- b) deprivation of a license, quotas, preferences or benefits;
- c) forced liquidation of a legal entity.

A fine, forced liquidation of a legal entity, deprivation of a license, quotas, preferences or benefits are used as criminal law.

#### **Article 96<sup>3</sup>. Fine**

The fine can be determined as a one-time payment in the amount of one hundred twenty to six hundred times the basic calculated amount or in the amount of material damage caused by a legal entity in the process of receiving criminal income or property acquired by criminal means.

When determining the type and amount of a fine, the property status of the organization is taken into account.

#### **Article 96<sup>4</sup>. Deprivation of a license, quotas, preferences or benefits**

Deprivation of a license, quotas, preferences or benefits is the cancellation of a license, quotas, preferences or benefits previously granted to a legal entity, as a result of which a crime was committed.

#### **Article 96<sup>5</sup>. Forced liquidation**

Forced liquidation is a criminal law measure that is applied in emergency circumstances and can be prescribed in cases where it is not possible to apply a more lenient measure, taking into account the nature of the criminal act committed by the legal entity and the criminal consequences of this act.

All property of a liquidated legal entity, after satisfying the creditors' claims, is transferred to the benefit of the state.

The application of the above proposals and recommendations in the current legislation will serve to regulate the legal mechanism of the institution of liability of legal entities and increase the effectiveness of the fight against crime.

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