

Секция «Юриспруденция»

The problem of recognition of a legal entity as a subject of crime in the criminal legislation

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The problem of criminal responsibility of legal persons which can be considered as subjects of crime is not new and it is quite controversial for criminal law.

In accordance with article 19 of the Criminal Code of the Russian Federation, «only a sane natural person who has attained the statutory age envisaged by this Code shall be subject to criminal responsibility». But criminal legislation of some foreign countries considers not only physical but legal persons to be the subjects of crime.[1] Article 121-2 of the Criminal Code of France provides that «legal entities, except for the state, shall bear criminal responsibility for criminal acts committed in their favor by their organs or representatives.»

The need for involvement of a legal person to criminal responsibility in the Russian Federation today is obvious. [2] In connection with transition of our country from administrative-command economy to a market economy, serious economic crimes, committed by legal persons and causing more damage to the state than the crimes committed by natural persons have emerged. [3]

Supporters of the concept of a legal entity as a subject of crime emphasize the vastness of damage caused by environmental, computer and some other types of offences, and they point out inadequate penalties which are applied to the violators in civil and administrative legislation. [4]

Therefore, refusal of the legislator to prosecute legal entities contradicts part 4 of article 15 of the Constitution of the Russian Federation, which establishes that: «The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied». And part 2 of article 1 provides that: «the Present Code is based on the Constitution of the Russian Federation and generally recognized principles and norms of international law».

In this case, for the definition of the guilt of a legal entity, Abashina L.A. offers to take the position, formulated with regard to administrative responsibility, to supplement article 5 of the Criminal Code by the second paragraph of the following content: «a legal person shall be guilty of an offence if it had the opportunity to compliance with the rules and norms, the breach of which provides for criminal responsibility, and it did not take any efforts authorized or required by law to perform the duties entrusted to it, and did not take all depending on it measures to prevent a crime »

However, in this concept, there are certain difficulties. For example, how to impute the blame to a legal entity, i.e., whether it was committed intentionally or by negligence. Besides, introduction of the Institute of criminal liability of legal persons will lead to the formation of two systems of the principles and grounds of criminal responsibility in criminal legislation .

It must be noted here, that the blame of a legal entity must be manifested in the subjective side of the crimes of its bodies, leaders or representatives, as it is envisaged in the countries with the criminal responsibility of legal persons. [5]

It is proposed to complement article 8 indicating that the base of the criminal liability of the legal entity is a public dangerous act which contains all the elements of a *corpus delicti*, stipulated by the relevant article of the Special part of this Code, and is committed to the interests of the legal entity; article 19 - in cases provided by the Present Code, the subjects of criminal liability are legal persons, and in article 20- to specify a list of criminal acts, for the commission of which the legal person is subject to liability. [6]

As for the sanctions applied to a legal person who has committed a crime:

firstly, it is a fine, the amount of which depended on the seriousness of the offence, on the nature and the size of the caused damage of property of a legal person;

secondly, prohibition to engage in specified activity which includes a ban on the issuance of shares or other securities, the Commission of certain types of transactions;

thirdly, liquidation of a legal entity;

fourthly, to provide such type of punishment as confiscation of property which can be used as additional punishment to the liquidation of a legal person.

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