Liability of Legal Entities for Corruption Offenses in Russia and Foreign Countries: Comparative Legal Analysis

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ABSTRACT
The article considers problematic issues of legal liability of legal entities in Russia, France, Lithuania and Slovenia for corruption offenses. The article reveals the international legal basis for the criminal liability of the legal entities for corruption crimes and the experience of using this institution in foreign countries. It is noted that in many European countries, the national legislator differently regulates the issues of bringing legal entities to criminal liability for corruption offenses. At the same time, European legislation, in contrast to Russian, provides for a wide range of sanctions for legal entities. In addition, in many foreign countries, criminal liability of legal entities is provided as an effective measure to combat corruption, with different interpretations of sanctions. The carried out comparative legal analysis enables the identification of effective methods and ways of combating corruption in foreign countries, which can be quite successfully implemented by improving Russian legislation in the indicated problems.
Keywords: *UN Convention against Corruption, Anti-Corruption, Legal Liability, Corruption Offenses, criminal liability of legal entities*

1. INTRODUCTION

The beginning of the large-scale anti-corruption campaign in our country can be considered the bringing of the legislation of the Russian Federation in line with international standards in the field of combating corruption. The norms of Russian anti-corruption legislation provide for liability for corruption offenses not only for individuals, but also for legal entities. These norms were adopted in order to implement the provisions of Art. 26 of the United Nations Convention against Corruption (the document entered into force for Russia on 06/08/2006) [1].

This international act provides for the adoption of measures by each State Party, taking into account its legal principles, to establish the responsibility of legal entities for participation in the offenses established in accordance with this Convention. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

In the Russian Federation, criminal liability is provided only for individuals, therefore, for legal entities, Articles 19.28 and 19.29 of the Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the CAO RF) establish administrative liability for corruption offenses.

Despite the fact that the improvement of domestic legislation in this area is gradually bringing the activities of law enforcement agencies closer to the general anti-corruption policy pursued by the world community.

At the same time, it seems that the introduction of criminal liability of legal entities is a predictive trend in the development of Russian criminal law policy and reveals the objective conditionality of the introduction of such liability.

In addition, the criminal liability of legal entities is established in many countries of the world and is provided for by the international obligations of the Russian Federation. The latter is confirmed by the instructions of the Group of States against Corruption (GRECO) to assess the implementation of international anti-corruption standards for Russia by refusing administrative responsibility of legal entities for illegal remuneration on behalf of a legal entity in favor of criminal liability [2].

The analysis of the state of corruption around the world, as in the Russian Federation, indicates that a significant part of corruption offenses is committed in the interests of legal entities, although this fact is not always reflected in the official statistics.

According to many experts, this type of offense is one of the main threats to the economic security of the state and participants in economic turnover [3, p. 4].

2. MATERIALS AND METHODS

The article uses the dialectical method of scientific knowledge, as well as logical, historical, systemic methods. Comparative analysis and synthesis methods are of particular importance. The functional method was applied to study the main directions of development of the institution of direct democracy.

3. RESULTS

In accordance with ratified international legal acts, Russian legislation provides for liability for corruption offenses of legal entities, if preparation and commission of corruption offenses are carried out on behalf of or in the interests of a legal entity, administrative or civil liability measures may be applied to it.

The considered institutions of administrative and civil law have proven their effectiveness in the legislation of a number of foreign states, where they have existed for a long time. However, an analysis of the practice of applying the provisions of the civil and administrative legislation of the Russian Federation in the part concerning the liability of legal entities on which behalf or in which interests corruption crimes are committed, showed that such practice is just beginning to develop, revealing both gaps in legislation and shortcomings in the work of law enforcement agencies. in this area, and requires further improvement [3, p. 5].

In accordance with Article 14 of the Federal Law of December 25, 2008 No. 273-FZ "On Combating Corruption", if on behalf of or in the interests of a legal entity, organization, preparation and commission of corruption offenses or offenses that create conditions for the commission of corruption offenses are carried out, a legal entity may be subject to liability measures in accordance with the legislation of the Russian Federation.

As already noted, according to Russian legislation, a legal entity as a subject of an offense can only be brought to administrative or civil liability. However, the previously announced by the Chairman of the Investigative Committee of Russia A.I. Bastrykin initiative on the introduction of criminal liability for legal entities still remains urgent, which is also due to the membership of the Russian Federation in international organizations and participation in a number of international treaties providing for the establishment of such liability [4, p. 2].

For example, the obligation to establish liability of organizations for involvement in corruption offenses and commercial bribery is provided for by the UN Convention against Corruption (adopted on October 31, 2003), the Council of Europe Criminal Law Convention on Corruption of January 27, 1999, the Organization for Economic Cooperation and Development (OECD) Convention) dated December 17, 1997 on combating bribery of foreign officials in the implementation of international commercial transactions.

At the same time, the presence in the national legislation of a legal mechanism for bringing legal entities to criminal liability will create legal conditions for extraterritorial criminal prosecution of international organizations and foreign legal entities located abroad for crimes infringing on the interests protected by the criminal legislation of the Russian Federation.

We would like to draw your attention to the fact that the administrative responsibility of legal entities has obvious disadvantages that do not allow ensuring an effective, proportionate and dissuasive effect on legal entities. In this regard, the criminal liability of legal entities has a number of significant advantages [5].

For instance, given that the offenses of legal entities are usually revealed during the investigation of criminal cases against individuals who committed illegal acts on behalf of or in the interests of the relevant legal entity, the investigation of the offense is much more efficient to carry out within a single process. Practice shows that when the responsibility of individuals and legal entities for interrelated acts is settled by various branches of law, and evidence is collected in different cases and, accordingly, these cases are considered separately by different courts, there are great difficulties in establishing the deed of the legal entity and its guilt. This, in particular, is due to the fact that a comprehensive study is not carried out in cases of administrative offenses.

Recently, facts have also become widespread when, even during the pre-investigation inspection, the inspected persons are taking active steps to conceal their property. In this regard, it seems advisable to amend Article 26 of the Federal Law "On Banks and Banking Activities", giving the investigator the authority to request information constituting bank secrecy, not only in criminal cases, but also on the materials of pre-investigation checks.

There are also alternative solutions. For example, it is proposed to investigate a crime committed by an individual and an associated administrative offense committed by a legal entity within the framework of one criminal case in a single process and fix the decision on this case in the judgment in accordance with criminal and administrative legislation [6, p. 65].

In jurisprudence, the fundamental difference between crimes and administrative offenses is the degree of public danger. Many experts consider administrative responsibility for legal entities to be clearly insufficient, especially in the field of combating corruption. The most sophisticated corruption schemes are carried out in the interests of legal entities or using them as an intermediary or “tool” in the transfer and extraction of criminal benefits. As noted in the scientific literature, “big business is especially generous with bribes.”

So, for receiving a state order, the size of a bribe reaches 1/3 of the project amount, and for issuing a license it may reach 1 to 5 million dollars [7, p. 51-54]. At the same time, the list of corruption-related crimes is fixed by the Ordinance of the Prosecutor General's Office of Russia No. 35/11 and the Ministry of Internal Affairs of Russia No. 1 dated January 24, 2020, and the list of administrative offenses of a corruption-related nature remains undefined.

The absence of a list of corruption-related administrative offenses fixed at the normative level causes difficulties not only in law enforcement practice, but also in the study of this social and legal phenomenon. The available statistical data do not allow one to fully judge the entire array of corruption offenses. Due to the absence of a list of administrative offenses of corruption, it is not possible to carry out a statistical analysis of the identified offenses. As a result, it is difficult to develop measures for the prevention of these illegal acts.

Another feature of the considered type of corruption offenses is a possible causal relationship between administrative offenses and crimes. For example, an evidence of a legal entity committing an offense under Art. 19.28 of the Code of Administrative Offenses of the Russian Federation, is a conviction that entered into legal force under Art. 204, 290, 291 and 291[1] of the Criminal Code of the Russian Federation.

This practice is actively used by prosecutors in order to bring legal entities to administrative responsibility. For example, the director of LLC "Veresk", acting in the interests of the organization, through an intermediary transferred a bribe in the form of money in the amount of more than 2 million rubles to the deputy director for production of the regional state autonomous institution "Tomsk forestry production association".

The funds were intended for an official to influence the employees of OGAU "Tomskleskhoz" in the preparation and conclusion of contracts by this institution for the execution of work on timber harvesting in a remote northern region in order to transfer the right to perform these works to LLC "Veresk". By the decision of the judge, the legal entity was brought to administrative responsibility in the form of a fine of 10 million rubles.

LLC “Plant “Rodina” was brought to administrative responsibility in the form of an administrative fine in the amount of 500 thousand rubles. The director of the plant, in order to avoid bringing the enterprise to administrative responsibility for violating forestry legislation, gave the assistant chief forester a bribe in the form of money in the amount of 90 thousand rubles. The former assistant to the chief forester was previously convicted under Part 3 of Article 290 of the Criminal Code of the Russian Federation (taking a bribe for illegal inaction), to a fine of 4 million rubles, with deprivation of the right to hold certain positions for a period of 4 years. The head of the legal entity was found guilty of committing a crime under Part 3 of Article 291 of the Criminal Code of the Russian Federation (giving a bribe to an official personally for knowingly unlawful inaction), with a penalty of 200 thousand rubles.

The majority of specialists refer to administrative offenses of corruption orientation as offenses “containing, as the act itself or a qualifying feature, an indication of the use by a person of his official position or official powers” [8, p. 66].

It must be borne in mind that the appointment of an administrative penalty to a legal entity does not relieve the guilty individual from administrative responsibility for this offense, just as bringing an individual to administrative or criminal responsibility does not exempt a legal entity from administrative responsibility for this offense (Part 3 of Art. 2.1. of CAO RF). At the same time, while recognizing the indisputable importance of applying criminal liability for corruption offenses, it is believed that measures of an exclusively criminal-legal nature in the fight against corruption are not fully effective.

At the same time, there are cases of imposing a disproportionate administrative penalty on a legal entity in the form of an administrative fine in the minimum amount. On the one hand, in such cases, one can be guided by the position of the Constitutional Court of the Russian Federation on the issue of imposing an administrative penalty below the lower limit, formulated in resolutions of January 17, 2013 No. 1-P, of February 14, 2013 No. 4-P, of 25 February 2014 No. 4-P. On the other hand, the introduction of criminal liability of legal entities for corruption offenses will allow balancing the legislation in the field of criminal and administrative liability of legal entities.

In many European countries, the issues of bringing legal entities to criminal liability for corruption offenses are resolved in different ways.

At the same time, European legislation, in contrast to Russian, provides for a wide range of sanctions for legal entities, which—in addition to fines—include:

Confiscation of items obtained as a result of committing a prohibited act, as well as items used or intended to be used as a means of committing a prohibited act; financial gain resulting from the commission of a prohibited act; an amount equivalent to objects or financial gain resulting from a prohibited act, unless these amounts are held by another person in restitution;

a ban on the implementation of main or additional types of entrepreneurial activity;

a ban on the use of grants, subsidies or other forms of financial support from government funding sources;

a ban on the conclusion of contracts for procurement for state needs;

a ban on support or advertising of ongoing business activities, manufactured products, services provided or benefits provided;

public announcement of the verdict.

Bans can last from one to five years. A ban on entrepreneurial activity cannot be imposed, if it is capable of leading to bankruptcy or liquidation of a collective entity or to mass layoffs [3, p. 58-59].

According to the criminal legislation of Lithuania, the following types of punishments can be applied to a legal entity for a committed crime: fine; limitation of the activities of a legal entity; liquidation of a legal entity. In the form of restricting the activities of a legal entity, the court may prohibit engaging in a certain type of activity for a period of one to five years.

Liquidation of a legal entity is one of the most severe types of punishment that can be imposed on a legal entity in a criminal procedure. Liquidation causes serious consequences not only for the owner of the legal entity, but also for other persons (employees, contractors, debtors, creditors, etc.). Therefore, the courts impose such a

punishment extremely rarely, as an exceptional measure, in cases where a legal entity systematically commits crimes or is a cover for committing crimes.

In addition to criminal sanctions for committed criminal acts, legal entities that are found guilty of committing corruption crimes are entered in special registers. The specified information in the registers of enterprises makes it possible to assess the reliability of a legal entity, which will have very serious consequences for the possibility of participating in public procurement and privatization of state property [9].

In Slovenia, the law establishes a number of penalties and measures that can be applied to legal entities, including: suspended sentence; fine; deprivation of ownership of property (expropriation); liquidation of a legal entity; a ban on certain commercial activities; a ban on further activities on the basis of licenses and permits; ban on obtaining licenses and permits; publication of the court verdict [10].

In France, there are separate additional types of punishment for each crime, including all types of crimes related to corruption and trading in influence. These penalties can be additional to or replace the main penalties or fines and imprisonment and can be applied to legal entities. Punishments are imposed by the court of first instance, but do not require special application by the criminal prosecution. If no alternative regime is provided, for example, destruction or transfer to a third party, the confiscated property becomes the property of the state [11]. The value of the property is determined by the court on the basis of expert advice.

France is one of the states in which a legal entity is not considered as the subject of a crime, but is recognized as a subject of criminal responsibility. At the same time, the legislation on the criminal liability of legal entities proceeds from the fact that criminal acts are committed by individuals, and legal entities can bear responsibility for them in cases established by law. According to Art. 121-2 of the Criminal Code of France, legal entities, with the exception of the state, are subject to criminal liability for criminal acts committed in their favor by bodies or representatives of a legal entity [12, p. 70].

In addition, we would like to draw your attention to the fact that according to European law, any company convicted of a corruption crime is automatically deprived of the right to carry out its activities in Europe. The basis for such a prohibition is paragraph 45 of the Directive of March 31, 2004, 2004/18/EC of the European Parliament and of the Council on the coordination of the procedure for the provision of public contracting works, public procurement contracts and public service contracts, according to which a candidate for bidding or a bidding participant (including a company director and other person exercising representative, control and other powers related to decision-making), convicted in order to protect the financial interests of the EU for fraudulent actions, corruption or laundering of proceeds of crime, is prohibited from participating in public contracts within the EU [13].

4. CONCLUSION

As can be seen from the comparison of foreign legislation, in many countries, criminal liability of legal entities is provided as an effective measure to combat corruption with different interpretations of sanctions, methods and means for the actual use of this measure of responsibility. Currently, more than 70 countries have provided for criminal liability for corruption as an important component of combating corruption [6, p. 65].

In the post-Soviet space, it is installed in Azerbaijan, Latvia, Lithuania, Moldova, Ukraine and Estonia. Currently, the issue of introducing criminal liability for legal entities is being worked out in Kazakhstan, Kyrgyzstan and Uzbekistan.

In addition, as N.A. Golovanov and V.A. Seleznev have aptly note, of particular interest are such preventive measures as the publication of the verdict in the media and the suspended sentence of a legal entity. Disclosure (advertising) as a form of punishment or a security measure is currently used in most states where there is criminal liability of legal entities.

Publication of the verdict is a very effective and important measure, especially when it is required to ensure the safety of life and health of people or certain economic benefits. Usually the verdict is made public at the expense of the convicted legal entity by publication (in whole or in part) in an official publication, broadcast on radio or television, or by several of the listed methods of public information at once [13]. At the same time, the court determines how all those in whose interests it is necessary to publish the verdict should be informed, and the terms of publication. Prescriptions regarding the promulgation of the verdict can be placed in the General Part of the Criminal Code of Russia.

We believe that the listed effective mechanisms in the studied problem under certain conditions could well be applied in the Russian Federation, especially since there are all the capabilities.

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