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ПРОТИВОДЕЙСТВИЕ ПРЕСТУПНОСТИ И ДИФФЕРЕНЦИАЦИЯ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ

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ON THE ISSUE OF CRIMINAL LIABILITY OF LEGAL ENTITIES IN THE RUSSIAN FEDERATION THROUGH THE PRISM OF HARMONIZATION OF LAW

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Introduction: despite the fact that the first legal entities appeared in Ancient Rome, the modern Russian legislation refers to them only as the subjects of civil and administrative responsibility. In accordance with the Criminal Code of the Russian Federation (hereinafter, referred to as UK RF), only sane individuals who have reached the age of criminal responsibility are subject to criminal liability. Against the background of this provision, the possibility of introducing the criminal liability of legal entities, at first glance, is rather doubtful. The arising doubts are also supported by the fact that neither a single principle, no a norm or institution of criminal law of the Russian Federation is applicable to a legal entity. However, in the vast majority of foreign countries, this institution has been successfully operating for many years, during which it has shown the validity and the objective necessity of its existence, in whose connection the authors **aim** to investigate the problems of introducing the criminal liability of legal entities in the Russian Federation. **Methods:** the methodological framework for the study is a set of methods of scientific knowledge, among which the main ones are the methods of systematicity, abstraction, analysis and comparative law. **Conclusions:** as a result of the study of the domestic, international and foreign experience, in particular, the international treaties of the Russian Federation and the criminal legislation of various countries, the proposals are formulated for the legislative regulation of the criminal liability of legal entities in the Russian Federation, as well as the need for further legal rethinking of the problem, which will be expressed in drawing public attention to the importance of this issue, its legislative regulation, the review of previously submitted draft federal laws on introducing the criminal liability of legal entities in order to identify and eliminate the provisions that prevent their adoption.

Key words: criminal liability, legal entities, harmonization of law, international treaties of the Russian Federation, crime, punishment, the principle of guilt.

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К ВОПРОСУ ОБ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ ЮРИДИЧЕСКИХ ЛИЦ В РОССИЙСКОЙ ФЕДЕРАЦИИ ЧЕРЕЗ ПРИЗМУ ГАРМОНИЗАЦИИ ПРАВА

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Введение: несмотря на то что первые юридические лица появились еще в Древнем Риме, современное российское законодательство относит их лишь к субъектам гражданско-правовой и административной ответственности. В соответствии же с Уголовным кодексом Российской Федерации уголовной ответственности подлежат только вменяемые физические лица, достигшие возраста уголовной ответственности. На фоне этого положения возможность введения уголовной ответственности юридических лиц, на первый взгляд, довольно сомнительна. Возникающие сомнения подкрепляются еще и тем обстоятельством, что ни один принцип, ни одна норма или институт уголовного закона Российской Федерации не применимы к юридическому лицу. Однако в преобладающем большинстве зарубежных стран данный институт успешно действует на протяжении многих лет, в течении которых он показал обоснованность и объективную необходимость своего существования, в связи с чем автором поставлена **цель** исследовать проблемы введения уголовной ответственности юридических лиц в Российской Федерации. **Методы:** методологическую основу данного исследования составляет совокупность методов научного познания, среди которых основное место занимают методы системности, абстрагирования, анализа и сравнительно-правовой. **Выводы:** в результате исследования отечественного, мирового и зарубежного опыта, в частности международных договоров РФ и уголовного законодательства различных стран, формулируются предложения по законодательной регламентации уголовной ответственности юридических лиц в Российской Федерации, а также необходимости дальнейшего правового переосмысления проблемы, которое будет выражаться в привлечении общественного внимания к важности данного вопроса, его законодательной регламентации, пересмотру ранее внесенных проектов федеральных законов о введении уголовной ответственности юридических лиц с целью выявления и устранения положений, препятствующих их принятию.

Ключевые слова: уголовная ответственность, юридические лица, гармонизация права, международные договоры РФ, преступление, наказание, принцип вины.

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Introduction

The prospects for the implementation of criminal liability for legal entities in the Russian Federation are not new: a huge number of scientific works have been written, which both defend the need for the implementation of criminal liability for legal entities, and assert its prematurity and even excess. However, it is simply impossible to deny the fact that this institution effectively exists in one form or another in the criminal legislation of more than 30 countries around the world, among which, besides the United States, Great Britain or China, there are such post-Soviet countries as Latvia, Lithuania, Estonia, etc. [15, p. 231].

First of all, it is necessary to pay attention to the fact that there are international legal acts ratified by the Russian Federation that provide for criminal liability of legal entities. These acts include the UN Convention against Transnational Organized Crime [5, p. 21] and the UN Convention against Corruption [6, p. 34]. These documents include the obligation of the States parties to impose the responsibility of legal entities for the commission of various crimes and offenses.

However, despite the fact that these conventions have been ratified in our country, for example, the UN Convention against Transnational Organized Crime was ratified in 2004, there is still no criminal liability of legal entities. This is often due to the fact that most international treaties provide for variation – the application of either criminal or administrative liability. Such treaties include, in particular, the UN Convention against Corruption. At the same time, the UN Convention against Transnational Organized Crime does not provide for this variation, which leaves the issue of the Russian Federation's fulfillment of its obligations in this part open [14, p. 94].

Historical and theoretical aspects of the problem under study

In 1992, when the draft Criminal Code of the Russian Federation was preparing, an attempt was made to implement norms about criminal liability of legal entities, but in the first reading of the draft law in the State Duma of the Russian Federation, the novella, without seeking the support, was not included in the text of the Criminal Code of the Russian Federation [9, p. 56]. Later, there were also repeated attempts to return to the issue of criminal liability of legal entities. For example, in 2011 the Investigative Committee of the Russian Federation developed a draft law "On Amendments to certain Legislative Acts of the Russian Federation in connection with the enactment of the institution of criminal legal influence against legal entities" [10]. In 2015, the State Duma of the Federal Assembly of the Russian Federation introduced a bill [11], which provided for independent criminal liability of a legal entity and an individual for the same act. However, it repeated the fate of its 1992 predecessor.

One of the theses of the opponents of the implementation of criminal liability of legal entities is that the strengthening of material liability for illegal activities can be provided by means of civil and administrative liability. However, it should be taken into account the fact that criminal liability itself is the strictest state-legal reaction for the subject of the offense, rather than civil and administrative liability. Moreover, criminal liability is not limited only to the application of measures of a criminal legal nature – the degree of its influence is much broader. The loss of business reputation and, accordingly, the financial losses that follow are much more fatal than the consequences of the use of civil and administrative means of influence [4, p. 61].

Another argument of the opponents is the absence of a legal entity as a subject of criminal behavior of the subjective side of the crime and, as a result, the inconsistency of the basis of criminal liability of legal entities with the fundamental principles of criminal law-the principles of personal and guilty responsibility [8, p. 19]. It is difficult to argue with the fact that a particular person who committed a crime or participated in its commission should be subject to criminal liability. However, this argument is not fundamental in this issue: it is necessary to understand that the rights and obligations of legal entities are secondary to the rights and obligations of individuals. As an objection to this argument, it is appropriate to recall the words of L.S. Belogrits-Kotlyarevsky, said at the beginning of the last century: "The required conditions for criminal liability: the desire to commit a criminal act and the ability to commit it can also be in the activity of a legal entity, because there is a volitional iception that is broader in terms of interests and more intense than the will of individuals. The presence of these conditions raises the possibility of not only the guilt of the legal entity, but also the possible involvement of it within its legal capacity" [1, p. 108].

The proof can be found not only in the Constitution of the Russian Federation, which established exclusively fundamental rights and duties of the citizen, and the legal capacity of legal entities is regulated only in the civil law, but also in the history of the legal entity as a subject of legal relations. It is well known that neither the Roman jurists, nor the jurists of the Middle Ages and their followers in Germany and Russia, nor, moreover, the Soviet scientists put the rights and

obligations of an individual and a legal entity on the same level [12, p. 199]. It follows from this that guilt as a element of a crime and the body of a crime, in the form in which it exists now, is not applicable to a legal entity. The guilt of legal entities that have committed criminal acts can only be understood as the act of its legally capable representatives, who can act both intentionally and negligently, but not excluding the criminal liability of an individual for a crime [2, p. 108]. Therefore, we can say that the subjective side of a legal entity is an indirect manifestation of the subjective side of its legal representatives.

Criminal liability of legal entities in the Russia: pro et contra

The advantages of implementation of criminal liability of legal entities are obvious. Currently, the measures of criminal legal influence for the committed crime are fully imposed exclusively on an individual, which is unacceptable the benefits and advantages of which the legal entity receives. Furthermore, the implementation of criminal liability will not only put in place international standards on this issue into the legal system, but also create the necessary legal conditions for the criminal prosecution of foreign legal entities that infringe on the interests protected by the criminal legislation of the Russian Federation by their own activities [13, p. 20].

Nevertheless, the implementation of criminal liability of legal entities in the Russian Federation is not possible until some important questions are answered: In which cases will a crime be recognized as committed by a legal entity? For what acts will a legal entity be held criminally liable? What will be the list of types of criminal penalties applicable to legal entities? The solution of these issues is possible only through the use of foreign experience, which, in turn, will be of great importance for the harmonization of Russian criminal law and the criminal law of foreign countries, especially the countries of the post-Soviet space.

Answering the first question, it should be noted that there is no single approach to determining the conditions of criminal liability of legal entities in the legislation of foreign countries. Thus, in accordance with Article 15 of the Criminal Code of the Czech Republic, a crime is recognized as committed by a legal entity if it is committed in its interests or within the framework of its activities by a clearly defined circle of persons [3, p. 72]. In Lithuania, in accordance with Article 20 of the Criminal Code of the Republic of Lithuania, legal entities are liable for acts of natural persons committed in favor of or in the interests of a legal entity [16]. According to Section 14 of the Estonian Criminal Code, a legal entity may be liable for an act that is committed by its supervisory authority, a senior official or an authorized executor in order to obtain benefits and advantages for the legal entity. Among the above approaches, the most suitable for the modern criminal law system of the Russian Federation is the approach of the Estonian legislator. This is explained primarily by the fact that, with familiar domestic enforcers categories used in the criminal code of Estonia, distinguish crime committed by a natural person of a crime committed by a legal person, it will be easier than using the approaches in other countries.

It is necessary to pay attention to the fact that in all these countries, the criminalization of legal entities does not exclude criminal prosecution of individuals and that these criminal provisions shall not use in relation to a state, regional and local authorities. This approach is quite justified both from the point of view of the principle of justice – in the first case, and from the point of view of the inviolability of state, regional and municipal power – in the second. Therefore, its integration into the criminal legislation of the Russian Federation is necessary.

It is necessary to consider the application of the provisions of section IV of the Criminal Code of the Russian Federation to legal entities. In our opinion, it is possible to release a legal entity from criminal liability with regard to reconciliation with the victim, compensation for damage, the appointment of a court fine and the expiration of the statute of limitations. Release from criminal punishment is possible only in connection with the expiration of the statute of limitations of the guilty verdict of the court. These provisions are applicable to a legal entity because they do not have a pronounced individual character, i.e., theoretically, they allow the possibility of their use by legal representatives, which makes it possible to use these institutions.

Answering the second question, it is worth noting that the range of acts for which a legal

person will be prosecuted in the Russian Federation is quite extensive and by no means exhaustive, so fixing it in the General part of the criminal code is not feasible [18, p. 16]. More effective variant is the experience of Moldova and Estonia, where criminal liability of legal entities occurs only for the commission of crimes, for which the punishment is provided in a Special Part directly for legal entities [17]. So, art. 185.3 of The Criminal Code of the Republic of Moldova provides for criminal liability for knowingly false statements in registration documents related to the protection of intellectual property in the form of a fine: for individuals-in the amount of 1,150 to 1,350 conventional units, and for legal entities-in the amount of 4,500 to 6,000 conventional units. Such an approach will eliminate confusion in law enforcement activities, since the content of the sanction of the article will show whether a legal entity is liable for this crime or not.

Turning to the list of types of sentences for crimes committed by a legal person, first of all, it is necessary to contact the purposes of punishment enshrined in part 2 of article 43 of the Russian criminal code. If there is no doubt about the goals of restoring social justice and preventing new crimes, then the correction of the convicted person demands to be explained. So, the fault of a legal entity does not exclude the criminal liability of an individual for a crime, it is safe to say that this principle is also fully applicable to legal entities. The next step is referring to the Convention against Terrorism, adopted by the SCO on 16.06.2009 and ratified by the Russian Federation on 02.10.2010 [7]. According to this convention, the participating countries ensure that the following penalties are applied to legal entities: 1) warning; 2) fine; 3) confiscation of the property of a legal entity; 4) suspension of the activities of a legal entity; 5) prohibition of certain types of activities of a legal entity; 6) liquidation of a legal entity. However, taking into account the fact that the current Criminal Code of the Russian Federation contains a large number of types of punishments, the integration of all these punishments, bearing in mind the various features of the application of some of them, seems impractical. In addition, the legislation already contains similar mechanisms in other branches of law.

In this regard, following the experience of Moldova, it is worth to adapt separate legal entities to penalties existing in the criminal code such as a fine and deprivation of the right to practice certain activities, and to introduce a new form of punishment – the liquidation of the legal entity with the confiscation of his property. It is necessary to note that these measures of criminal and legal character, especially when the liquidation will be carried out while respecting the interests of third parties in the form of creditors and shareholders through guarantees provided for by the civil legislation of the liquidation of the legal entity. The use of these types of punishments, in our opinion, will not cause much difficulty for the law enforcement officer, and will contribute to the appointment of a legal and fair punishment.

Conclusions

Therefore, in the context of the harmonization of public law, in our opinion, the introduction of criminal liability of legal entities in Russia has positive results. The identification of international and foreign experience allows us to speak not only about the possibility of real integration of this institution into the criminal legislation of Russia, but also about the need for further legal rethinking of the problem, which will be expressed in drawing public attention to the importance of this issue, its legislative regulation, and revision of previously submitted draft federal laws on the implementation of criminal liability of legal entities in order to identify and eliminate provisions that prevent their adoption.

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