

REGARDING SOME ASPECTS OF CRIMINAL LIABILITY OF LEGAL ENTITIES

Key words: criminal liability, legal entities, criminal-legal measures applied to legal entities

Açar sözlər: cinayət məsuliyyəti, hüquqi şəxslər, hüquqi şəxslərə tətbiq olunan cinayət-hüquqi xarakterli tədbirlər

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Introduction

The main characteristic of legal entities is the limited liability of the participants. Limited liability is also the main idea of the legal entity. It is the fact that the participants are not responsible for the company's debts that gives a significant boost to the economies of countries and allows capital to accumulate. However, in addition to the successful impact, it has led to large-scale abuses in these companies.

After these processes, first of all, the process of registration of legal entities, which was previously only in the form of consent, was complicated. Later, the institution of corporate liability emerged.

As a result of the development of the legal entity, there is a tendency for participants to withdraw from the current activities of the company. In this case, the abuse of current managers by the company drew attention to the responsibility of those who are part of the company's governing body and have the power to dispose of its property. [4, p.208]

It should be noted that the criminal liability of legal entities is new to Azerbaijani law, and until recently this issue was not regulated by the Criminal Law. However, the current Criminal Code recognizes legal entities as subjects of crime and identifies criminal-legal measures applied to legal entities. Thus, Articles 99-4 - 99-9 of the Criminal Code are devoted to the criminal liability of legal entities as a whole. Articles of penal law specify and analyze types of criminal law measures applied to legal entities, and Article 99-9 regulates the exemption of a legal person from the application of criminal law measures. [5, p.614]

The responsibility of companies is determined by the legal norms in various areas of law. According to these norms there are such types of responsibility as criminal, administrative, civil and labor. In some cases, liability may involve several legal areas. Among these types of liability, criminal legal liability of legal entities has a specific weight among other types of liability for their characteristics.

Crimes committed by the activities of legal entities cause greater economic damage. Examples include securities market fraud, money laundering and so on.

There are two theories which have been used in various different contexts, to hold corporations criminally liable for crimes and other similar offences. These theories are those of Vicarious Liability and the theory of Identification. The traditional theory of vicarious liability holds the master liable for the acts of the servant done in the course of the master's business (without proof of any personal fault on the part of the master). The identification theory on the other hand recognises that the acts and intent of certain senior officers in a corporation are the directing force of the corporation and are thus deemed to be the acts and intent of the corporation. The corporation is, therefore, instead of being vicariously liable, held to be directly liable. [10, p.23]

The Criminal Code of the Republic of Azerbaijan was added to the Criminal Code of March 7, 2012, Chapter 15-2, "Criminal Procedures for Legal Entities", and the official position on all discussions on whether or not legal entities are subject to criminal liability.

It should be noted that legal entities are not the subject of the crime but the subject of criminal liability. Thus, the law provides clear criteria for becoming a subject of crime. This includes reaching a certain age range and becoming an intelligent individual. None of the listed features are in the legal entity. On the other hand, the subject of the offense is a person who commits an action (action or omission) as provided for by the law, and who has a mental attitude in the form of intentional or negligent act and its consequences, which can only be performed by individuals. [5, p.613]

Compared to the concept of a criminal subject, the concept of criminal liability has a wider meaning. In addition to bringing that person to criminal responsibility for the crime committed by an individual, the legal entity may also be the bearer of the criminal liability. According to the Criminal Code, legal entities are associated with a limited number of crimes. While individuals are responsible for committing all crimes ide-

ntified in the criminal law, legal entities are the bearers of criminal liability only in the very few cases listed in Article 99-4.6 of the Criminal Code.

There are two main models in the legislation of the world states regarding the definition of criminal liability of legal entities. The first model assumes that, along with individuals, legal entities are also independent subjects of crime. This model is used in the UK and the US. [8, p 255] The second model recognizes individuals as the sole subject of crime. This model called French model. The traditional French model has had enormous influence in Europe, while the American model has had impact in common law systems in England and Canada. With the adoption of the Nouveau Code Penal, the American model has, in many respects, overtaken the French traditional model in France. [7, p. 8] What has emerged is a new French model which has significant impact not only in France, but in other civil law jurisdictions as well. The traditional French model declares that a corporation is incapable of committing a crime-a principle derived from humanitarian concerns of personal criminal liability established during the French Revolution. The French Grande Ordonnance Criminelle of 1670 mentioned the subject in great detail. [8, p. 261] The French Revolution ideal of individualism, however, did away with the concept. The traditional French model derives from the maxim that *societas delinquere non potest*. The corporation being a legal fiction, it could fulfill neither the *actus reus* nor the *mens rea* requirement. This approach determines the criminal liability of legal entities only when individuals commit crimes for the benefit of the legal entity or for the protection of its interests. This theory is used in Turkey, France, and Azerbaijan.

There are obvious distinctions between the American model which involves comprehensive corporate criminal liability and an elaborate system of penal sanctions, and the French model of corporate liability which was imposed only in statutorily defined circumstances. Similar distinctions arise between vicarious criminal liability of entities in the American model and liability only for specific acts of entity officers or organs in the new French model.

The advantage of French model is that the existing criminal law does not require any modifications to the criminal law provisions, penalties, sentencing and other systemic elements. The subject of the crime is now considered a natural person. At the same time, the nature of the guilt does not change, and the punishment system, punishment rules, and so on. remains the same.

According to the criminal law, legal entities are subsidiaries of criminal liability. Criminal or legal action against a legal person can be applied only if one or more of the offenses referred to in article 99-4.6 of the Criminal Code is committed by a natural person in the interests of the legal entity or for the protection of its interests.

Criminal-legal measures are applied to the legal entity for the benefit of that legal entity or for the crimes committed by the following individuals to protect its interests:

1. An officer authorized to represent a legal entity;
2. An official authorized to make decisions on behalf of a legal entity; a person authorized to control the activities of a legal entity;
3. Employee of a legal entity as a result of failure to exercise control by officials provided for in the first two paragraphs.

Legal entities exclude criminal liability of the state, municipalities and international organizations. State bodies, state institutions, municipalities and their bodies, municipal unions, international organizations, implementing the goals and functions of the Azerbaijan Republic, established in accordance with the legislation and funded from the state budget, within the limits established by the legislative, executive and judicial bodies of the Republic of Azerbaijan, special missions, diplomatic and consular missions are not subject to criminal liability. Legal entities with state and municipal enterprises are subjects of criminal responsibility, criminal actions may be applied against them. Liquidation of the legal entity shall not apply only to the state (municipality) or legal entities owned by the state (municipality). [3, p.619]

An issue of mutual interest is the proportion of criminal liability of individuals and legal entities for crimes committed. Application of criminal-legal measures to a legal entity does not exclude criminal liability of an individual who committed a crime or participated in any crime (as an organizer, instigator, assistant). Criminal liability of an individual shall be determined separately from the criminal liability of the legal entity.

Criminal sanctions applied to a legal person are not envisaged in Articles 15-1 and 15-2 of the Criminal Code, which are not considered to be punitive.

Conclusion

After the restoration of the independence of the Republic of Azerbaijan, unlike in the Soviet era, the legislation on legal entities, one of the main participants in the free market economy, began to form and develop. In this process, one of the issues that need to be regulated by legal entities, the issue of criminal liability of legal entities was resolved by the amendment to the Criminal Code of the Republic of Azerbaijan dated

March 7, 2012. As noted above, this regulation chose the French model from the two main models available in the world for criminal liability of legal entities. With the choice of this model, there was no need to radically change the existing criminal law. Because, in all cases, the subject of the crime was considered an individual. However, no changes were made to the provisions related to the subject of the crime, the penalty, the norms of sentencing and other elements of the system.

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Hüquqi şəxslərin cinayət-hüquqi məsuliyyətinin bəzi aspektləri ilə bağlı Xülasə

Azərbaycan Respublikası öz müstəqilliyini bərpa etdikdən sonra sovetlər dövründən fərqli olaraq azad bazar iqtisadiyyatının əsas iştirakçılarından biri olan hüquqi şəxslərlə bağlı qanunvericilik fomalaşmağa və inkişaf etməyə başladı. Bu prosesdə hüquqi şəxslərin tənzimləməsi zəruri olan məsələlərindən biri olan hüquqi şəxslərin cinayət-hüquqi məsuliyyəti ilə bağlı məsələ Azərbaycan Respublikasının Cinayət Məcəlləsinə 7 mart 2012-ci il tarixli əlavə ilə öz həllini tapdı. Yuxarıda qeyd olunduğu kimi bu tənzimləmə hüquqi şəxslərin cinayət məsuliyyəti ilə bağlı dünyada mövcud olan əsas iki modeldən Fransa modelini seçdi. Bu model seçilməsi ilə qüvvədə olan cinayət qanunvericiliyində köklü dəyişikliklər etməyə ehtiyac qalmadı. Çünkü, bütün hallarda cinayətin subyekti fiziki şəxs hesab olundu. Bununla da cinayətin subyekti ilə bağlı müddəalar, cəza, cəza təyin etmətə dair normalar və digər sistemdaxili elementlərdə hər hansı dəyişiklik edilmədi.

Относительно некоторых аспектов уголовной ответственности юридических лиц Резюме

После восстановления независимости Азербайджанской Республики, в отличие от советских времен, законодательство о юридических лицах, одном из основных участников экономики свободного рынка, стало формироваться и развиваться. В ходе этого процесса, одной из проблем, которую необходимо урегулировать юридическим лицам, вопрос об уголовной ответственности юридических лиц был решен путем внесения изменений в Уголовный кодекс Азербайджанской Республики от 7 марта 2012 года. Как отмечалось выше, этот регламент выбрал французскую модель из двух основных в мире моделей для уголовной ответственности юридических лиц. С выбором этой модели не было необходимости радикально менять существующее уголовное законодательство. Потому что во всех случаях субъект преступления считался личностью. Однако не было внесено никаких изменений в положения, касающиеся предмета преступления, наказания, норм вынесения приговора и других элементов системы.

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