ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.41 *Nº 78*
Julio
Septiembre
2023

Cuestiones Políticas Vol. 41, Nº 78 (2023), 523-540
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Corporate liability and white-collar crime: Comparative review

DOI: https://doi.org/10.46398/cuestpol.4178.36

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Abstract

The aim of the research was to analyze academic approaches to understanding the legal nature of white-collar crime and what crimes it includes; based on this understanding, the model of corporate criminal liability was investigated to place it in various law enforcement contexts. Throughout the article, appropriate research methods have been used, such as: comparative law method, systemic-structural method, formal-legal method. Based on the results of the detailed comparative analysis, it has been established that there are no unified standards or models for both white-collar crime and corporate criminal liability. Furthermore, it has been argued that the concept of fraud (deception) constitutes the key element of white-collar crime and is also the foundation of most corporate crimes. In the conclusions, it is argued that corporate criminal liability in the United States, and to a lesser extent in some European countries (including Ukraine), is a powerful law enforcement tool capable of protecting society from massive crimes as well as deterring corporations from unlawful deviations.

Keywords: corporate liability; white collar crime; money laundering; fraud; corporate crime.

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Recibido el 10/02/23 Aceptado el 16/04/23

Responsabilidad de las empresas y delitos de cuello blanco: Revisión comparativa

Resumen

El objetivo de la investigación fue analizar los enfoques académicos para comprender la naturaleza jurídica de la delincuencia de cuello blanco y qué delitos incluye; sobre la base de dicha comprensión, se investigaron el modelo de responsabilidad penal de las empresas para situarlo en diversos contextos de aplicación de la ley. A lo largo del artículo se han utilizado métodos de investigación apropiados, como: el método de derecho comparado, método sistémico-estructural, método formal-jurídico. Sobre la base de los resultados del análisis comparativo detallado, se ha establecido que no existen normas o modelos unificados tanto para los delitos de cuello blanco como para la responsabilidad penal de las empresas. Además, se ha argumentado que el concepto de fraude (engaño) constituye el elemento clave de la delincuencia de cuello blanco y es también el fundamento de la mayoría de los delitos empresariales. En las conclusiones, se afirma que la responsabilidad penal de las empresas en Estados Unidos, y en menor medida en algunos países europeos (incluida Ucrania), es una poderosa herramienta de aplicación de la ley capaz de proteger a la sociedad de delitos masivos como de disuadir a las empresas de desviaciones ilícitas.

Palabras clave: responsabilidad de las empresas; delitos de cuello blanco; blanqueo de dinero; fraude; delincuencia empresarial.

Introduction

To this date various definitions of crimes in economic activities are proposed, and more or less successful attempts to classify (organize) such punishable acts are made. Specific nature of economic crimes, reference of white-collar crime (hereinafter – WCC) statutes to regulatory law, dependence of specific provisions on the level of development and protection of economic relations in the country refer any scholar to the issue of correct terminology behind economic offenses. "Commercial", "economic" (in some countries also "white collar", "corporate" and "professional"), "business environment related" – one can find many variations of concepts in the legal literature and across the nations' criminal codes.

Sometimes it is noted that the term "crimes of economic orientation" along with such definitions as "economic crimes", "crimes in the area of economy" and "crimes in the area of economic activity" have become a strong part of the conceptual framework of criminal law and other fields of

knowledge, and are widely used by employees of law enforcement agencies. This is the first prong of the complicated "corporate economic crime" phenomenon to be discussed in this scholarly work.

Being closely connected to the issues of white-collar criminality is the corporate criminal liability regime. Nowadays corporations are as big a part of any given society as are any other collective institutions – political, educational, non-profit etc. Corporations represent a distinct and powerful force at regional, national and global levels and they wield enormous economic powers. Besides governments and governmental agencies, corporations become ever more effective agents of action in any society.

The development of the society, at various points of time, has had a direct influence on the structure and functions of the corporation. However, there is another side of the medal: corporate wrongdoing has become an ever-growing issue in the modern business world. Almost daily we witness large companies and financial institutions enters into plea agreements with national prosecutorial offices as a result complicated white-collar crimes they have committed. Millions of dollars move from corporate accounts to sovereign treasuries in the form of fines and other financial penalties.

With regard to Ukrainian corporate criminal liability model in particular. On May 23, 2013 the Law of Ukraine with a long title "On Amendments to Certain Legislative Acts of Ukraine in Connection with the Implementation of the European Liberalization Action Plan Union of the Visa Regime for Ukraine Regarding Liability of Legal Entities" has been adopted (it entered into force on September 1, 2014).

As a result of such legislative intervention, Chapter XIV-1 has been added to the General Part of the Criminal Code of Ukraine with the title "Measures of a criminal law nature against legal entities". While commentating the specified legislative novel, M. Khavronyuk writes that the issue of criminal liability of legal entities, although it has been introduced in Ukraine in the form of the so-called quasi-criminal or limited criminal liability, still remains debatable in theory of criminal law (Dudorov and Khavronyuk, 2014).

1. Methodology

While working on this paper, the following methods of research have been employed extensively.

The major, for the purposes of the paper, comparative law method has enabled us to research WCC statutes and corporate liability regimes across several European jurisdictions (including Ukraine) as well as in the United States. Based on comparative paralels a conclusion has been reached that:

1) the phenomenon of WCC is extremely complicated and includes various offenses; 2) similarly, national approaches toward the issue of corporate criminal liability vary significantly and have different statutory foundations.

Overall, currently the comparative law method is widely used when researching various issues of white-collar crime (Reznik, *et al.,* 2020).

The system-structural method has been used to describe applicable statutes and their location within the structure of the national Criminal Codes. Legislative approaches toward constructing relevant statutory frameworks also fall under this scientific method. Based on the core laws of logic and reason, the system-structural method allows to evaluate, if the new legislative material fits the law and the "spirit" behind it.

Finally, the formal-legal method has enabled the authors to analyze in detail the legal meaning of the provisions of various legal acts, which cover issues of economic criminality and corporate liability.

Overall, extensive use of the methodological tools has eneblaed a closer comparative look at the issues of WCC and corporate liability in the United States, Ukraine and several other European jurisdictions, even more so in the context of the modern globalized world, with its various risks and challenges.

2. Recent research and findings

This research paper focuses on the advantages and flaws of corporate criminal liability within the wider scope of white-collar criminality in various world jurisdictionsб including United States of America and Ukraine. The American corporate liability model will play a virtual "sparring partner" role for the purposes of evaluating both progress and potential pitfalls on Ukraine's (and to less extent those of other European nations) way to establishing effective legal framework to combat corporate crime.

Obviously, a large body of academic literature has been devoted to the issues discussed in this paper. As such, issues of criminal responsibility for economic crimes in Ukraine, including in comparative context, has been studies by such Ukrainian commentators as P. Andrushko, P. Berzin, A. Boyko, N. Gutorova, R. Volynets, V. Navrotskyi, M. Panov, V. Popovych, A. Savchenko, M. Khavronyuk and some others.

The most consistent and systematic approach to solving problems related to the qualification of this category of crimes and the practice of applying the norms of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code), which establish them, is embodied in the scientific works of O. Dudorov. Authors of this paper has also extensively commented on the issues at hand (Pidgorodynskyi, *et al.,* 2021; Minchenko, *et al.,* 2021).

In the American criminal law doctrine, various pressing issues of liability for economic crimes and corporate crimes in particular have been studied by K. Brickey, S. Buell, S. Green, L. Dervan, U. Zagaris, J. Kofi, E. Luna, P. Morgan, J. Oh 'Sullivan, E. Podhor, R. Posner, J. Rakoff, E. Sutherland, K. Strader, P. Henning, and others.

Thus, as one might see, the topic of white-collar criminality (including corporate wrongdoing) is extensively researched and discussed at various professional forums. At the same time, such topic remains far from being "over-researched" – a number of issues remains unsolved, since economic criminial schemes constantly evolve as business and regulatory landscapes shift and chages globally on a regular basis.

a) White-Collar Crime: Its Origins, Meaning and Elements

Analysis of legal literature on the issues of criminal liability for business (or economic, white-collar) crimes, demonstrates a lack of focus from local scholars on the issues of adequately labeling such crimes, justifying their balanced name based on position of developing quality conceptual apparatus of the Criminal Code. With this being said, numerous authors' interpretations of generic and specific objects of economic offenses in criminal law treatises exist today.

For the record: to this date no clear, all-inclusive definition of WCC exists, and such description is not likely to appear anytime soon due to a variety of reasons. The term "white collar crime" is notorious for its ambiguity just in any global jurisdiction where it is used. At least some agreement among scholars exists on what types of criminal behavior this phrase should include.

Among various types of criminal activity, one can name antitrust violations, computer and internet fraud, credit card fraud, phone and telemarketing fraud, bankruptcy fraud, healthcare fraud, environmental violations, insurance fraud, mail fraud, government fraud, tax evasion, financial fraud, securities fraud, insider trading, bribery, kickbacks, counterfeiting, public corruption, money laundering, embezzlement, economic espionage and some other related offenses.

In particular, degree of effectiveness of criminal law protection of Ukrainian stock market largely depends, among other things, on the quality of the law on combating illegal use of insider information and on the substance of the relevant regulatory legislation rules. Just like in the United States, Ukrainian insider rule refewrs to the need for equal information flow – such approach is fundamental to the proper functioning of any stock market in the world.

The lack of specific law enforcement practice in Ukraine is explained by the internal characteristics of the national stock market, by its currently undeveloped status (Kamensky *et al.,* 2020). Within this particular case, we see a direct connection between the need to protect instruments of market economy (stock market specifically) and criminal liability for WCC.

The commonly used phrase "white-collar crime" was reportedly introduced in 1939 during a famous speech by sociologist Edwin Sutherland to the American Sociological Society. Sutherland defined this term as an offense committed by a person of respectability and high social status in the course of his occupation. Later in his scholarly paper Sutherland stated that different forms of illegal white-collar conduct "consist principally of violations of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power" (Sutherland, 1940). Such definition, as history has showed us, reveals the key elements of both individual and corporate economic crimes.

From the comparative standpoint, the framework of the criminal law of Ukraine, attributing the "market economy" concept to the body of legal relations protected by Chapter VII of the Criminal Code of Ukraine indicates that this form of organization of national system of production, distribution, exchange and consumption of goods covers areas of economic activity, which are protected by criminal law, in an overall comprehensive manner.

Thus, stock market, creditors' rights, fair competition – such components of Ukrainian economy are the embodiment of the market economy model. As one might see, WCC remains actively present in countries with both emerging and developed market economies.

Some real life numbers. According to some extensive research: 1) white-collar crimes are estimated to make up only 3% of federal prosecutions; 2) in 2021 white-collar crime prosecutions have been down 53.5% compared to 2011; 3) as of 2021, annual losses from white-collar crimes have been anywhere from $426 billion to $1.7 trillion – such wide range here is due to the lack of prosecutions; 4) there were 4,727 white-collar prosecutions in 2021 alone. Finally, by some estimates up to 90% of white-collar crimes go unreported (ZIPPIA, 2023).

Current political developments, globalized economy, and further synchronization of legal systems around the globes provide a unique forum for expanding existing national legal frameworks, establishing new principles and doctrines of law.

Of course, when outlining the "white collar" segment of criminal law studies, special attention should be drawn to the study of globalization trends in today's world and, accordingly, in interstate economic relations. Today

we are all able to follow the processes of digitalization,communication, erasure of language barriers, migration of labor and capital, joint space exploration, implementation of international research projects in almost all areas, transnationalization of business and more (Kamensky, 2021).

Such endeavors, while obviously gaining momentum, cannot but affect, at least indirectly, law in general and criminal law in particular. The emergence of new types of economic crimes, the growth of economic crime in general and its adaptation to various socio-economic changes are widely recognized.

Hence, it makes sense to refer to Guy Stessens's statement: modern societies are increasingly dealing with types of economic crime unknown in the XIX century, when most European criminal justice systems have been created. Nowadays, prosecutors and courts face the growing challenge of economic crime, which did not exist before. Corporations play an important role in it, as the lion's share of business activity in today's world is attributed to corporate business (Stessens, 1994). The latter notion will be explored in greater detail within the following pages of the article.

The annual numbers of federal prosecutions for economic crime in America over the two plus decades is demonstrated in Figure 1.

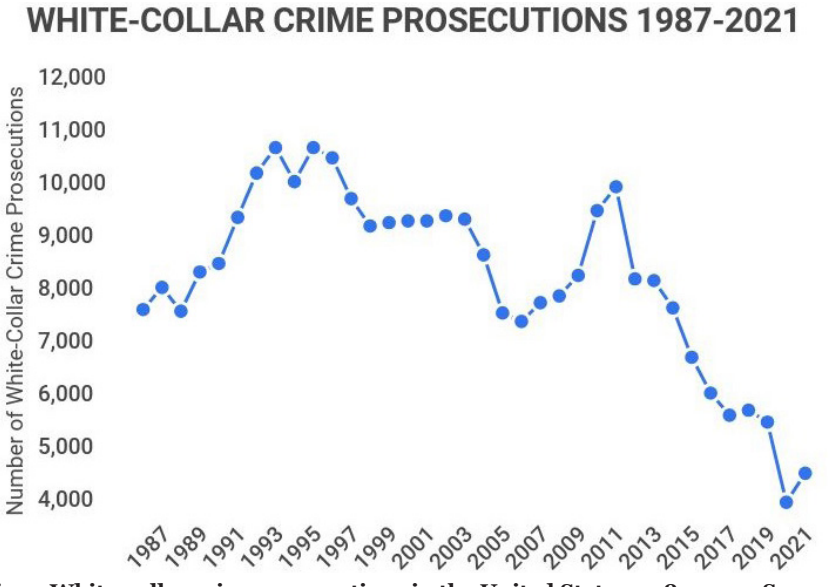

Fig. 1. White-collar crime prosecutions in the United States, 1987-2021. Source: Zippia. "20 Shocking White-Collar Crime Statistics [2023]: The State of White-Collar Crime in The U.S." Zippia.com. Sep. 28, 2022, https://www.zippia.com/advice/white-collar-crime-statistics.

Finally, we want to make a point that *fraud* is usually "at the heart" of any given WCC. This is true in any criminal law system as law enforcement practice proves.

b) Fraud as the key element of any white-collar crime

The word "fraud" is widely refered to in the WCC context. This term underlines "intelligent", nonviolent, and primarily for-profit nature of such offenses that are intended to deceive (an individual, a corporation, or public at large) in order to earn something of value, power, or both. The key message is "that fraud is typically the cornerstone of every white-collar offense, no matter how simple and meager or intricate and grandiose" (Bailey and Rothblatt, 1984: n/p).

In one of the first works devoted to the analysis of the term "white-collar crime", its author E. Sutherland wrote that crime in business is most often manifested in the form of distortion of financial statements of corporations, manipulation on the stock market, commercial bribery, direct or indirect bribery of public officials for the purpose of concluding profitable contracts or adopting favorable regulatory acts, distorting facts during advertising and promotion of goods and services, waste or misuse of funds, weighing and measuring, as well as knowingly false valuation of goods, tax fraud, incorrect use of funds received as a result of current activities or during bankruptcy.

It was precisely these and many other forms of illegal behavior of big business that the infamous American gangster and "Public Enemy No. 1" A. Capone aptly described as legal racketeering (Sutherland, 1940).

American commentator S. Buell writes that complex conceptual and definitional problem of fraud is further aggravated by the fact that such manifestations of socially negative behavior directly permeate many spheres of social life, not the least of which is the regime of legislative regulation of the market economy. Fraud is one of the most serious, costly and punishable causes of legal liability that apply to the modern corporate sector and financial markets.

Fraud permeates almost every sphere of the financial system and economic exchange relations. If the legal system is unable to develop a more or less accurate definition of fraud, then neither state regulators nor society in general will be able to objectively assess the legal significance of those events that negatively affected, say, national financial markets (Buell, 2011).

A few more words about the American realities of combating *fraudulent* manifestations in the economic sphere. In particular, the high level of legislative attention (and, accordingly, the recognition of its dangerous nature) to fraud in the economic sphere is evidenced by the fact that the structure of the current federal criminal code (Title 18 of the United States Code) contains two chapters that contain "anti-fraud" provisions.

This is Chapter 47 "Fraud and False Statements", which contains §§ 1001-1040, as well as Chapter 63 "Mail Fraud and Other Fraudulent Crimes", which contains §§ 1341–1351. Within these two chapters, we have counted forty-four prohibitions, most of which relate to manifestations of fraud in various spheres of the national economy.

c) Corporate Crime: Old Issues, New Methods

Corporate criminal liability is closely related to the issues of WCC in modern globalized world.

In one joint scientific study, attention has been paid to the fact that the answer to the question of the reasons for the emergence and further development of the institution of criminal liability of corporations in the USA lies not only (and not so much) in the area of criminal law, but in the field of requirements and tasks, related to the general development of society, primarily in the part of forming and protecting the foundations of the market economy.

Materials of federal judicial practice in this part clearly demonstrate the scale of corporate abuses and the level of danger to society that the activities of modern corporations can create in the absence of reliable regulatory and law enforcement barriers.

According to many representatives of the American legal community, it is the norms of criminal law and the high efficiency of law enforcement associated with them that are able to werve as such barriers, which is actually confirmed by the modern practice of criminal prosecution of corporations (Dudorov and Kamensky, 2015).

Though a lot of time has passed since the adoption of the Law on Liability of Legal Entities, the practice of applying criminal law measures against legal entities is still not stable; it has not become a common instrument of criminal law.

In particular, as evidenced by the nationwide statistics of court decision, the issue of seizure of the property of legal entities is often resolved at the stage of pre-trial investigation. However, it is hardly possible to count at least two dozen verdicts against authorized persons, in which criminal law measures are simultaneously applied against legal entities. The big question is: what exactly prevents this legal institution from working effectively and meeting the tasks set before it?

Markedly contrasting with the more or less established American approach, Ukrainian judicial practice in terms of the application of measures of criminal law influence against legal entities remains today in a, so to speak, a rudimentary state.

Our own analysis has demonstrated that reference to Art. 96-3 of the Criminal Code is often made in decisions of appellate courts and investigative judges, which cancel the decisions of investigative judges (investigative law enforcement agencies, respectively) on the seizure of the property of those legal entities, the activities of whose officials are investigated under the articles of the Criminal Code on liability for tax evasion, fees (mandatory payments) and terrorism financing (Articles 212 and 258-5). Relevant resolutions and petitions are annulled, in particular, on the grounds that Art. 212 of the domestic Criminal Code is not provided among the legal grounds for the application of criminal law measures to legal entities.

Despite the presence in judicial practice of certain materials that relate to issues regarding the possibility of applying measures of a criminal law nature to legal entities (Archive, 2015; Archive, 2016) in the dockets of Ukrainian courts, it was not possible to find any reference to the application of these measures to a legal entity on the grounds provided for in Art. 96-3 of the Criminal Code. Such law enforcement "silence" is somewhat alarming.

On the other hand, introduction of criminal liability of legal entities in the common law system owes a great deal to the doctrine of strict (absolute) liability, which, while being a feature of the Anglo-American legal system, actually means objective incrimination, that is, liability for criminal violations – no-fault legal norm.

We would like to add that such pragmatic concept is used during the criminal prosecution of corporations for violation of the requirements stipulated mainly by the norms of regulatory legislation, in cases where corporations carry out activities that are obviously harmful to society, and therefore prohibited by relevant regulations. In the famous case "New York Central & Hudson River Railroad Company v. United States" (1909) the Supreme Court of the United States has for the first time recognized that a corporation can be found guilty of committing even such a crime, where the relevant statute provides only for willfulness (criminal intention) as a form of guilt.

This case applied provisions of the Elkins Act, which back in the day regulated freight rates charged by railroad companies to carriers and prohibited those companies from granting discounts to preferred carriers. The U.S. Supreme Court decided that without criminal liability for legal entities, legislation such as the Elkins Act would not operate and the public would not be able to take advantage of its benefits.

The court also noted that at the beginning of the 20-th century in the texts of most court decisions and scientific commentaries, the possibility of crimes being committed by corporations was rejected, at the same time assuming the possibility of crimes being committed by their representatives – natural persons (New York Central, 1909).

The court also noted that the authority of the US Congress in terms of regulating economic relations between states, preventing undue protectionism and ensuring equal rights for all those who participate in economic relations at the national level should not be questioned. At the same time, the Court observed, it would be a marked step backward to enact a decision that would prohibit Congress from exercising control over those who conduct interstate commerce by prosecuting such persons for the intent and purposes of agents to whom those economic entities have delegated authority to act on their behalf.

The law cannot be "blind" to the fact that now the vast majority of economic transactions are carried out by organizations, and foreign trade operations are almost completely in their hands; as a result, the absence of criminal liability of such organizations will lead to the loss of effective state control in this area.

One can hardly argue that legal entities are artificial legal entities capable of subjective expression of will in the form of certain behavior regulated by the norms of national legislation. Among all legal entities provided for by the federal law, the corporation itself has the unique status of the aggregate impersonal expression of the will of the persons who are part of it, i.e. the shareholders.

It is this collective status that determines the noticeably higher and more perfect production, financial, economic and, of course, legal regime of a corporation compared to the legal capacity of an individual or, say, a limited liability company. This specificity of the legal nature of the corporation allows it to exert a significant influence on social and legal relations in the state. In the criminal law context, this means that corporations are potential carriers of a much greater public danger (social harm) to legal relationships protected by law than individuals (Kamensky, 2016).

The latter circumstance actually determines the need to adopt appropriate norms of a preventive, protective and punitive nature, capable of effectively "protecting" society as a whole and its individual law-abiding representatives from crimes and other violations by corporations. After many years of discussions and experiments, the United States, to be followed by other developed nations, chose the path of giving corporations the status of the subject of crime. Thus, the possibility of bringing corporations to criminal liability has become an undeniably effective form of state control over their activities.

The annual amounts of criminal fines paid by the U.S. corporate wrongdoers over the period of 2001-2018 are shown in Figure 2.

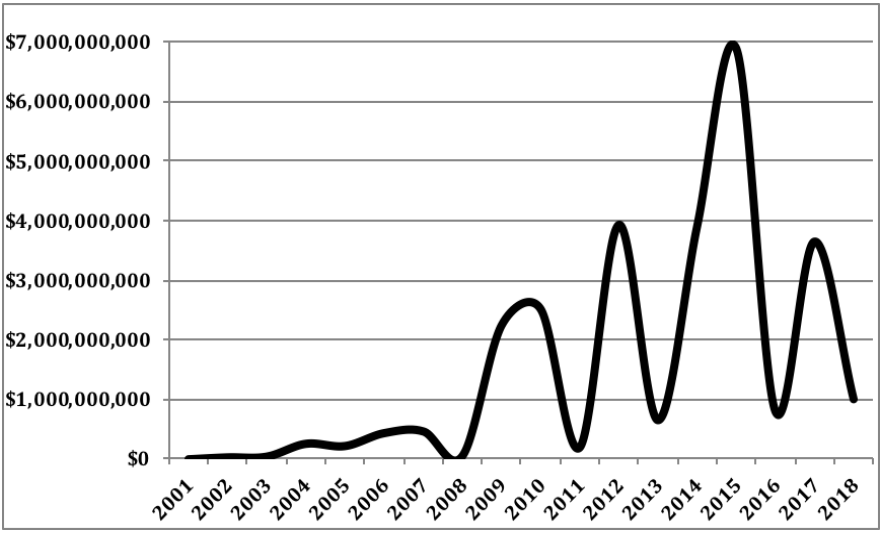

Fig. 2. Corporate Criminal Penalties, 2001-2018. Source: Declining Corporate Prosecutions. Corporate Prosecution Registry Blog. In: https://corporate-prosecution-registry.com/blog/declining-corporate-prosecutions.

In the research paper on the issues of rethinking principles of criminal liability of corporations in the USA, American commentator L. Dervan rightly focuses attention on the fact that such liability runs into many questions, problems and mistakes, since legal norms, which from the very beginning have been developed to apply to natural persons, should henceforth also cover legal fictions. Criminal laws, nevertheless, can and should be applied to corporations to ensure their liability to society, as long as companies develop, they increase their assets, as well as the degree of influence on important processes in public life.

At the same time, corporations are nothing more than an association of people primarily for the purpose of obtaining income, and therefore it is worth remembering not only the guilty individuals who embody the illegal behavior of companies, but also all those innocent employees and shareholders who may seriously suffer as a result of guilty verdicts against corporations. Therefore, in criminal cases initiated against companies the same high standard of fairness, balance and objectivity should be ensured, as during the actual criminal prosecution of individuals – representatives (employees) of companies (Dervan, 2011).

Historically, the prevailing criminal law theory was that corporations could not be held criminally liable due to their artificial personality (juristic

fiction approach) and lack of the moral blameworthiness element. For a long time, particularly for the past hundred years, American criminal law experienced several serious advancements in both rethinking and introducing corporate criminal liability into federal and state law systems. This was done primarily through judicial decision-making and prosecutorial enforcement (Brickey, 1993). Despite the ongoing discussions on the reasons and results of having corporate criminal liability, it is clear that it is established: it is routinely imposed on corporate wrongdoers, it brings its share of public benefits, and it seems to serve at least some of the criminal law goals.

d) European Model of Corporate Criminal Laibility

Throughout Europe, a large number of criminal offences are committed in the exclusive interest of legal entities by their directors, managers and employees. For a long time, civil law jurisdictions followed the principle derived from Roman law *societas delinquere non potest*, which constituted an obstacle to the acceptance in the respective legal systems of the possibility of holding a legal entity responsible in criminal law.

However, in recent years, owing in large part to the spread of offences connected with business activities and corporate globalization, and taking into account the influence of the OECD guidelines, the Council of Europe initiatives as well as EU and EC legislation, the regulatory framework has been constantly shifting. Within the European context, the domestic legal orders vary in their approach to the issue of legal entities liability.

On the one hand, some jurisdictions focus on individual liability, while others, in contrast, focus on corporate responsibility; conversely, some countries do not recognize any form of criminal liability of companies, while others provide for administrative sanctions for offenses. If it is not possible to discern a "common European model" of how to govern such corporate responsibility, one can nevertheless identify the guidelines that are followed in the European domestic jurisdictions.

Moreover, corporate globalization means that many companies have their headquarters in one country whilst at the same time having an important part of their business in other jurisdictions. This further underscores the importance of securing the introduction in Europe of legislation on the liability of legal entities, which will provide uniformity, and certainty in the prosecution of actions related to corporate crime.

If today in most of European legislations *societas delinquere potest*, it is also true that step-by-step European Countries are going towards a system in which also *societas publica delinquere potest*, which means that also public bodies can be liable for criminal offenses.

Thus, European corporate managers and administrators must have at least basic legal knowledge related to issues of corporate criminal liability, if they want to avoid incurring any form of liability, whether criminal or administrative.

While serving as a typical case for the European jurisdictions, the relevant approach by Dutch law and practice can be of particular interest here. Section 51, paragraph 1 of the Dutch Criminal Code provides: "Criminal acts can be committed by natural persons and *bodies corporate*." Furthemore, the Dutch Supreme Court (HR 21 oktober 2003, LJN: AF7938) has interpreted this general rule as to include corporate liability "... when the act has taken place within the sphere of the body corporate."

Non-limitative enumeration (HR 21 oktober 2003, LJN: AF7938) includes the following situations: 1) it is an act of an employee or someone working for the corporate; 2) the act fits the regular course of business of the corporate; 3) the act benefitted the corporate in its business; 4) the corporate was in a position to prevent the act, but the act was acceted or condoned – or in the past similar acts have been accepted or condoned (Brouwer, 2015).

B. Keulen and E. Gritter have also presented a thorough scholarly report, which provides a brief overview of the concept of corporate criminal liability in the Netherlands. Following a description of the historic development of this concept, they pay attention to the substantive law regarding corporate liability, including the concept of secondary liability and defenses, and to specific rules for the trial and the punishment of legal persons. The position in Dutch criminal law of the public law legal person, such as the provinces, has also been dicussed in this work. The report was completed with a short evaluation of the concept of corporate criminal liability in the Netherlands (Keulen and Gritter, 2011).

Some other major European economies also currently have some variations of corporate criminal liability models. For example, since coming into force of the new Penal Code on March 1, 1994, French law recognizes corporate criminal liability. The legislature chose a rather broad model of corporate criminal liability, which applies, in principle, to all offenses and to all legal persons, including companies (Deckert, 2011). However, the legislation requires that a department or representative of the legal person commits the offense "on the behalf of" this entity (Art. 121-2 of the French Criminal Code). Such approach resembles the current Ukrainian model.

Liability of a legal person may therefore arise out of offenses committed by their collegial bodies such as the board of directors or the supervisory board, or individual legal representatives. Individual representatives include individuals such as: (i) directors, managers, general managers and presidents, who are vested, by the law or the bylaws, with the power to administrate,

manage and control the entity; and (ii) de facto directors or managers, but also persons, vested with delegation of powers (including employees) or acting within a specific mission for the company (such as liquidators).

Regarding the issues of liability, arising out of acts of employees, and given that the delegation of powers does not need to be made in writing, certain Supreme Court cases refer to the status or quality of the employee to determine whether they have been acting as "representatives" of the legal person. Since December 31, 2005, any legal persons may be held liable for any criminal violation of French law (Lasry, 2023).

Penalties for legal persons may be of a monetary and non-monetary character. Also, some penalties can be incurred by the legal persons only. No general principles under French law constrain the judge when deciding the penalties incurred by a convicted legal person. The French legislator has also established some specific procedural rules with regard to legal persons. However, with a few exceptions, the majority of the rules of criminal procedure applicable to natural persons apply to legal entities as well.

In turn, the Criminal Code of Ukraine has embodied such a model of criminal law influence on a legal entity, within which the subject of the crime and only a natural person continues to be held criminally liable, and criminal law measures are applied to a legal entity, which itself is not a separate form of criminal liability (Orlovska, 2014).

Based on the current Criminal Code of Ukraine, manifestations of criminal and legal response to the commission of crimes and other social crimes dangerous encroachments provided for by this Code, criminal are not exhausted by responsibility; measures of criminal law influence can be applied as part of the implementation of criminal liability, as well as outside it (as it happens, in particular, when applying measures criminal law to legal entities).

Conclusions

Nowadays, criminal liability of corporations in the USA is a wide spread practice. Such liability regime is characterized by a close connection between provisions of substantive criminal law, criminal procedural law, and regulatory legislation. Corporate liability is a unique body of law, peculiar to the American legal system and at the same time significantly differs from European legal approaches.

In this research paper we have established that the answer to the question of the reasons for the emergence and further development of the institution of criminal liability of corporations in the USA lies not so much in the area of criminal law, as in the coordinate system of real needs related

to the general development of society, primarily in the part of forming and protecting foundations of the market economy. Federal case law on the issue demonstrates the scale of corporate abuses and, at the same time, the high level of harm to society that the activities of modern corporations can create in the absence of reliable regulatory and law enforcement barriers.

At the same time, it has been established that formation and development of the institution of criminal liability of corporations in the USA as in any other given country is a long and complex process, which will be specific for each state that introduces this type of liability.

As pointed out by legal commentators, corporate criminal liability in the United States, and to a lesser degree in some Western European nations, is a powerful law enforcement tool, which is capable of both protecting society of massive wrongdoings and deterring businesses from unlawful deviations.

Therefore, upon introduction of such type of liability to the criminal law of any given country, as is currently the case with Ukraine, detailed guidelines for prosecutors and judges need to be issued to ensure both responsible and effective use of such newly created statutory provisions. Organizational liability statutes have been initially designed and thus should be used for the purposes of punishing and detering corporate misconduct only.

By no means should they be used with the purpose of abusing discretion by judges or prosecutors or corruptly influencing lawful businesses. Unfortunately, such legal guidelines have not been developed and implemented in Ukraine yet. However, a balanced application of well-written organizational criminal liability standards empowers prosecutorial and judicial communities with higher integrity, professional responsibility, and impartiality – qualities, which are always important, when dealing with a powerful corporate world.

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UNIVERSIDAD DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 Nº 78

Esta revista fue editada en formato digital y publicada en julio de 2023, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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