

Involvement of legal entities in committing criminal offences influencing factors

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Abstract

The involvement of legal entities in the commission of criminal offences is a global phenomenon that has an inestimable impact on individuals and society as a whole, and essentially it is a relatively new phenomenon in the Republic of Latvia, as only in 2005 the Criminal Law of the Republic of Latvia was supplemented with a chapter that provides for the application of forced influence to legal entities. Undoubtedly, the economic activity carried out by legal entities is aimed at the maximum possible profit-making; however, often the persons responsible for legal entities put profit maximisation in a higher position and renounce ethics and moral values, violate the law and even commit criminal offences in the interests of legal entities, due to improper supervision or as a result of control. Therefore, the purpose of this article is to study the factors influencing the involvement of legal entities in criminal offences in the Republic of Latvia to find out what measures could be taken to prevent the involvement of legal entities in committing criminal offences.

Keywords

coercive measures • involvement factors • legal entities

INTRODUCTION

Combating financial and economic crimes is one of the biggest challenges for law enforcement and judicial authorities in recent years, which largely includes combating the involvement of legal entities in criminal offences, based on the recommendations (Phase 3 Report: Latvia, 2019) of international organisations (Council of Europe's expert committee report, 2018) in this area. The involvement of legal entities in the commission of criminal offences is a global problem, and today it is closely related to financial, economic, corrupt, environmental and other crimes.

Large-scale companies are the main determining force on the globe. They are everywhere, in almost every aspect of our lives. Of the world's 100 largest economies, 51 are legal entities, not countries (Sarwar, 2015). Today, powerful legal entities not only dominate the global economy, but also have significant influence on sports and culture, as well as on politics, so proving the involvement of legal entities in criminal offences is often difficult or even impossible. Likewise, the public views on the harmfulness of the involvement of legal entities in criminal offences are not unambiguous and some representatives of legal entities consider tax optimisation, bribery, environmental pollution and even involvement in money laundering to be part of business, despite the fact that

both legal entities can be subject to coercion means of influence, as well as natural persons can be held liable (Mokhiber and Weissman, 2002). The involvement of legal entities in the commission of criminal offences is often more harmful than a criminal offence committed by an individual person, because most criminal offences in which legal entities are also involved are directed against the interests of the national economy, thus against the entire society and against the population of the country as a whole.

The purpose of this article is to study the factors influencing the involvement of legal entities in criminal offences in the Republic of Latvia to find out what measures could reduce or even prevent the involvement of legal entities in committing criminal offences. The article has two chapters and a conclusion. The first chapter of the article examines the nature and characteristics of the involvement of legal entities in criminal offences in the Republic of Latvia, while the second chapter examines the factors that contribute to the involvement of legal entities in criminal offences in the Republic of Latvia.

Generally recognised scientific research methods were used in the preparation of the article: analytical method, comparative research method, qualitative research method (case analysis), as well as legal interpretation method.

RESEARCH RESULTS AND DISCUSSION

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Nature and characteristics of the involvement of legal entities in criminal offences in the Republic of Latvia

According to Article 70.1 of the Criminal Law of the Republic of Latvia, the basis for applying means of coercive influence to legal entities is a criminal offence provided for in the special part of this law against a legal entity under private law, including a state or municipal capital company, as well as a partnership, if the offence is in the interests of the legal entity, for the benefit of this person or it was committed by a natural person as a result of improper supervision or control, acting individually or as a member of the collegial body of the relevant legal entity based on the right to represent the legal entity or act on its behalf, based on the right to make decisions on behalf of the legal entity or exercising control within the framework of the legal entity (Criminal Law, 1998). Therefore, it can be established that there is a connection between a natural person and a legal entity to apply coercive measures to it for a criminal offence committed by a natural person. Undeniably, profit maximisation (Commercial Law, 2000) is one of the main reasons why high-ranking corporate representatives commit crimes in the interest of legal entities, as a result of good or bad control or supervision, but it is by no means the only one.

Preservation of profit opportunities, management of a specific market and reduction of business costs are a few reasons that can encourage the involvement of legal entities in criminal offences.

It must be said that in practice it can be found that legal scholars in their research rarely distinguish between everyday crimes, such as theft, fraud, robbery, bodily harm and even murder, and crimes committed by influential persons and members of the public, focusing mainly on everyday crimes and their criminological aspects. However, it should be taken into account that often more harmful to the society as a whole are crimes committed in the interests of legal entities, as a result of good or improper supervision or control.

By nature, legal entities are an abstract concept that has no mind of its own; therefore, the expression of will can be ascertained by evaluating the actions of the responsible persons of the company because legal entities cannot have the intention to commit criminal offences themselves. In fact, the will of legal entities is expressed and implemented through its representatives, thus the will of the representative of the company is actually transferred and attributed to the legal entity itself (Krastins, 2002).

When characterising the involvement of legal entities in criminal offences, the statement of the Ministry of Justice of the Republic of Latvia of 17 June 2021 regarding the application of coercive means of influence to legal entities must be taken into account (Explanation of the Ministry of Justice of the Republic of Latvia, 2021). The Ministry of Justice, with the help of the Judicial Administration, collected

statistical data on the use of coercive measures in the period from October 2019 to 25 May 2021. According to the data provided by the Judicial Administration, during this period, 25 legal entities were subject to coercive measures; in 17 cases, coercive measures were applied for the criminal offence provided for in Article 218 of the Criminal Law (for tax evasion and the payment of payments equivalent to them). For two legal entities, the means of coercive influence have been applied for the criminal offence provided for in Article 195 of the Criminal Law (laundering of criminally obtained funds) and, for another two legal entities, the means of coercive influence have been applied for the criminal offence provided for in Article 323 of the Criminal Law (bribery).

From the above, it can be concluded that in the absolute majority of cases, or 19 out of 25 processes for the application of means of coercive influence to legal entities, which is actually 76% of the total number, the means of coercive influence were applied directly for financial and economic crimes. On the contrary, in two cases, means of coercive influence have been applied for bribery, which makes up 8% of the total number of processes for coercive influence.

Therefore, it can be concluded that in 84% of cases coercive measures are applied to legal entities for the so-called 'white-collar' crimes, and in only 16% of cases, or in four processes for applying coercive measures to legal entities, they are applied for other crimes.

Observing the above, it can be concluded that in the Republic of Latvia there are actually three main crimes for which means of coercive influence are applied, although the legal framework in the Republic of Latvia does not prevent their application for any crimes provided for in the Special Part of the Criminal Law of the Republic of Latvia.

Considering that the evasion of taxes and the payment of payments equivalent to them, as well as the laundering of criminally obtained funds make up the absolute majority or 76% of the total number of processes, then there is a reason to talk directly about financial and economic crimes and their influencing factors, or even about the 'shadow economy' in general, which will be paid attention to in the next chapter.

Factors contributing to the involvement of legal entities in criminal offences in the Republic of Latvia

The results of the 'Shadow Economy Index in the Baltic States' of Riga University of Economics (SSE Riga) show that the size of the shadow economy in Latvia in 2022 remained almost at the level of 2021: 26.5% of gross domestic product (GDP), decreasing by only -0.1 percentage points. The shadow economy has decreased relatively more significantly in Estonia, while an increase in the size of the shadow economy can be observed in Lithuania. As one of the influencing factors, the COVID-19 pandemic is mentioned, as well as the war in Ukraine, therefore it is predicted that the results may

not be encouraging in the future and the size of the shadow economy in the Baltic States may continue to grow.

Here I would like to mention that the data differ in different studies, for example, in the study of Austrian shadow economy researcher Friedrich Schneider on the shadow economy in 36 Organisation for Economic Co-operation and Development (OECD) countries for the period from 2003 to 2021, it is indicated that the shadow economy in Estonia in 2021 amounted to 23.10%, in Lithuania it was 22.9% and in Latvia it was 20.2%; thus it can be concluded from various studies that the shadow economy in the Baltic countries is approximately the same and constitutes approximately 22.5% of the gross domestic product.

According to shadow economy researcher Arnis Sauka, in the case of Latvia, this actually means that Latvia loses >2.7 billion euros per year to its economy, which could help defence, health care, science, as well as building the capacity of law enforcement agencies and other national needs; therefore, the Baltic States still have a lot to do in this regard.

If we talk about the components that make up the shadow economy, the main component that makes up the shadow economy is precisely the envelope wages; therefore, special attention should also be paid to this area. In fact, it can be established that envelope wages in the Republic of Latvia actually reach almost 50% of the entire shadow economy, and a similar situation exists in Estonia and Lithuania, although in Lithuania a large part of the shadow economy is also made up of undeclared income, which includes income from smuggled goods realisation (KPMG Survey, 2022).

In terms of sectors, the highest share of the shadow economy in Latvia is still in the construction sector. Professor Sauka points to a negative trend: if since 2015, the shadow economy in the construction industry in Latvia decreased, then in 2021, the shadow economy in the industry will increase to 31.2%, while in 2022, even 34.5%. In 2021, the volume of the shadow economy in retail trade in Latvia reached 29.8%, while already in 2022 it was 30.5% in the service sector and in 2021 it was 27.5%, while already in 2022 it was 28.6%. Only in manufacturing and wholesale in 2022, a drop in the shadow economy can be observed from 25.0% in manufacturing in 2021 to 23.9% in 2022, while in wholesale from 24.4% in 2021 to 20.5% in 2022 (Sauka, 2023).

In general, it should be added that currently the average indicator in all OECD countries is slightly >16%, while in the countries with the lowest shadow economy index, namely, Austria and Switzerland, shadow economy accounts for around 6% of the gross domestic product.

Evaluating the statistics as a whole on the applied means of coercive influence in the Republic of Latvia and the state of the shadow economy in Latvia, it can be concluded that, in fact, the only determining factors that encourage legal entities to engage in criminal offences are economic conditions.

The economic activity carried out by legal entities is mainly focused on the maximum possible profit making; however, the persons responsible for legal entities often place profit maximisation in a higher position and renounce ethical and moral values and commit violations of the law. The education system also plays a certain role here because in practice it can be found that criminal offences committed in the interests of legal entities, as a result of good or improper control or supervision, are often not considered as such, a series of tax optimisation, bribery, environmental pollution and even involvement in money laundering by representatives of legal entities, as well as other criminal offences are considered part of business, despite the fact that both legal and natural persons can be prosecuted. Likewise, the public views on the harmfulness of the involvement of legal entities in criminal offences are not unambiguous; in practice, part of the public supports, for example, non-payment of taxes, the payment of wages not shown in the accounting records or 'envelope wages'.

From this, it can be established that the education system, neither in general secondary education institutions nor in higher education institutions, actually fails to improve the moral standing of potential company representatives, which could be promoted by creating awareness about, for example, the importance of tax contributions to the national budget in the social, economic, security and defence factors of the country, as well as for providing other functions.

Another important factor for the involvement of legal entities is the fact that the means of coercive influence under criminal law may not be adequately applied; for example, the amounts of money collected are not such as to deter other legal entities from engaging in criminal offences and sometimes even significantly fall short of their amounts, which are applied within the administrative process for violations in cases of competition violations.

For example, in this regard, I would like to draw attention to one of the decisions of the Court of Economic Affairs in the process of the application of the means of coercive influence. In this article, attention was already drawn to the fact that the means of coercive influence applied in the Republic of Latvia, especially in the form of money collection, in the author's view, are not severe enough to deter the involvement of legal entities in committing criminal offences, and this is also confirmed by one of the money collections applied in the rulings of the Court of Economic Affairs approximately. Accordingly, the court of first instance, the Court of Economic Affairs decided on 13 December 2022 to apply coercive measures to a legal entity registered in the Republic of Latvia based on the order of the Lithuanian Sauli District Court of 17 October 2019 regarding punishment in a criminal case in which a Lithuanian citizen was found guilty of committing a criminal offence, which is provided for in the third part of Article 227 of the Lithuanian

Criminal Law, which corresponds to the criminal offence provided for in the second part of Article 323 of the Criminal Law of Latvia, namely, for offering a large amount of material values to a public official so that he, using his official position, performs some action in the interests of another person. From the decision, it can be established that the bribe in the amount of EUR 90,000 was given so that the legal entity registered in the Republic of Latvia would gain an advantage in a public procurement tender in Lithuania, that is, to win the tender, which was unofficially represented by the accused.

In this decision, the court found that the means of coercive influence applicable to a legal person is money collection; however, it did not specifically motivate why exactly such a coercive influence tool and the amount should be determined in the amount of 240 of the minimum monthly wages set in Latvia, or EUR 120,000.00, although the amount of money collection could be to determine from 20 to 75,000 in the amount of the minimum monthly salary established in Latvia, namely, from EUR 12,400 to 46.5 million.

It should be said here that a better example in Latvia can be found in connection with violations of competition rules; for example, in the regulations of the Cabinet of Ministers No. 179 of 29 March 2016, 'Procedure in which fines are determined for violations of the prohibition of competition law and unfair trade practices and compulsory fines for non-fulfilment of legal obligations set by the Competition Council', the criteria for the applicable penalty for violations of competition rules (Cabinet of Ministers of the Republic of Latvia regulations No. 179, 2016). These regulations, which provide for the imposition of penalties on legal entities for competition violations in the administrative process, specify relatively more specific criteria for the application of penalties, taking into account the severity, duration, mitigating and aggravating circumstances of the violation committed by the legal entity, determining the fine as a percentage of the net turnover of the last reporting year, and it may be up to 7% of the annual net turnover, but it is assessed according to the severity of the violation (Competition Law, 2000). The author thinks that we should also go in this direction in the processes of applying means of coercive influence, linking the collection of money with the annual net turnover or in some other way linking it with the company's financial position, for example, profit. The author also thinks that it would be a reasonable solution, so that the company is not actually made insolvent by means of money collection, but at the same time, such coercive measure is also sufficiently painful and deters other companies and their employees from carrying out any criminal activities in the interests of the company, good or improper supervision or control. Therefore, it can be established that if in this process the amount of this money recovery were to take into account the criteria that are used when applying penalties in the context of violations of competition rules, then

in fact the corresponding amount of money recovery for such a crime would be no less than EUR 210,000, which would be a total of 7% of the net turnover of the reporting period of 2020; therefore, it can be established that the penalties for competition violations, based on its legal framework, are applied significantly more severely than the means of coercive influence in similar situations in criminal proceedings.

Taking into account the above, rhetorical questions arise here: whether the criteria are really detailed enough for the application of money recovery, whether this amplitude is not disproportionately large and whether the amount of money recovery applied for the involvement of a legal entity in the commission of a criminal offence fulfil the function of deterrence, taking into account that it is in fact significantly less than the fine that would be imposed in the case of a serious infringement of competition.

In this case, we ask a rhetorical question whether such state legal policy and the means of coercive influence applied by the court to legal entities regarding criminal offences committed in the interests of legal entities, good or as a result of improper supervision or control, are appropriate and proportionate and deter legal entities from engaging in criminal offences. In the author's view, the answer is no. The criteria for applying the means of coercive influence should be improved, they should be stricter than in other branches of law and they should deter other legal entities from engaging in criminal offences, while ensuring that involvement in crime does not pay off.

CONCLUSIONS

As it was already established, in fact, representatives of legal entities commit criminal offences in the interests of legal entities, as a result of good or improper control or supervision, mainly to make a profit for the company and also for themselves, gain control over a certain business sector, exclude competitors, etc., thus placing economic goals and personal prestige above the norms of ethics, morality and even legal regulation. The business environment in itself sets a demand for greater profit; moreover, representatives of legal entities and their managers are obliged to act in the interests and for the benefit of company owners or shareholders and to maximise the company's profit.

The above does not force corporate representatives to disguise themselves, because in fact corporate representatives are mostly not considered criminals in society, but rather respectable people in society, even despite the fact that a single crime committed through a legal entity often causes more damage than an everyday one committing criminal offences.

The society as a whole turns against the perpetrators of everyday crimes, for example, if a bicycle, a mobile phone, an

item in a store is stolen, people immediately turn to the police ask for criminal proceedings to be initiated, to find and punish the guilty person. On the contrary, if tax evasion, payment of enveloped wages or even bribery occurs in the interest or benefit of a legal entity, society does not engage in combating such crimes, rather it supports it by not reporting, for example, receipt of enveloped wages, non-payment of taxes, whereas some persons even look for opportunities how to buy goods and services without paying taxes. In addition, in society, representatives of legal entities who commit criminal offences are generally not considered criminals, but respected people in society, due to their high social status, financial well-being and intellectual capacity.

Therefore, criminal offences committed in the interests of legal entities, as a result of good or inadequate control and supervision, significantly threaten the well-being of society, because financial, economic crimes and corrupt crimes not only cause and can cause material damage to the state and distort the market economy, but at the same time also repel foreign investors. Considering this relatively small number of processes on the application of means of coercive influence on legal entities, the society as a whole is not so informed about the involvement of legal entities in the commission of criminal offences; therefore, there is no public information that it is possible to achieve justice, individuals do not report the existence of such crimes and hence neither perpetrators of criminal offences nor legal entities are punished. In addition, there is a possibility that society still does not understand the harmfulness of such crimes involving legal entities, and therefore does not actively cooperate with law enforcement authorities in combating them.

Arnis Sauka, in his study, 'Shadow Economy Index in the Baltic States 2009–2022 year', as a result of the regression analysis, points out that the greater the chance of being caught without paying taxes and there are significant consequences, the lower the involvement of entrepreneurs (legal entities) in shadow economy activities. In addition, he points out that involvement in the shadow economy is most influenced by dissatisfaction: with the legal regulation of business, with the work of the State Revenue Service, with the tax policy in the country and with government support.

As a result of the research, the following conclusions can be reached:

1. Measures should be taken to educate the public about the harmfulness of the involvement of legal entities in criminal offences and its consequences for the country and society as a whole, involving the media, secondary and higher education institutions.
2. Investigators, prosecutors and judges should be trained on the process of applying coercive measures to legal entities in order to promote awareness among them.
3. Means of coercive influence on legal entities must be

such as to deter other legal entities from engaging in criminal offences.

4. Adherence to ethical and moral norms should be promoted in the business environment as well.
5. Representatives of legal entities may continue to commit criminal offences in the interests of legal entities, as a result of good or improper supervision or control, if committing criminal offences 'pays off', representatives of legal entities should not feel impunity, the potential benefit should not be greater than the potential loss.
6. Taking into account that legal entities are usually involved in financial and economic crimes, especially crimes related to tax evasion, payment of wages not shown in accounting records, etc., the state policy in the field of taxes and transfer should be long term, predictable to deter them as much as possible from re-engagement in criminal offences.
7. It is necessary to improve the criminal law regulation, especially the criteria for the application of coercive measures, so that the application of coercive measures becomes more effective and ensures the deterrent function.

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