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Corporations and the State: Emerging of the Problem of Corporate Liability

Anna Shashkova

Department of Constitutional Law, Moscow State Institute of International
Relations (University) (MGIMO-University), Moscow, Russia

Tel +7 916 670 8030

a.shashkova@inno.mgimo.ru

Abstract

The aim of the present article is to find the root of the problem of interaction between the state and corporations. The core part of the research is dedicated to the analysis of emerging of the corporate liability based on the dialectical method of cognition political, legal and socio-economic processes. As a result, the roots of the problem of criminal liability of corporations are purely political. The question on emerging of corporate liability is analysed from a political point of view coming to a conclusion that at present the Russian Federation political conditions are not set in for the matter.

Keywords: industrial, society, liability, corporate, crime.

Las empresas y el Estado: surgimiento del problema de responsabilidad corporativa

Resumen

El objetivo del presente artículo es encontrar la raíz del problema de interacción entre el estado y las corporaciones. La parte central de la investigación está dedicada al análisis del surgimiento de la responsabilidad corporativa basada en el método dialéctico de cognición, procesos políticos, legales y socioeconómicos. Como resultado, las raíces del problema de responsabilidad penal de las corporaciones son puramente políticas. La cuestión sobre el surgimiento de la responsabilidad corporativa se analiza desde un punto de vista político llegando a la conclusión de que en la actualidad las condiciones políticas de la Federación Rusa no están establecidas para el asunto.

Palabras clave: industrial, sociedad, responsabilidad, corporativo, crimen.

1. INTRODUCTION

Introduction of criminal liability for corporate misconduct is a question, which is being discussed in the Russian Federation since 2015, when a draft law ‘On Introduction of Amendments to Legislative Acts of the Russian Federation in the Light of Introduction of the Institute of Criminal Liability for Corporations’ was submitted by the Investigation Committee of the Russian Federation to the State Duma. Most developed countries criminalized corporate misconduct and there are arguments that Russia shall follow the route of such countries

(Bytko, 2015). At the same time, here are strong opponents to the criminalization of corporate crime. For example, the Russian Federal Chamber of Lawyers is in strong opposition to this idea. The arguments here concern mostly the subjective side of a crime, the principle of a personal culpability: *actus reus non facit reum nisi mens sit rea* (the act is not punishable if there is no perception of guilt), as well as the purpose of criminal liability. The problem of criminalization of some act is a question of public order, a political question. Criminal action must violate public order, not just rights of particular individuals. An act shall be of great political or social importance, to deserve the stigma to be called a 'crime'. And the problem has mostly political and not legal roots of emergence and evolution.

2. FROM PRE-INDUSTRIAL TO INDUSTRIAL SOCIETY

The transition from pre-industrial to industrial society incurs economical changes inside the society: commodity-money relations are developed, money get primary role in the overall spectra of values replacing barter transactions, market operations are becoming broad spread (Shashkova, 2015). The industrial society is the result of the industrial revolution. The basis for the industrial society is private property. The working force is moving from agriculture to industrial area, people from the country come to the city. Urbanization of the society takes place. Capitalist relationships are replacing previous feudal relationships in such countries as Italy, England and Holland. Industrial era begins. This step is also characterized with the

emergency of monopolies, both private and state monopolies. Schumpeter (2008) marks out the entrepreneur as a driving force of industrial society.

3. INTERRELATION BETWEEN THE STATE AND THE BUSINESS

At the same time the concept of a ‘corporation’ arises. A corporation is considered as an entity separated and independent in a business environment (Duff et al., 2014). A corporation is considered independent in its relations with the state, the owner, shareholders and other stakeholders of the corporation (Yin and Wang, 2018). At this particular step of development of the society the relationship between the state and corporations come to a new level (Shashkova et al., 2017). All discrepancies between the state and the corporation show how much they depend on each other. The economic growth of the state, an increase in the number of working places and export operations are due to the fact of existence and business activity of corporations. Such interconnection works both ways. The market, which is a controlling force of the economy, is more and more adapted to the needs of corporations.

4. ARISING OF A CONCEPT OF ‘CORPORATION’

The concept and current understanding of ‘corporation’ arises during this period as well. A corporation is understood as a structure, which acts independently in commercial turnover. It acts independently in its relations with the state as well. A corporation acts

as a veil for owners from other shareholders and counteragents of the corporation. The court precedent of the House of Lords of the United Kingdom elaborated such concept in 1896. Of course, the idea of a limited liability is much older, than XIX century. Some vestiges found it in the medieval era in monasteries and religious institutions. Later in XVI century large corporations exploited the trade with the East Indians (e.g. the Vereenigde Oostindische Compagnie) (Grimes, 2013). The case is recorded under the name of ‘Salomon et al.’. The concept of this case is of particular interest notwithstanding the decision of the United States court ‘Santa Clara County v. the Southern Pacific Railroad Co.’ adopted 10 years before the UK decision, in 1886 (Bloch, 2013). The American court applied Amendment Four to the US Constitution to a corporation. It was for the first time in history when the notion ‘person’ was applied to a legal entity and not to a physical person. “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”. The details of the case ‘Salomon et al.’ show that for a long period of time Mr Aaron Salomon ran a successful leather business as a sole trader. Later, his son took some interest in the business and Mr Aaron Salomon decided to create a business entity as a limited company Salomon and Co. Ltd. The requirement of English law as of the year 1892 stated that at least 7 persons had to participate in a business entity as shareholders. Those made Mr Aaron Salomon convert all his family

members into shareholders. Mr Aaron Salomon owned 20,001 shares and the other six shares were distributed among his six family members (his wife, his daughter and four sons). Mr Aaron Salomon sold his business to a newly-created business entity for £39,000, £10,000 out of which was a loan. In this sense Mr Aaron Salomon was a principal shareholder and a creditor of the corporation Salomon and Co. Ltd. Later on the political situation in the country and numerous strikes at industrial enterprises led to the distribution of government contracts among a number of suppliers from Salomon and Co. Ltd (Galbraith, 2007). As English government was the main supplier for Salomon and Co. Ltd. the income from sales relatively decreased. When the corporation went into liquidation being a result of the claim of one of the bondholders of Salomon and Co. Ltd. in October 1893 the insufficiency of funds to cover all the creditors was discovered.

The concept delivered in the judgment is of current importance: those who gave loans to the company have priority over general creditors. At the same time the court rejected claims of Mr Aaron Salomon as a debenture holder. Moreover, the court recognized agency and fraud in the actions of Mr Aaron Salomon making him personally liable before other creditors. The High Court and the Court of Appeal supported the idea that the company and Mr Salomon are the same person (Pulbrook, 1865). As the courts stated the only purpose of creating the company was to transfer personal business to the company, which makes the company itself a myth (Shashkova, 2015). The idea of creating a company by Mr Salomon had as its object

purposes contradictory to the law: to trade with the intention on avoiding liability, to indebt under the name of the limited company and to lead away all assets of the company into debt obligations before himself. The House of Lords being the highest court in the UK unanimously overturned this decision. Both arguments of fraud and agency were rejected. The Companies Act 1862 had a mere requirement of seven people's participation without the necessity of independence from the majority shareholder. Therefore, creating and registering the corporation under the Act Mr Salomon fulfilled all legal requirements. That makes the corporation Salomon and Co. Ltd and all its legal actions lawful (Goulding, 1999).

5. CONSEQUENCES OF RECOGNIZING THE CONCEPT OF LIMITED LIABILITY

The House of Lords recognized a company as a separate person. It was held:

Either the limited company was a legal entity or it was not. If it were, the business belonged to it and not to Mr Salomon. If it was not, there was no person and nothing to be an agent (of) at all; and it is impossible to say at the same time that there is a company and there is not. The company is at law a different person altogether from the (shareholders)...; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands received the profits, the company is not in law the agent of the (shareholders) or trustee for them. Nor are the (shareholders), as members, liable in any shape or form, except to

the extent and in the manner provided for by the Act (Salomon et al., 1897: 35).

Thus, a doctrine of ‘separate personality’ was created. The author summarises such doctrine of ‘separate personality’ to the following:

- The business entity has separate property. Any business assets are owned by the company itself and not by shareholders. This is normally a major advantage in that the company’s assets are not subject to claims based on the ownership rights of its members.
- ‘Property’ has broad meaning: things, rights on those things and obligations considering those things.
- Property of a corporation shall be separated from the property of the founders or participants/shareholders of the legal entity.
- The concrete form of separate property is either a legal entity’s own financial balance or its own budget.

The recognition of the doctrine of ‘separate personality’ resulted in further important court precedents stating the following:

The fact that only one person owns a corporation does not infringe its status as a corporation (Dignam, 2011).

- A business entity has an ability to act on its own behalf, has its own name, can enter into transactions with such name, and be a claimant and a defendant in court. A company has a contractual capacity in its own right and can sue and be sued in its own name. Contracts are entered into the company’s name and the
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company is liable for any such contracts.

- A corporation has perpetual succession. A corporation continues to exist until it is wound up or otherwise dissolved, regardless of any changes of shareholders, directors, etc. As the corporation exists in its own right, changes in its membership have no effect on its status or existence. Members may die, be declared bankrupt or insane. Corporation members may also transfer their shares without any effect on the company. As an abstract legal person the company cannot die, although its existence can be brought to an end through the winding up procedure.
- A company bears independent property responsibility for the entirety of property in its possession. A company answers not only with the property in its ownership, but as well with advance payments on its bank accounts, loans and other funds, which the business entity does not possess under the right of ownership. Unless otherwise stipulated by law neither administrators, nor participants of the business entity are responsible for debts, nor subsequently, the corporation is responsible for debts of its founders (participants).
- A company may possess property while no property rights arise for shareholders (Grantham, 1998).

In case the insolvency (bankruptcy) of a company, property of shareholders of the company is not subject to risk as it happens in case of personal bankruptcy. Thus, the concept of limited liability makes the

liability for shareholders of the company limited. The only economic risk they have, is a risk of losing a contribution to set up a company (Mankoff, 1972). In contrast to the liability of shareholders the company is liable unlimitedly before creditors or other persons: the entire property of the company is answerable on obligations of the company (Kosolapov, 2011). Coming to such conclusion creates another important issue. Can shareholders, managers or other influential persons in the company abuse their rights using the concept of limited liability? The answer exists. The UK courts have considered the risks and together with the concept of 'separate personality' of a company elaborated a concept of lifting a 'corporate veil'.

6. LIFTING A 'CORPORATE VEIL'

Such concept of lifting a 'corporate veil' is applied in case there are reasons to look inside the company in order to claim liability of the persons standing behind the company. When the company abuses its limited liability, e.g. in cases of hiding the real agency activity, in case of fraud and violation of law, in case of group of interconnected companies or in all other cases directly stated by law, such as excess evaluation of the statutory capital or deliberate bankruptcy. In case the insolvency (bankruptcy) of a company has been caused by the participants, by the owner of the legal entity's property or by other persons, who have the right to issue obligatory instructions for the legal entity, or may determine its actions in any other way, if the legal entity's property proves to be insufficient, the subsidiary liability of the legal entity's obligations may be imposed upon such persons (Croal,

2013). In case of breach of law persons in charge will not enjoy limited liability of the corporation and its 'separate personality'. They will be answerable on their fraudulent actions. Thus the concept of lifting a 'corporate veil' is the integral part of the concept of corporate personality and independence of the company. Not only English law uses the concept. In German law, such concept is called 'Durchgriff hinter den gesellschaftsrechtlichen Schleier', which means penetrating liability, in the American law, it is known as 'Piercing the Corporate Veil'. In the case *Kinney Shoe Corp. v. Polan* the court stated that the concept of a separate liability of a corporation may be ignored in case of "use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation» (Kinney et al., 1991). Implementation of such concept by courts leads to another concept – 'corporate crime' (Bequali, 1978).

7. THE INTERACTION BETWEEN GOVERNMENTS AND CORPORATIONS

Thus, basing on the analysis of the precedent in the case 'Salomon et al.' and the precedent in the case 'Santa Clara County v. Southern Pacific Railroad Co.' the author can conclude that a 'corporation' as a separate person, which can execute self-committing legal actions, meet its obligation, act as a plaintiff or as a defendant in court, as a self-governing legal entity, whose rights and duties are distinct from those of its members, appears only at the end of the nineteenth century. At this particular stage of industrial society, when

private property becomes sacred, the current understanding of a 'corporation' is created (Shashkova et al., 2017). Such concept of 'corporativity' of a company means that the company can make transactions on their own behalf, may act as a plaintiff and a defendant in court, can sell, buy, rent, lease, and mortgage property in its own name. The corporation's property is inviolable. However, it does not give the individuals that are standing behind a corporation complete indulgence. The legislation and judicial practice clearly show that in case of violation of the law, it is possible to transfer liability to persons actually committed their actions, even if they are covered by the corporation. Thus, the concept of 'lifting a corporate veil' is also a part of the concept of corporativity. Such concept of 'lifting a corporate veil' is as well an integral part of the concept of the autonomy of the company, an integral part of the corporation as an independent entity. At the same time if the state becomes weak corporations shall assume some functions of the state.

In early industrial society monopolies acted as land owners in the Roman Empire, collecting tribute for the passage of goods via the river. American railroad tycoons wiped out of business competitors in the same way at the end of XIX century. The mass media add to the political rhetoric the idea of the antagonistic relationship between the state and corporations in the post-industrial society. The right-wing forces claim that the state intervention in the process of making money is too strong. Therefore, the state rather prevents than helps trading activity and activity of corporations. The left-wing forces draw an

image of a corporation as a predator, exploiting workers and consumers and evading taxes. They claim tighter control of corporations from part of the state. Such contradictions between the state and corporations lead to ineffective operational response to the banking crisis of 2007-2008. The Russian government responded to such crisis by passing new acts, more strictly regulating the financial and especially the banking sector, attempted to crack down on corporations using tax havens. Was it effective? Some countries such as the United Kingdom did the opposite. They reduced corporate taxes to attract more investment to the economy of the country. The French President François Hollande did the same. He came to power in 2012 on a wave of anti-capitalist rhetoric and in January 2014 announced the reduction of corporate taxes of 30 million euros to resuscitate the stagnating French economy. Though after increase up to 75% of the luxury tax such action of the French President was not noticed. It should be noted that notwithstanding all existing controversies between the state and corporations each other is sine qua non. Only because of corporations the economic growth of the state happens, jobs are created, export of goods is realized (Marx, 1844). All these lead to increase a position of the country in the global economy. Transnational corporations (TNCs) are of specific importance. Such corporations generally pay higher salary, export more goods and pay higher attention to research and development (RandD) of new products and technologies. The state is forced to compromise at this point. An interesting example of the particular case is an advertising and marketing group WPP, which moved its head office from London to

Dublin due to tax claims in the area of revenue earned abroad. Later, after changes in tax regulations WPP returned its head office back to London. Corporations cannot exist without the state either. The state legalizes corporations, trains employees of such corporations, and creates an infrastructure (roads, air control). All these actions of the state allow corporations to manage business, to deliver their goods in a specific place. It is the state that carries out research and development, requiring significant capital investment (Etudaiyae-Muhtar et al., 2017). Subsequently corporations commercialize such R&D products: from satellite systems to medical devices. In certain business sectors, the state is a major client for corporations itself: defence systems, pharmaceutical products. The development of the construction industry also very much depends on public policies (Curti and Mihov, 2018). Public policy affects the corporate structure of business as well. In the USA, for example, high corporate taxes and an increasingly strict legislative regulation of public corporations led to a reduction in the number of public corporations and the establishment instead of limited liability partnerships. Tax regulation according to which the taxation of interest from investments in securities is different in the case of stocks and bonds (for taxation of bonds applies tax deductible, while dividends are paid from net profit) has led to the increase in the number of debt instruments and to the decrease the investment in stocks.

Progress development in the technological area provided the state with the opportunity of total control over citizens through

telephony or email. In this field also the government and corporations can both confront and interact (Ramirez and Ramirez, 2017). There are almost no areas of business with secrecy and anonymity, especially when the issue at stake is cash money. Will corporations protect their customers from the control of the government, risking accusations of violation of legislative acts?

Social problems' regulation drives the state and corporations into a conflict as well. The Patient Protection and Affordable Care Act, which entered into force in the USA in 2010, imposed a significant bureaucratic burden on small businesses. Formalities that small businesses had to comply with when providing maternity leave for the mother, or even worse for the father, forced small businesses to allocate additional funds and people to comply with the law. In fighting for voters opposing tax increases, the state shifted the burden of social problems onto the shoulders of corporations. That is one of the reasons why the Patient Protection and Affordable Care Act was abolished and substituted with the American Health Care Act (AHCA): to make businesses do business. Big business corporations clearly understand the dependence of their success on the relations with the state: lobbying rather than brilliant business ideas can put the business into effect. Tax regulation can be favourable or can simply swallow the corporation as a whole (Whelan, 2014). While opening the boundaries and globalization of major types business and social activities the state identified areas of business that must be protected from foreign invasion (Berezko, 2016). The state decided to determine the

maximum share participation of foreign persons in such strategic corporations. In each country these areas may vary depending on the strategic goal of the state: in France it is agriculture, in the UK – financial services, in the Russia - gas industry. The state also creates special state corporations dealing in such strategic areas (Alekseeva and Lebedeva, 2016). It should be noted that the tools of interaction between the state and corporations in the rich world and the poor world differ. In the rich world, it is the government that dictates the rules, which corporations shall comply. Corporations have to structure their business and corporate organization in accordance with these rules. The role of taxes, government regulations of the competition, the understanding of strategic development of technology, the impact of lobbying is of great importance here. In the poor world, everything is easier and more complicated at the same time: corporations of big business feel free to determine the best financial and fiscal conditions for themselves with the help of corrupt schemes. They cover nearly all areas, including the area of security, which traditionally has to be under the regulation of the state. The creation of non-governmental organizations (NGOs) does not allow distinguishing any more between the competence of the corporations and the state as such competence is mixed. The scope of activities of the state and corporations is also mixed: the state begins to do business, and corporations and NGOs start dealing with peoples' security.

8. THE IDEA OF CRIMINALIZATION OF CORPORATE MISCONDUCT

Such a notion as ‘corporate crime’ comes to life. Russian dictionaries define a ‘corporate crime’ as a ‘white collar’ crime. At the same time, European dictionaries give to a doctrine of ‘corporate crime’ a broader interpretation. Criminology refers to a corporate crime as to a crime committed either by a corporation (i.e., a business entity, which is a separate legal entity and not dependent on natural persons that manage its activities), or persons acting on behalf of a corporation or other entity (Fisch, 2007). The concept of a corporation being a separate person means equality in application of liability to such separate person. The starting point for such interpretation was the above-named decision of the US court ‘Santa Clara County v. the Southern Pacific Railroad Co.’. It applied the notion ‘person’ to a company.

“The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does”.

Regulation of corporate crimes arises to the political level. After a large number of fatal accidents on the rail network and at sea a term ‘corporate manslaughter’ was elaborated in the UK. This was done to

attract more attention to technological hazards associated with corporations. In 2007 such offence was criminalized with the adoption of the Corporate Manslaughter and Corporate Homicide Act. The Corporate Manslaughter and Corporate Homicide Act 2007 is a landmark in law. For the first time, companies and organizations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care. The Law Reform Commission of New South Wales states that a corporate crime may create a big threat to the prosperity of the community. The reason is that in case of a corporate crime a group of people to be affected is wider than in the case of an individual action. And economic harm potentially caused is much higher as well. On the one hand these are corporations that develop new technologies and economies of scale. These may serve the economic interests of mass consumers by introducing new products and most efficient methods of mass production (Hagan, 2010). On the other hand given the absence of political control today, corporations serve to destroy the foundations of the civic community and the lives of people who reside in them. The case of the decision of the US court ‘Santa Clara County v. the Southern Pacific Railroad Co.’ and its further construction by the Supreme Court of the US provides an understanding of possibility and reasonability of criminal responsibility of corporations.

“Congress can impute to a corporation the commission of certain criminal offenses and subject it to criminal prosecution therefor”.

It was held that a corporation should be responsible for the acts of its representative or agent, whom can be a management body or other empowered employee or another person. It shall be stressed that a corporation shall be held liable even if such agent had acted against the express order of the corporation being a principal. A corporation is liable for tort within the agent’s authorized powers, not only powers strictly construed. That means that even in case there is no direct contract between the corporation and the agent, the agent is considered to be a legal representative of the corporation. There are of course certain court decisions against such construction, e.g. Connecticut General Life Insurance Company v. Johnson.

“I do not believe the word "person" in the Fourteenth Amendment includes corporations. The doctrine of stare decisis, however appropriate and even necessary at times, has only a limited application in the field of constitutional law”.

A decision on the case ‘Burnet v. Colorado Oil and Gas Co.’, dated 11 April 1932, claims that the court is constantly changing its interpretations of the Constitution of the United States, thus reaching improper construction in the case ‘Santa Clara County v. Southern Pacific Railroad Co.’ Notwithstanding such decisions the baseline of

the American courts' construction of the problem is clear - criminalization of corporate misconduct of a separate legal person. The Corporate Manslaughter and Corporate Homicide Act of the UK state that it is applicable to particular cases, which are cases of a corporation, a department, a police force, a partnership.¹ The Act also states that a corporation is guilty of an offence only if the way in which its activities are managed or organized by its senior management is a substantial element in the breach. Thus the Corporate Manslaughter and Corporate Homicide Act stipulates the necessity of the guilt of a corporation. The Act establishes no guilt or liability of an individual of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter. It is very important because to make a corporation accountable for the guilty act, such guilty act of a corporation must be accompanied by a mental understanding of the guiltiness of the act. The corporation shall be aware of the guiltiness, which is hardly to believe in the case of an artificial person. In determining a crime and prospective responsibility for the crime the due level of care shall be taken into account. A 'relevant duty of care' of a corporation that must take place in particular circumstances is provided for in the Corporate Manslaughter and Corporate Homicide Act². Similarly as in case of money laundering crime the liability under the Corporate Manslaughter and Corporate Homicide Act shall be incurred only in case of some predicate crime. That means that the liability under the Act does not arise as is. It arises only after some

¹ *Corporate Manslaughter and Corporate Homicide Act*, cit. n. 24, p. 1.

² *Corporate Manslaughter and Corporate Homicide Act*, cit. n. 24, p. 2.

other crime that is considered to be a crime under the general criminal law has been proved³". The procedure for incurring liability by a corporation starts from a remedial order. In case a remedial order is not executed with a specified period liability under the Corporate Manslaughter and Corporate Homicide Act shall arise.

“An organization that fails to comply with a remedial order is guilty of an offence, and liable on conviction on indictment to a fine⁴”.

Thus the responsibilities of a corporation as of the Corporate Manslaughter and Corporate Homicide Act shall be: compensation of losses, the publication of information on the crime of the corporation in mass media or unlimited fine. Analysing the practice of application of the Act the author realizes that in the case initiation of criminal prosecution on the murder under the Corporate Manslaughter and Corporate Homicide Act such criminal case is initiated simultaneously against the specific officials of the corporation and against the corporation itself. In contrast to the civil procedure, cases of independent corporate liability of a corporation have not yet happened. A Northern Irish company and two other companies JMW Farms Ltd and Lion Steel Ltd were convicted under the Corporate Manslaughter and Corporate Homicide Act under the guilty plea. Another company Cotswold Geotechnical Holdings Ltd got conviction after a trial. The

³ *Corporate Manslaughter and Corporate Homicide Act*, cit. n. 24, p. 10 (1).

⁴ *Corporate Manslaughter and Corporate Homicide Act*, cit. n. 24, p. 9 (5).

patterns that emerge after the analysis of the above case and taking in consideration other cases of are these:

- Prosecutions tend to be of small, owner-managed companies, not companies of big business.
- Convictions by guilty plea seem likely to continue if the alternative is the risk to one of the owners of personal conviction and imprisonment.
- Fines remain below the lower threshold of £500,000 suggested by the Sentencing Guidelines Council.

9. CONCLUSION

Looking through the Corporate Manslaughter and Corporate Homicide Act the author can state turning backwards in the responsibility system. In case of court decisions of the XIX century lifting of corporate veil was the leading idea of corporate responsibility and inevitability of responsibility of a particular guilty person (Nicholson, 2007). Nowadays a corporation is the primary responsible person. At the same time application of corporate criminal liability e.g. under the FCPA and the UK Bribery Act demonstrates clear trend to punish both legal entities and natural persons (McGrath, 2017). Neither punishment of a corporation in accordance with the criminal court's decision, nor plea bargaining excludes individual criminal liability. The risk of individual liability also increased significantly after the release of the Yates Memorandum in the United States in 2015. Coming back to the introduction of criminal liability for corporate misconduct, it

should be stated that under the concept of lifting a corporate veil, liability for corporations is already introduced. However, most Governments introduced civil or administrative liability for companies. Criminal liability for corporations is introduced in many countries as well, e.g. in the majority of the developed countries, though in the Russian Federation the issue is still pending. Nowadays the absence of criminal liability for corporations in the Russian Federation does not release officials of the corporation from criminal liability – officials are recognized culpable for corporate crimes. Such officials are in fact the persons committed a crime; they signed the documents and made real deeds. According to the Tables given below the number of economic crimes in the Russian Federation is being decreased during two consecutive years. That is a sign that criminal liability is being replaced in particular cases with administrative or civil liability. There is no legal obstacle to introduce criminal liability for corporations, which means that the roots of the problem of criminal liability of corporations are purely political. Thus, a decision to introduce or not such liability shall be considered from a political point of view and not a legal one. At present, political conditions in the Russian Federation have not come to the point of criminalization of corporate misconduct.

REFERENCES

ALEKSEEVA, A. and LEBEDEVA, M. 2016. **Что proishodit s teoriej mezhdunarodnyh otnoshenij What Happens with the Theory of International Relations.** In Polis. Politicheskie issledovanija. N^o 1. pp. 29-43. Russia.

- BEQUALI, A. 1978. **White Collar Crime: A 20th Century Crisis.** Lexington Books. Lexington. Massachusetts.
- BEREZKO, J. 2016. **Filosofskoe osmyslenie upravlenija gosudarstvom Philosophy Understanding of the State Management.** Pravo i upravlenie. XXI vek. Vol. 1. N^o 38: 121-125. Russia.
- BLOCH, H. 2013. **Corporations and the Fourteenth Amendment.** UCLA. p. 64. Russia.
- BYTKO, J. 2015. **Nuzhen li Rossii takoj zakon k voprosu o proekte zakona ob ugovnoj otvetstvennosti juridicheskij lic. Does Russia Need Such a Law to the Problem of the Draft Law on Criminal Responsibility of Legal Entities.** Saratovskaja gosudarstvennaja juridicheskaja akademija. Vol. 2. N^o 103: 182-193. Russia.
- CROAL, H, 2013. **Victims of White-Collar and Corporate Crime.** Matters of Russian and International Law. N^o 3. p. 84, Russia.
- CURTI, F. and MIHOV, A. 2018. **Fraud recovery and the quality of country governance.** Journal of Banking and Finance. Vol. 87. pp. 446-461, Russia.
- DIGNAM, A. 2011. **Company Law.** Oxford University Press. p. 646. UK.
- DUFF, R., FARMER, L., MARSHALL, S., RENZO, M., and TADROS, V. 2014. **Criminalization: The Political Morality of the Criminal Law.** Oxford University Press. p. 312. UK.
- ETUDAIYAE-MUHTAR, O., AHMAD, R., and MATEMILOLA, B. 2017. **Corporate Debt Maturity Structure: the Role of the Firm Level and Institutional Determinants in Selected African Countries.** Global Economic Review. p. 1-19. UK.
- FEDOROV, A. 2017. **Pravovaja ohrana korporativnyh otnoshenij. Aktual'nye problemy, protivodejstvie sovremennym kriminal'nym ugrozam, zarubezhnyj opyt Legal security of corporate relations. Current problems, confrontation with relevant means, foreign experience.** Justicinform. p. 1070. Russian.
-

- FISCH, E. 2007. **Criminalization of Corporate Law: The Impact on Shareholders and Other Constituents**. Faculty Scholarship. p. 1053.
http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2059andcontext=faculty_scholarship (accessed 29.08.2017).
- GALBRAITH, J. 2007. **The New Industrial State**. Princeton University Press. p. 576. United States.
- GOULDING, S. 1999. **Company Law**. Cavendish Publishing Limited. p. 430. London & Sydney.
- GRANTHAM, R. 1998. **Corporate personality in the 20th Century**. Hart Publishing. Oxford. p. 295. UK.
- GRIMES, J. 2013. **Fourth statutory corporate manslaughter conviction are trends emerging?** Kingsley Napley. UK.
- HAGAN, E. 2010. **Introduction to Criminology: Theories, Methods, and Criminal Behaviour**. SAGE Publications, Inc; Seventh Edition. p. 576. United States.
- KINNEYSHOECORP. V. **Polan**. 1991.
<https://h2o.law.harvard.edu/collages/3661> [accessed 29.08.2017]. United States.
- KOSOLAPOV, N. 2011. **Gosudarstvo kak korporacija i korporacija kak gosudarstvo: produkt globalizacii ili novaja fenomenologija? A State as a Corporation and a Corporation as a State: Product of Globalization or New Fenomenology?** Sravnitel'naja politika. N^o 2. p. 19. Russia.
- MANKOFF, M. 1972. **The poverty in progress: The political economy of American social problems**. Holt, Rinehart and Winston. p. 524. United States.
- MARX, C. 1844. **Human requirement and Division of Labour**. At <https://www.marxists.org/archive/marx/works/subject/quote/s/> (accessed 29.08.2017).
- MCGRATH, J. 2017. **Instrumental and Expressive Governance, Corporate and White-Collar Crime in Contemporary Society**. Law and Financial Markets Review. pp. 1- 9. UK.
-

- NICHOLSON, H. 2007. **Sarbanes-Oxley's Purported Over-Criminalization of Corporate Offenders.** Journal of Business & Technology Law. p. 43. United States.
- PULBROOK, A. 1865. **The Companies Act, 1862, with analytical references and copious index.** Publisher: Effingham Wilson. p. 233. UK.
- RAMIREZ, M., and RAMIREZ, S. 2017. **The Case for the Corporate Death Penalty: Restoring Law and Order on Wall Street.** NYU Press. p. 288. United States.
- SALOMON, V. SALOMON and CO. LTD. 1897. at <http://www00.unibg.it/dati/corsi/65081/62134> Salomon%20v%20Salomon%20and%20Co.pdf [accessed 22.01.2018]. UK.
- SCHUMPETER, A. 2008. **The Theory of Economic Development: An Inquiry into Profits, Capital, Credit, Interest and the Business Cycle.** (First published in 1934, 2008). <http://compaso.eu/wpd/wp-content/uploads/2013/01/Compaso2012-32-Croituru.pdf> (accessed 29.08.2017).
- SHASHKOVA, V. 2015. **Criminalization of Corporate Responsibility, Politics, the State and the Law.** Vol. 8. N^o 44: 17. <http://politika.snauka.ru/2015/08/3281> (accessed 29.08.2017).
- SHASHKOVA, V. 2015. **Study Manual on Bases of Russian Law.** Cambridge Scholars Publishing. p. 374. UK.
- SHASHKOVA, V., RAKITSKAYA A., and PAVLOV, Y. 2017. **Emergence and Activity of Legal Entities in Russia in the Pre-Revolutionary Period (comparative analysis).** Bylye Gody. Vol. 46. N^o 4: 1333-1344. Russia.
- SHASHKOVA, V. 2011. **Financial and Legal Aspects of Doing Business in Russia.** Aspect Press. p. 256. UK.
- WHELAN, P. 2014. **The Criminalization of European Cartel Enforcement. Theoretical, Legal, and Practical Challenges.** Oxford University Press. p. 391. UK.
-

YIN, J., and WANG, S. 2018. **The effects of corporate environmental disclosure on environmental innovation from stakeholder perspectives.** Applied Economics. Vol. 50. N^o 8: 905-919. UK.



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