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Corporate misconduct in the view of prospective criminalization

Violaciones Corporativas en Perspectiva de la Criminalizacion

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Contents

ABSTRACT:
The article focuses on different theoretical approaches towards establishing corporate criminal liability in the national legislation of the Russian Federation. The central part of the article examines different theoretical and practical views on the introduction of corporate liability in general, and in the Russian Federation in particular. The present article aims to find the root of the problem, and by comparing the positions of several opponents, to give recommendations for the solution to the problem.
Keywords: corporate misconduct, criminal liability, corporate crime, civil liability, administrative liability

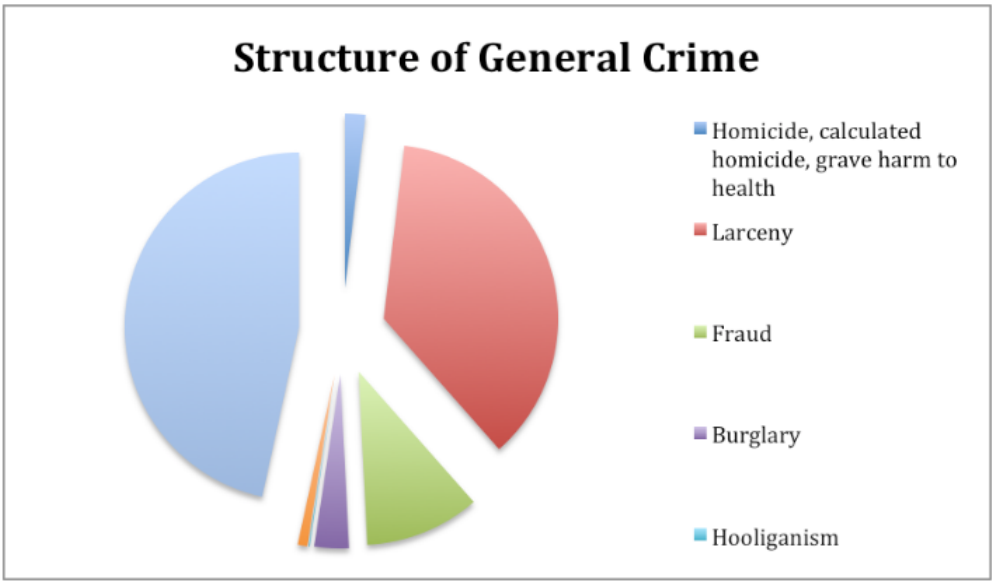
RESUMEN:
El artículo se centra en diferentes enfoques teóricos para establecer la responsabilidad penal corporativa en la legislación nacional de la Federación Rusa. La parte central del artículo examina diferentes puntos de vista teóricos y prácticos sobre la introducción de la responsabilidad corporativa en general, y en la Federación de Rusia en particular. El objetivo del presente artículo es encontrar la raíz del problema y, comparando las posiciones de varios oponentes, dar recomendaciones para la solución del problema.
Palabras clave: violaciones corporativas, responsabilidad penal, delito corporativo, responsabilidad civil, responsabilidad administrativa

1. Introduction

One of the most controversial issues in the current legal and political society of the Russian Federation is the question of the necessity of introducing criminal liability for corporations. This debate is particularly heated in the light of the State Duma of the Russian Federation's present consideration of the initiative by the Russian Investigation Committee on the necessity for the criminalization of corporate misconduct, and of the Russian Federal Chamber of Lawyers' strong opposition to this idea (Pozizia FPA RF, 2015).

Table 1
Structure of General Crime, %

Homicide, calculated homicide, grave harm to health	1,9
Larceny	36,6
Fraud	10,7
Burglary	3,2
Hooliganism	0,1
Misappropriation or embezzlement	0,9
Other	46,6



Source: Elaborated by author based on Ministry of Internal Affairs report. https://xn--b1aew.xn--p1ai/Deljatelnost/statistics

Corporate crime is a serious phenomenon, which presents a high level of danger in many fields: economy and trade; health and safety in the workplace; environmental protection; human rights, and others. Introducing criminal liability for corporations in most of the contemporary legislatures has opened theoretical debates and research works in various academic disciplines, such as criminal law, criminology, sociology, social psychology, economic science and others (Nagy, 2007).

From one point of view, Russian law, there are two types of liability for corporations, both civil and administrative. Administrative fines for certain violations are quite high: e.g. violation of ecological and sanitary rules during the collection, accumulation, neutralization, and transportation of industrial waste and other ozone-depleting substances incurs from 100,000 to 250,000 Rouble (approximately $1,700 USD to $4,200 USD) fine for legal entities, or suspension of business activity for up to 90 days (KOAP RF, Art. 8.2.). Other violations-such as corporate bribery-can reach amounts up to 100 mln Roubles (approximately $1,800,000 USD) (KOAP RF, Art. 19.28.).

From another point of view, the main distinction between criminal and administrative liability is, in the former, the isolation from society as a consequence of undue behaviour – imprisonment (Fedorov, 2017). A problem therefore needs to be solved: how to isolate a legal entity technically.

1.1. Evolution of corporate crime

At the particular stage of industrial society in which private property becomes sacred, a 'corporation' (as it is currently understood) is created. Such a concept of the 'corporativity' of a company means that the company can make transactions on its own behalf, and may act as a plaintiff or as a defendant in court. It can also sell, buy, rent, lease, and mortgage property in its own name. The corporation's property is inviolable. No one may take it away, unless in accordance with the law, and in the vast majority of cases, only under a court decision. The corporation gets independence and powers of 'personhood' after incorporation: when the documents of the corporation are registered with the appropriate state bodies. Prior to such state registration, the corporation does not legally exist as a 'person' (Shashkova, 2018). After the formal steps of incorporation, such a 'person' becomes a full member of the industrial society with all incumbent rights, duties and powers belonging to a person in regards to participation in civic life. Interaction with so-called 'members of society' vary from individuals to the state.

However, these facts do not give individuals standing behind a corporation the right to complete indulgence. The legislative and judicial practice clearly shows that, in a case of violation of the law, it is possible to transfer liability to the persons who actually committed the actions, regardless of coverage by the corporation. Thus, the concept of 'lifting a corporate veil' is also a part of the concept of corporativity. This concept of 'lifting a corporate veil' is also an integral part of the concept the company's autonomy; necessary to the view of the corporation as an independent entity.

In the understanding of a number of Russian social scientists, a process of interaction between the state and corporations shall develop into the process of a functional interchange of the state and corporations. That means that corporations shall assume some functions of the state in case the state becomes weak (Kosolapov, 2011).

In early industrial society, monopolies acted in a similar fashion to land owners in the Roman Empire, collecting tribute for the passage of goods via the river. American railroad tycoons eliminated business competitors in the same way at the end of XIX century. The US government, represented by President Theodore Roosevelt, opposed such corporate monopolies. The image of such corporations became tarnished, due to the way such powerful and influential persons used their positions primarily for their own lucrative gains. They were thought to be using their power for the removal of inconvenient politicians, as well as lobbying more cooperative government figures for their own interests. The final result of such actions was intended to be the avoidance of corporate social responsibility (The Economist, 2014).

Such a notion of 'corporate crime' then comes to life. Russian dictionaries define a 'corporate crime' as a 'white collar' crime' (M.AST, 1999). At the same time European dictionaries give a broader interpretation to the concept of 'corporate crime'.

Criminology refers to a corporate crime as a crime committed either by a corporation (i.e., a business entity, which is a separate legal entity, and therefore not dependent on natural persons who manage it's activities), or persons acting on behalf of a corporation or other entity. At the same time, a corporate crime in one jurisdiction does not mean that it is automatically recognized as a corporate crime in another jurisdiction; laws vary between jurisdictions. For example, some countries do not prohibit insider trading by law (Manne, 2005), while in the majority of jurisdictions, insider trading is treated as a serious crime.

The basic interpretation of the legislation and court practice, in general-and criminology in particular-of a corporate crime may be identified as a crime committed by a company or by individuals representing the company. Different types of corporate crime may be distinguished as:

- The traditional Russian interpretation of white-collar crime, e.g crime committed by white-collar employees of the company. Such an interpretation focuses on the subjects of said crime, i.e. white-collar employees of the company.
- Organized crime. In the case of organized crime, corporations are used as a vehicle for gaining profit, e.g. money laundering. Such an interpretation considers the subjects of the crime as well – companies helping individuals to commit a crime.
- State-corporate crime. State-corporate crime is based on the confrontation of corporations and the state and the relationship hereof. Such an interpretation focuses on the subjects of crime as well – companies interfering with the state in the commission of a crime.

Thus, the comprehension of any type of corporate crime is focused primarily on the subjects of the crime. Such subjects of the crime may be a corporate individual or a corporation.

In case of undue behaviour, different types of liability apply: civil, administrative, and criminal. Civil liability presumes monetary compensation; administrative liability means a fine or closure of a company. Criminal liability is normally associated with imprisonment.

Regulation of corporate crimes arises to the political level. 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 more efficient methods of mass production. On the other hand, in the absence of political control, corporations serve to destroy the foundations of the civic community and the lives of people who reside in them.

Nowadays, many countries have recognized and introduced criminal liability for corporations. It is commonly understood that, facing a serious type of liability, corporations and their officers may think twice before breaking the law.

What is the particularity of criminal liability? Criminal liability is one of the types of public liability. It is necessary to differentiate between the process of criminal prosecution of corporations and the process of accountability of officials belonging to the corporation. In general, the roots of the concept of criminal liability are similar to the concept of any other kind of public responsibility: identification, punishment, and removal from society. The purpose of punishment is the same: to restore the violated rights and apply current legal norms. The main distinction here lies in such a form of criminal liability as imprisonment: a person is withdrawn from the society. Civil liability has a monetary punishment as a result of improper behaviour. Here can be found the fundamental difference between criminal and civil liability: In the case of imprisonment, it shall be applied to a natural person only, and is not applicable to corporations. What about criminal liability against corporations in such a case? Is it a reasonable measure? For a wide number of researchers, the answers is 'yes'. Dr. Nagy points out that one of the reasons for prosecuting corporations is that there are no adequate civil, administrative or enforcement alternatives to ensure adequate legal compliance (2007). Some Russian researchers as well, e.g. Alexei Fedorov, follow the same reasoning through applying different grounds: confronting adverse acquisition (2017).

At the same time, it is important to emphasize that the United States Securities and Exchange Commission (SEC) is very effective with its non-criminal sanctions, e.g. the Sweden-based telecommunications provider (name?) agreed to pay $965 million in a global settlement to resolve violations of the Foreign Corrupt Practices Act (FCPA) in order to win business in Uzbekistan (SEC, 2017). Using only civil and administrative methods of punishment heavily pressures corporations to abide by the laws. Thus, such examples show that criminal responsibility is not the only alternative means to civil sanctions. Supporters of the idea of criminalization of corporate misconduct can claim nowadays, that only the element of liability, and not the impact of such liability on the corporation, is the reason and the grounds for criminal liability of corporations and their officials. According to Lindsey Farmer, criminal liability is idealized by the society as a panacea against further crimes in certain areas (Duff, Lindsay, Marshall, Renzo, Tadros, 2014). Though neither in the past nor the present has such an understanding been definitively proven . The researcher offers to focus on indemnification as an alternative to criminal liability: interaction between the offender and the victim – the corporation and the state.

The behaviour of a person (a corporation as a legal person included) may be subject to either civil law (administrative law also included), or criminal law. The structure of the courts in the countries of Romano-Germanic systems of law, including Russia, delegate civil and administrative matters to the jurisdiction of civil courts of general jurisdiction, while criminal cases shall be considered in the criminal courts. This means that in the case of criminalization of misconduct of corporations, not only special regulations, but the special consideration of the court shall be required.

The problem of criminalization of a particular act is a political question; a question of public order. Criminal actions are those actions which violate public order, not just the rights of particular individuals. When speaking of particular individuals, the matter lays within the concept of private, civil law. In the case of committing a tort (undue civil action or inaction) it is possible to kill a person, e.g. in case of a traffic accident. Here, civil courts shall consider the tort itself, and criminal courts shall consider a case of murder as a particular case incurring criminal action. Is there the same situation with corporations? Can they be considered to violate public order in their activities?

An act shall be of great political or social importance in order to deserve the stigma of being called a 'crime'. In fact, a corporation is a person, and therefore acts of a corporation shall be considered in the same way as acts of individuals. This means that, just as a natural person, a corporation can commit crimes. On the one hand, the state may conduct victimology by analyzing the level of harm to the individuals by a particular action. The conclusion on the necessity of the application of criminal law to the particular conduct may follow such analysis. At the same time, the state must take into consideration the dependence of the state on corporations. Therefore, the state, while making a decision on the criminalization of this or that particular act of corporations, considers not only the interests of individuals, but the interests of corporations as well. Such facts make the process concerning criminalization of actions by legal entities more complex.

Political scientists, economists, and criminologists have come to the conclusion that the effective functioning of a society and a social order is caused by the process of socialization. The law is a universal means to ensure the interests of the state. Moreover, each state, being sovereign, may use such laws to achieve their own goals. From the point of view of Marxist ideology, the law reflects the interests of, and is fully dependent on, the group of persons (1975), who own the means of production (Li). That is, the most economically powerful group.

The ideas of the ruling class are in every epoch the ruling ideas, i.e. the class which is the ruling material force of society, is at the same time its ruling intellectual force. The class which has the means of material production at its disposal has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it. The ruling ideas are nothing more than the ideal expression of the dominant material relationships, the dominant material relationships grasped as ideas (Marx, 1845).

In his studies of corporate crime, Frank Pearce shows a wide range of corporate crimes (1992). At the same time, cases of prosecution of corporate crime by the state are quite rare.

The researchers who follow the ides of Karl Marx have come to the conclusion that political power is used to reinforce economic inequality by legislative recognition of private property rights.

Under private property ... Each tries to establish over the other an alien power, so as thereby to find satisfaction of his own selfish need. The increase in the quantity of objects is therefore accompanied by an extension of the realm of the alien powers to

which man is subjected, and every new product represents a new potentiality of mutual swindling and mutual plundering (Marx, 1844).

The wider the economic gap between the rich and the poor, the higher is the level of crime in general, and corporate crime in particular (see Table 1). An economist and political scientist, Milton Mankoff came to the following conclusion: in the states having lower economic stratification the crime level is much lower (1972).

It should be noted that the representatives of the right sector haven't noted any specific features of corporate crime. Thus, they attempt to undermine the theory that distinguishes corporate offenders into a particular category of special criminals (Hagan, 2010).

The survey of European economic crimes conducted by PricewaterhouseCoopers in 2001, came to the conclusion that up to 70% of economic crimes in the largest companies of the world were committed by employees of such companies.

It is considered that the criminalization of corporate crimes develops the doctrine of the autonomy and independence of a corporation. If a corporation is a separate entity according to civil law, why should not it be a separate person in the criminal law? Corpus delicti (components of a crime), e.g. in a murder of an individual, includes the following elements:

- The object of the crime: circumstances that characterize the generic, specific and direct objects of the crime. In case of a murder, social relations that provide the basic (natural) rights and freedoms constitute a general object of a murder under Article 105 of the Criminal Code of the Russian Federation (UK RF, Art. 105). Public relations providing the basic right (the right to life) constitute a specific object of a murder. A person's right to life constitutes a direct object of a murder.
- The objective side of the crime is characterized by such features as an action or inaction (failure to act), time and place, socially dangerous consequences, a causal link between socially dangerous consequences and action or inaction, the method, the environment, and the means and instruments of the crime. The objective side of murder consists in depriving another person of life in an illegal way. A murder can be committed in the form of an action or inaction. Corpus delicti is material in case of a murder. A murder is considered complete only in case of the death of a victim as a result of the action or inaction of a guilty person.
- The subject of the crime represents general or specific characteristics of a guilty person (age, sanity, etc.). The subject of liability for a murder under Article 105 of the Criminal Code shall be any person over fourteen years of age by the time of the crime. For other types of crimes against human life, criminal liability starts from sixteen years of age.
- The subjective side of the crime is a motive or purpose of the crime, characteristics of fault (intent or negligence), and the emotional state at the moment of committing a criminal act (affective state). The subjective side of a murder is characterized by guilt in the form of intent. The intent may be both direct and indirect.

This is the subjective aspect of a crime which raises the primary questions in the problem of the criminalization of a murder committed by a legal person. Guilt is a necessary component of making a person criminally liable: *actus reus non facit reum nisi mens sit rea* (the act is not punishable if there is no perception of guilt). Analysing this component of a crime, the author concludes that there must be a perception of guilt on the part of a corporation in order to charge it with a murder. The prosecution must prove that the corporation was aware of the guilt of it's actions if it is to incur responsibility.

To hold a corporation accountable for the guilty act, said guilty act must be accompanied by a mental understanding of the guiltiness of the act. The corporation shall be aware of the guilt. The question at hand regards the management body of the corporation in understanding the guilty action: a Chief Executive Officer (CEO), a Board of Directors, or a General Shareholders' Meeting. What if a Chief Executive Officer is not a natural person, but a legal entity? The responsible-corporate-officer doctrine in the US provides that a defendant may be guilty if he or she had, "by reason of his [or her] position in the corporation, responsibility and authority either to prevent in the first instance, or promptly to correct," the alleged violations of law (Krigsten, 2010). What if some members of the Board of Directors opposed the decision that caused death? What if some shareholders did not attend the General Shareholders' Meeting? Application of criminal liability to persons who were not aware of the guiltiness of the actions at the time of the crime shall not be admitted.

During XX century, corporate misconduct was criminalized in most UN Nation-States: countries of precedent law system (e.g., the United Kingdom, the USA, and Ireland); territorial parts of different countries (e.g., Scotland) and their former colonies; Romano-German member-states (e.g., almost all EU member-states); countries of Islamic Family Law(e.g., Albania, Lebanon, Syria), as well as severalcountries of the former USSR (e.g., Latvia, Georgia, Kazakhstan). Still the matter of criminalization of corporate misconduct is under discussion in the Russian Federation.

In the Russian Federation, the issues concerning corporate liability lay generally in the area of civil and administrative law. The Code for Corporate Governance approved by the Bank of Russia in 2014, gives recommendations on corporate conduct and corporate structure without referring to any sanctions. The discussion of the issue intensifies from time to time within the State Duma or the Investigative Committee of the Russian Federation, though in general, no actions are undertaken on the matter. There have been a number of articles published on the introduction of criminal liability for corporations, as well as a number of conferences with such general conclusions as recommendations for the gradual introduction of criminal liability for legal entities, e.g. in the Institute of Legislation and Comparative Law under the Government of the Russian Federation (IZAK).

From one point of view, criminalization of corporate misconduct is an effective means to control corporations on behalf of the state. Introduction of corporate liability will allow withstanding of the activities of sham corporations, so-called 'one-day companies', i.e. such companies that conceal the real activities of legal entities. Analysing corpus delicti, one may conclude that activity of corporations may also have full corpus of crime. The concept of guilt in regards to a legal entity, as discussed above, also has grounds and reasoning. The issue at question here relates to the type of liability for corporate crime and the subject of liability: officials of the corporation or the corporation itself. Speaking about officials of the corporation, natural persons are taken into account. Of course, they are officials, but still natural persons and not do not hold the status of legal entities.

Analysing criminal punishment for corporations (e.g., in the USA), one can affirm that the main means of affirming responsibility is a fine and compensation for damages. Even when it is an unlimited fine – it is still a fine. Both a fine and compensation for damages are means of civil or administrative liability. Such types of liability are provided in the Russian legislation as well, e.g. in case of non-execution during the specified period of the prescription of the Anti-Monopoly body. In such a case, the officials of the corporation shall pay a fine from 8,000 to 12,000 Roubles or face disqualification for a period of up to three years; the fine for legal entities is stipulated from 100,000 to 500,000 Roubles (KOAP RF, Art. 19.5 p.2.6). Here, the subjects of the administrative liability are both officials of the corporation (natural persons) and the corporation itself (the legal entity). One cannot see fundamental differences in the means of liability in case of introduction of corporate liability. Is the issue at hand regarding the size of the fine?

Court decisions of the XIX century lifted the corporate veil, and led to the idea of corporate responsibility, as well as the inevitability of responsibility on the part of a particular guilty person. The Civil Code of the Russian Federation focuses on the possibility of lifting of a corporate veil as well. Corporate criminal liability is applied in Europe and the USA. The Foreign Corrupt Practices Act (FCPA, 1977) and the UK Bribery Act (BA, 2010) demonstrate a clear trend towards punishing both legal entities and natural persons. Neither punishment of a corporation in accordance with a 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, providing individual accountability for corporate wrongdoing (2015).

2. Methodology

2.1. Russian Legislation Shall Follow International Standards

The draft law 'On Introduction of Amendments to Legislative Acts of the Russian Federation in Light of Introduction of the Institute of Criminal Liability for Corporations' was submitted to the State Duma on 23 March, 2015. Qualification of the gravity of a crime is assessed by the size of a fine: up to 3 mln Roubles for minor crime; up to 8 mln Roubles for medium crime; up to 15 mln Roubles for grave crime. The only punishment for a very grave crime is the prohibition of the activity of a corporation, or its involuntary liquidation. The practicability of introducing such responsibility may be explained by the obligations taken by the Russian Federation under the United Nations Convention against Transnational Organized Crime (2000) and the bringing of Russian legislation to conformity with the legislation of Anglo-Saxon countries which have already introduced criminal liability for corporations.

The current Russian legislation in the aforementioned field of criminalizing misconduct of legal entities does not meet international standards and requirements, according to the National Strategy on Combating Corruption approved by the Decree of the President of the Russian Federation n. 460 on National Strategy on Combating Corruption and National Plan on Combating Corruption for 2010-2011 (2010). The legislation concerning administrative offenses does not provide for the entire spectrum of sanctions adequate to addressing the public danger of a considered crime, including the withdrawal of the license, prohibition of the exercise of a particular activity, forced liquidation of the legal entity, etc.

2.2. Investment Risks

The necessity of introducing such an institution as criminal liability for corporations is explained by legal, socio-economic and political factors. Recently, a number of crimes committed in the interests of legal entities, or with the use of legal entities, significantly increased in Russia. Thus, as in other jurisdictions where criminalization of corporate misconduct took place on the legislative level, the phenomenon of 'corporate crime' shall receive criminal prosecution in the Russian Federation. Such crime has a negative impact on the investment appeal of Russia. It significantly increases the investment risks associated with the vulnerability of Russian financial instruments from criminal attacks. This also results in the outflow of capital from Russia, according to the Decree of the President of the Russian Federation n. 1800 on Central Bodies of Power of the Russian Federation, Responsible for Implementation of Provisions of the UN Convention Against Corruption, in Relation to International Cooperation (2008). The negative effect of Russian corporate crime includes inflation growth, reduction of production, and transfer of capital to the grey sector of the economy.

2.3. Sanctions for a Corporation under the Code for Administrative Violations are Insufficient

The Criminal Code of the Russian Federation does not provide any sanctions for a crime committed by a corporation. Sanctions for corporations are provided in the Code for Administrative Violations. The level of liability under administrative law is however incompatible with the public danger caused by the legal entity. The possibility of establishing the circumstances under which a corporation may be found liable for a crime in the course of administrative proceedings is very limited. The degree of social danger in case of administrative offences is lower. Administrative violations are generally considered to have an anti-social character, but not a socially dangerous one. Thus, procedural effort and money granted for resolving such offences is considerably less than in a criminal case. There is a simplified procedure and shorter deadlines compared to a preliminary investigation under criminal law. Operative actions of officers are not used in such a category of legal proceedings either. The limitation period in the Code for Administrative Violations is lower than in the case of involvement in violations of the Criminal Code (UK RF, Art. 178).

The Investigative Committee of the Russian Federation does not consider that the measures provided in the Code for Administrative Violations are sufficient to counteract corporate crimes, resulting in an increase of real criminological activity in the country, such as ecological crimes, the financing of terrorism, or organized crime (Bytko, 2015).

Table 2
Structure of Economic Crime
in the RF, thousands

2013 year	141,2
2014 year	107,3
2015 year	112,4
2016 year	108,8
2017 year	107,4

Source: Elaborated by author based on Ministry of Internal Affairs report. https://xn--b1aew.xn--p1ai/Deljatelnost/statistics

There are also other reasons for the introduction of criminal liability for corporations: criminal sanctions will build an effective mechanism for resisting crimes committed by corporations, and will allow for significant resistance against the using of sham companies and other corporate structures which are not properly registered as a legal entity.

2.4. Creating an Effective Mechanism for Counteracting the Criminality of Corporations

The establishment of criminal punishment and adequate sanctions for corporations will create an effective mechanism for the general counteraction of criminality of legal persons. Such criminality includes the totality of crimes committed in the interest of

corporations, or with the use of financial and other advantages of corporations. At present, an individual incurs criminal consequences of such criminal acts in full. Such a fact does not meet the principle of fairness in regards to criminal punishment.

Katekavia Flight 9357, a domestic flight operating from Krasnoyarsk to Igarka in Russia, crashed in the early hours of 3 August, 2010, killing twelve out of the fifteen people on board the aircraft. The aircraft crashed whilst on the approach to Igarka Airport, around 700 meters short of the runway.

An investigation was carried out by the Russian Interstate Aviation Committee (MAK) who concluded that the crew failed to make a timely decision for a missed approach when the plane descended below the minimum safe height (100m) in the absence of reliable visual contact with approach lights and runway lights. The final report into the accident, which was released in October 2010, concluded that pilot error was the cause.

As a result of the crash, a government investigation into the operating practices of Katekavia was begun; the outcome of that investigation is not known. However, in/around October 2013, the court in Krasnoyarsk, Siberia held that the captain of the flight could have averted the accident by waiting for better weather conditions before attempting to land, but instead continued his landing approach in poor visibility. The captain blamed the air traffic control service and the airport's meteorologists, saying that they had misled the flight crew. The Russian Court rejected the captain's arguments and sentenced him to 4 ½ years in prison for his role in the accident (Malkov, 2013).

Here is a particular case of liability of an individual. No corporate liability for such a corporate accident is provided in the Russian Federation. Under such an approach, companies have no motivation to enforce the law in a situation where it's violation can allow for the gain of some economic benefits.

The analysis of Russian investigative practices during recent years, concerning air and sea accidents, major accidents in coal mines, and other industrial sites, and emissions to the environment considered to be dangerous to life and health shows that one of the main causes of such accidents with casualties are: economic savings in the purchase of security equipment, production, and training/retraining of the staff.

As shown above, in the event of such socially dangerous consequences of a corporate crime, the responsible party shall be an individual. The corporation only reimburses the damage caused. The introduction of criminal liability of legal entities will allow the shifting of the vector of punishment for a crime to be one which is detrimental to the corporation. In such cases, a corporation shall bear tangible, reputational, and other losses.

The threat of criminal legal sanctions shall motivate a corporation to take a more responsible approach to security, investment strategy, and effective measures of corporate control over the members of the management bodies and employees. Thus, such a legal institution as criminal liability for corporations shall enhance the preventive role of criminal law in the field of corporate crime prevention.

2.5. Extraterritorial Criminal Prosecution

Another argument for the introduction of criminal liability for corporations lies in the extraterritorial criminal prosecution abroad of international corporations and foreign legal persons for the crimes provided by criminal legislation of the Russian Federation. The existence of the institution of criminal liability for legal entities in the national legislation of the Russian Federation will create a legal mechanism for claiming criminal responsibility for foreign corporations on Russian territory.

The absence of such a legal instrument excludes the possibility of repatriation of criminal capital acquired on the territory of the Russian Federation and subsequently transferred abroad. In such cases, assets are put on the balance sheet of a foreign corporation, and Russian law has no instrument to reclaim them. To have a possibility to reclaiming said capital, the Russian court must give a sentence establishing the guilt of a corporation, and not of particular individuals, in transnational crime. Taking into account criminal fines for corporate violations, the introduction of such liability would be good for the Russian budget, e.g. under the Decree of the President of the Russian Federation n. 1799 on Central Bodies of the Russian Federation, Responsible for Implementation of Provisions of the UN Convention against Corruption, in Relation to the Mutual Legal Assistance (2008).

The procedure of extraterritorial criminal prosecution is provided for, by the legislation of many countries with developed legal systems, e.g.. under the FCPA (Foreign Corrupt Practices Act) in 2011 alone, the U.S. Department of Justice, along with the U.S. Securities and Exchange Commission and the Federal Bureau of Investigation, initiated more than 140 criminal investigations against American and foreign corporations on the charge of bribery in different countries.(Cleveland, Favo, Frecka, Owens, 2010). The UK Bribery Act provides for similar criminal punishment of corporations.

Based on the findings of the FCPA, such major corporations as Siemens, Halliburton and Daimler received huge fines. Siemens' fine amounted to about 2 bln Dollars, Halliburton's fine amounted to about 600 mln Dollars, and Daimler's fine amounted to about 200 mln Dollars. Mercedes-Benz Russia was charged with a fine of 27.36 mln Dollars for bribing officials on the territory of the Russian Federation. Why does this money go to the American budget and not to the Russian one?

The arguments to criminalize misconduct of corporations in the Russian Federation are based on political, economic, and social reasoning. The aim of the introduction of such liability is based not only on the idea of punishment for corporations, but also on the idea of economic value for the budget of the state (see Table 2, 3).

3. Results

Notwithstanding the above arguments, there are fierce adversaries of the introduction of criminal liability for corporations in the Russian Federation. One such opponent of the idea is the Federal Chamber of Lawyers. The understanding of the issue by the Federal Chamber of Lawyers lies in the principles of criminal justice. Introduction of criminal liability for corporations is contrary to such principles (2015).

3.1. The Principle of Personal Culpability

As for the Federal Chamber of Lawyers, the concept of criminal liability is the principle of personal culpability: when a person has conducted a crime intentionally or negligently. Exculpable or collective responsibility is contrary to such principle.

In accordance with Article 5 of the Criminal Code of the Russian Federation, a person is subject to criminal responsibility only for those socially dangerous actions (orinaction) and socially dangerous consequences for which their guilt is established. This is a concept of 'subjective presumption'. It means that only a guilty person is subject to criminal liability. The guilt may result from a form of intent or negligence. A concept of 'objective presumption', i.e. criminal responsibility for innocent infliction of harm, is prohibited in accordance with Part 2 of Article 5 of the Criminal Code of the Russian Federation.

The Russian doctrine creates an incompatibility in attempting to combine the principles of guilt in case of personal responsibility with innocence in the case of collective liability of corporations. The introduction of criminal liability for corporations, in fact,

requires the establishment of different principles of criminal responsibility to the Criminal Code of the Russian Federation. Conflicting principles of criminal responsibility lead to the impossibility of achieving the objectives of punishment.

3.2. The Purpose of Criminal Culpability

The second argument lies in the purpose of criminal responsibility and criminal sanctions. The main aim of criminal responsibility and criminal sanctions is the rehabilitation of the guilty person, as well as correctional education. This assumes the aspect of change in the individual characteristics of a person. Thus, the introduction of criminal liability will result in changes to the Criminal Code of the RF, which would provide different principles of liability for natural and legal entities. This is contrary to the constitutional principle of justice.

3.3 The Duplication of Punishment

The types of punishment proposed by those who favour the criminalisation of corporate misconduct shall be penalties such as a warning, a fine, deprivation of licenses, deprivation of quotas, preferences, and privileges, and can be as severe as the deprivation of the right to engage in certain activities on the territory of the Russian Federation and/or compulsory liquidation. These types of punishments actually duplicate punishments established by Article 3.2 of the Code for Administrative Violations (KOAP RF, Art. 3.2.). The issue at hand is the reasonability of duplicating punishment provided in the Code for Administrative Violations in the Criminal Code.

Table 3
Structure of Economic Crime
January – June 2018, %

Property robbery	39,4
In the sphere of economic activity	30,9
Against the interest of service in commercial and other organizations	1,9
Against the state service, interests of the state service and municipal service	13,7
Other	14,1

Source: Elaborated by author based on Ministry of Internal Affairs report. https://xn--b1aew.xn--p1ai/Deljatelnost/statistics

Article 19.28 of the Code for Administrative Violations is purely dedicated to bribery, from business entities to civil servants of the Russian Federation and foreign countries. The article states monetary liability in case of giving, offering or promising of a reward to an official. A reward, by definition, includes money, securities or other property and property rights. It needs to be stressed that non-property rights (like employment of a close relative of an official) are not on the list of violations under Article 19.28 of the Code for Administrative Violations. The liability in this case is a fine of triple the sum offered or promised. In case of a gross amount (more than 1 mln Roubles) the fine rises to 30 multiples of the reward, but not less than 20 mln Roubles with the confiscation of the reward. In case of a super gross amount (more than 20 mln Roubles (approximately 350,000 USD) then the fine rises to 100 multiples of the reward, but not less than 100 mln Roubles (approximately 1,800,000 USD) with the confiscation of the reward.

The argument for criminalisation of corporate misconduct states that the measures of the Code for Administrative Violations are not severe enough. However, the fines provided in the Code for Administrative Violations are relatively high. Article 204 of the Criminal Code which addresses the regulation of commercial bribery states a fine up to 400,000 Roubles (approximately 7,000 USD), which means that the fine in the Code for Administrative Violations is 250 times higher than the one in the Criminal Code of the Russian Federation.

There are multiple court cases with the application of Article 19.28 of the Code for Administrative Violations. The court decision of Ivanovo City, dated 25 December, 2017, enforced the decision of the lower court to put an administrative fine on the legal entity OOO (limited liability company) "GasLux" in the amount of 500,000 Roubles, for giving a reward in the amount of 300,000 Roubles to a supervisor of Rostechnadsor (2017). A similar case with a fine of 1 mln Roubles took place in Komi Republic (2017).

Article 19.28 of the Code for Administrative Violations was introduced to the Code in 2011. During the first years of its existence, court practice under the Article was contradictory. After a preliminary maturation period, the court practice started to be consistent, mostly by punishing and increasing the sums of fines. 68 such cases of commercial bribery, under Article 19.28 of the Code for Administrative Violations, were considered in 2011, and 108 in 2012. In 2016, for Part 1 alone of the Article 19.28 of the Code for Administrative Violations, 397 legal entities were judged, and in all 397 cases, were fined as punishment. 278,388,000 Roubles (approximately 5 mln USD) were thus recovered from legal entities (2016).

In addition, the Civil Code of the Russian Federation provides such a measure of civil responsibility as the liquidation of a legal entity. In accordance with Article 61 Part 3 of the Civil Code of the Russian Federation, a corporation shall be liquidated under a court order (GK RF, Art. 61.3.). In the opinion of some criminologists, the law can impose even more severe sanctions within the framework of civil and administrative law, but not in criminal law.

3.4. New Problems Created

The introduction of criminal liability for corporations shall not resolve existing problems. They will remain unresolved. . It will create new ones for law enforcement bodies, e.g.it raises the question of the sanity (or insanity) of a legal entity. Can a corporation be found liable for actions of a natural person declared insane at the time of the crime?

Moreover, as stated above, the criminal liability of legal persons occurs due to specific acts of individuals. At the same time, the consequences of criminal responsibility of corporations shall be borne by all team members, including those who opposed the decision adopted by particular individuals.

Failing to understand the criminal misconduct of corporations will incur an unacceptable violation of rules to achieve social adequacy of the law. The introduction of criminal liability for corporations may lead to opposite results of those which parties in

favour of said liability hoped to achieve : a significant increase in business risks, the outflow of capital from the country and the reduction of investment appeal of Russia.

Nowadays, the absence of criminal liability for corporations in the Russian Federation does not exonerate officials of the corporation – officials that are, in fact, the culpable persons. Such officials are the persons committing a crime; they signed the documents and committed the deeds.

4. Conclusions

In summarizing the problem of the introduction of criminal liability for corporations in the Russian Federation, the author comes to the following conclusions: The legislation of the Russian Federation is subject to drastic changes in case of the establishment of criminal liability for corporations. Thus, the issue is subject to further assessment and discussion. When drafting a bill, it is necessary to study, compile, and analyse economic and sociological, information, in order to carry out the necessary calculations. It is also required to take account of foreign experience under the Methodological Rules for the Organization of Legislative Work by the Federal Executive Authorities while Drafting a Law approved by the Order of Ministry of Justice of the Russian Federation n. 3 of the Institute of Legislation and Comparative Law under the Government of the Russian Federation (2001). The existing legislation shall be carefully analysed in the field of legal regulation, with the purpose of understanding the reasons for the ineffectiveness of existing legal mechanisms (if any). The final analysis must also determine gaps in laws, out-dated regulations, or the existence of a duplication of acts regulating similar legal relations.

The introduction of criminal liability for corporations may also cause harm, especially for employees of corporations who could be prosecuted. As a result of the incurring of major fines, convicted corporations may be forced to decrease the wages of employees and perhaps the number of employees themselves may be reduced, which can ultimately lead to the liquidation of the company and dismissal of all employees. Therefore, the proposed criminalisation of corporate liability needs further substantiation.

The presence or absence of criminal liability in the Russian Federation at present is a debatable question; too many acts must be analysed in order to give an answer to such a question. If we look at an example, in case of bribery, a natural person is liable under the Article 291 of the Criminal Code of the RF and a corporation in whose interests such official acted – under Article 19.28 of the Code for Administrative Violations. Taking into account different laws of the RF providing liability for corporations, the author recognises the necessity of systematization of corporate liability in the Russian Federation.

There is a conflict on private and public interests within the corporation as well. In case of a quorum of the Board of Directors on the decision to conduct certain acts, later recognized as criminal, some members of the board may have been against such an act. What to do with such persons? Why should they also bear the negative effects of criminal misconduct? The answer here is in assessing the personal aspect of possible criminalization of corporate misconduct as well.

Notwithstanding all the above, the issue at hand is not the size of fines, as one can see that administrative fines for certain wrongdoings are even higher than criminal ones. The issue at hand is not in the avoidance of personal liability; persons cannot hide behind a 'corporate veil' of a Russian company. The point concerning criminalization of corporate misconduct is a very political one. The Russian Federation didn't recognize Article 20 of the UN Convention against Corruption (2003), which regulates illicit enrichment, and a similar attitude is shown towards criminalization of corporate misconduct. Political forces pro et contra criminalization of corporate misconduct are the main actors in this field, not lawyers. And when the political will is achieved, the last point is set.

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