

Legal Entities as the Subject of Crime in Criminal Law of the Socialist Republic of Vietnam

Alexey Alekseyevich Chistyakov¹, Nguyen Huu Tam¹, Bui Shi Nam¹ and Le Anh Thuan²

¹*Peoples' Friendship University of Russia (PFUR), Moscow, Russia*

²*National Academy of Public Administration, Hanoi, Vietnam*

Keywords: Legal entity; individual; criminal liability; crime subject; administrative responsibility.

Abstract: Faced with the need for a comprehensive reform of legislation, in general, and the process of judicial reform, in particular, the Political Bureau of the Communist Party of the Socialist Republic of Vietnam (hereinafter - SRV) by Resolutions No. 8 and No. 49 indicated that the study of fundamental theoretical questions about the legal situation in the state and the criminal responsibility in the SRV has not only political, social and legal significance, but also an important practical scientific significance. The need for such research is due to the state's desire to ensure a more thorough, fair and effective consideration of criminal cases. On November 27, 2015, the National Assembly of the SRV voted for the adoption of amendments to the Criminal Code, which entered into force on January 1, 2018. For the first time in the history of the criminal legislation of the SRV, a legal entity was recognized as the subject of a crime. The purpose of the article is to study the issue of the formation of legal regulation of the institution of criminal liability for legal entities in the SRV. The article discusses the need to introduce criminal liability for legal entities in the SRV. In the course of the work, the following tasks were set: to identify the reasons for the need to establish the institution of criminal liability for legal entities in the criminal legislation of the SRV; and also to reveal the characteristic features of the subject of crimes - legal entities. Applying comparative legal research methods, general methods of scientific knowledge, and such analysis and synthesis, the author made a number of theoretical conclusions. The result of the study was the development of knowledge in the field of criminal law science, in particular, the development of scientific approaches to the legal regulation of the institution of criminal liability of legal entities in the SRV.

1 INTRODUCTION

In the course of international integration, Vietnam became a member of many international organizations and took part in many international conventions on economics, human rights and international, such as: the convention on transnational organized crime, the convention against corruption, the convention for the suppression of the financing of terrorism, and the strong development market economy creates breakthroughs in economic life.

However, Vietnam is facing many phenomena and socially hazardous behavior on the part of legal entities. This reality has posed serious questions for the Vietnamese criminal law science that need to be answered: should a legal entity be the target of a crime?

A legal entity is a legally constituted organization that has a single structure, has its own property and is responsible for its assets, as well as independently

participating in legal relations on its own behalf (Bobkina., 2017, Bottega and Powell, 2012, Cam and Lan, 2017, Harald, 2002, Krishnan, 2020).

2 MATERIALS AND METHODS

In the course of research, the author used general scientific research methods such as analysis, synthesis, systems approach, as well as private law methods as comparative legal and statistical.

3 RESULTS AND DISCUSSION

The problem of establishing criminal liability for legal entities has not yet been unambiguously interpreted. Herewith, the number of states in the world that enshrine in legislation the provision on the

criminal liability of legal entities is growing, and this is considered a trend in the progressive development of modern criminal law.

From a practical standpoint, legal entities commit a significant number of crimes in the spheres of economy, trade, labor law, tax law, health care and environmental protection. A. Renou, argues that "it is necessary to effectively punish these crimes, especially since the financial resources of enterprises allow them to commit much more serious crimes in comparison with the capabilities of individuals" (Lawrenson and Braithwaite, 2018).

Herewith, it is extremely interesting that the criminal law systems of these states belong to different legal systems. The criminal liability of legal entities is established in the UK, USA, Canada and some former colonies of Britain, which are classified as a common law criminal family. But at the same time, legal entities are brought to criminal responsibility in a number of countries of the Romano-Germanic legal family (Ministry of Justice, 2006).

Prior to the adoption of the 2015 Criminal Code in Vietnam, there was no possibility of recognizing legal entities as the subject of a crime. In the period up to 2015, under the criminal law of the SRV (hereinafter - SRV), only individuals could be criminally liable.

The birth of the 2015 Criminal Code contributes to the development of politics and criminal law thinking in our state. For the first time in the history of the criminal legislation of the SRV, the Criminal Code provides for criminal liability for commercial legal entities. This has changed the traditional understanding of crime and punishment, meeting the demand in the fight against crimes committed by commercial entities in Vietnam in recent years. This has created a legal basis for international cooperation in the fight against crime, especially the transnational organized crime. According to the traditional point of view, it is a crime to combine objective and subjective factors. According to objective factors, it is the criminal act of a person that exposes society to a significant danger. According to subjective factors, this act should be associated with the internal subjective attitude (guilt) of the offender, therefore, prior to the adoption of the Criminal Code of 2015, the criminal legislation of Vietnam recognized only an individual as a subject of a crime, since it meets the above two conditions. Thus, only a natural person is subject to criminal liability, the liability of legal entities, respectively, is not provided for by criminal law.

In the past, in a planned economy, legal entities were mainly state-owned enterprises that produced goods and products pursuant to the state's plan, therefore, the obligations for these legal entities were not considered. However, at present, with the socialist market economy and the trend of international integration in Vietnam, there are many different types of enterprises producing products for different purposes.

Many legal entities are commercial economic organizations that have committed new unlawful acts because of profits, which are detrimental to the interests of the state, society and people. Therefore, in addition to administrative liability, liability for damages in civil law, the establishment of the institution of criminal liability for legal entities for committing dangerous acts has become necessary.

A legal entity is an organization, but not all organizations are legal entities. Only those organizations that meet the requirements of the law can become legal entities and have an independent status to enter into legal relations, that is, they have the same "A legal entity is an organization that meets all the necessary conditions established by law... which is a subject of civil legal relations; differs from an individual (individual); a legal entity is an organization, but not any organization, but only those organizations that meet all the conditions established by law" (Nie, 2018).

It should be noted that a legal entity is an organization that is legally established, has a strict organizational structure, has independent property and independently participates in legal relations on its own behalf and is responsible for its property when entering into these relations.

Legal entities can participate in public relations, including criminal law relations.

When participating in criminal legal relations, are legal entities recognized as subjects of a crime and are they subject to criminal liability for dangerous acts? Currently, this issue, which some countries are considering, others have noted in the criminal law, including Vietnam.

However, in general, consideration of the question of whether a legal entity can become a subject of a crime is always the main task in regulating the criminal liability of a legal entity.

As analyzed above, not every organization has the legal status of a legal entity. To be considered a legal entity, an organization should meet the following criteria:

- A legal entity should be legally created, that is, it should be established in the manner prescribed by

the Civil Code. Legal entities should be created on clear legal grounds.

- The presence of an organizational structure established by the Civil Code or other laws. To survive and function normally, legal entities should be structured in a complete, stable and unified organizational form.

- Since a legal entity is not a person, but an organization, that is, an association of people working together for a specific purpose, therefore, in order for a legal entity to function consistently, this organization should be a team with a single will and actions, this organization should be managed by some "executive body"...

- The presence of property that is independent of other individuals or legal entities, and is responsible for its property. The legal entity should have independent property, that is, the property of the legal entity should be completely separated from the private property of the participant.

A legal entity has the right to use its property to service its activities, is responsible for its property and fulfill its legal obligations, and can also sue to return property or receive compensation for damage, regardless of who causes it, even if it is a member of it. legal entity.

- Members do not use their property for liability for a legal entity, and legal entities do not use their property to fulfill their duties or responsibilities on behalf of their members.

As already analyzed above, organizational and property independence from its members is an independent subject of a legal entity. When participating in legal relations, a legal entity has an independent subject status with its members. In addition, legal entities also have the right to participate in the proceedings on an independent and equal basis with other bodies, organizations and individuals.

The Criminal Code of the SRV 2015 (as amended) was adopted by the National Assembly of the SRV on November 27, 2015 and entered into force on January 1, 2018. Chapter XI (Articles 74 - 89) of this Code specifies the conditions for the application of criminal liability for commercial legal entities, the scope of their liability, sanctions and applicable judicial measures, circumstances mitigating and aggravating their liability, the conditions for their release from punishment and convictions.

The current Criminal Code of the SRV regulates in the most detailed way the criminal liability of commercial legal entities. To implement the specified vector of development of Art. 2 of the Criminal Code of SRV 2015. "Grounds for criminal liability" was

supplemented with Part 2 on the conditions for imposing criminal liability on a commercial legal entity (Nie, 2019).

According to Art. 75 of the Civil Code of the SRV 2015, a commercial legal entity is a legal entity, the main purpose of which is to make a profit for distribution among its members [10]. Commercial legal entities include enterprises and business organizations. The process of creation, implementation and termination of the activities of commercial legal entities should be performed pursuant to the provisions of the Civil Code of the SRV, the Law of the SRV "On Entrepreneurial Activity" and other relevant regulations.

It should be noted that not all legal entities can be the subjects of crime under the criminal law of the SRV, but only those commercial legal entities that commit either criminal acts or acts entailing criminal consequences. Moreover, the 2015 Criminal Code of the SRV provides for a list of 33 specific crimes for the commission of which commercial organizations are subject to criminal liability.

This innovative approach of Vietnamese lawmakers to the issue of combating crime meets the practical requirements of concentrating the fight against commercial legal entities in the sphere of their encroachments on the economy and the environment, as well as support by these organizations of terrorism and the implementation of the process of laundering proceeds of crime. The introduction of criminal liability for commercial legal entities in the SRV creates favorable conditions for the protection of the rights of victims of violations by legal entities, and also contributes to better legal protection of victims in the context of globalization and the processes of international integration in the SRV. In addition, the provisions under consideration implement the participation of the EOT in many international conventions on the prevention and fight against crime, especially participation in such significant ones as the 2000 Convention. "On Transnational Organized Crime", 2003 United Nations Convention against Corruption and other documents.

4 CONCLUSIONS

Thus, for the first time in the history of criminal law, Vietnamese legislators have introduced provisions on the criminal liability of commercial legal entities in the Criminal Code, which come into force on January 1, 2018.

It is a breakthrough in legislative thinking of the Vietnamese legislators by consideration of the

commercial legal entity as subject of crime. It duly reflects the urgent needs of the era of building a market economy that Vietnam is undertaking, and also corresponds to the development trend of world criminal law and international law pursuant to international conventions Vietnam has participated in.

However, since the entry into force, criminal prosecution of commercial entities under the Vietnam Penal Code of 2015 has not been effective, and there are still no restrictions. This problem continues to pose new requirements for Vietnamese lawmakers to continue to edit, supplement and enhance the law provisions that will be effectively applied in the fight against organized crime in the new phase.

REFERENCES

- Bobkina, N. V., 2017. Legal entity as subject of crime. *In Young scientist*. 52. pp. 135-137.
- Bottega, A., Powell, L. F., 2012. Creating a linchpin for financial data: Toward a universal legal entity identifier. *In J. Econ. Bus.*
- Cam, L.V., Lan, N. T., 2017. The criminal legislation of Vietnam after the third codification: some new main features of norms of the General part. *In Bulletin of the St. Petersburg State University*. 8(4). pp. 452–458. Civil code No. 33/2005/QH11, 2005.
- Harald, R., 2002. General criminal law.
- Krishnan, C. N.V., Davidoff, S. S., Thomas, R. S., 2020. How do legal standards matter? An empirical study of special litigation committees. *In Journal of Corporate Finance* 60.
- Lawrenson, A. J., Braithwaite, G. R., 2018. Regulation or criminalisation: What determines legal standards of safety culture in commercial aviation? *In Safety Science*.
- Ministry of Justice, Institute of Legal Science. Law Dictionary, Encyclopedia Publishing House – Justice Publishing House, Hanoi, tr. 606, 2006.
- Nie, M., 2020. Space Privatization in China's National Strategy of Military-Civilian Integration: An Appraisal of Critical Legal Challenges, *Space Policy* 52.
- Nie, M., 2019. Asian Space Cooperation and AsiaPacific Space Cooperation Organization: An Appraisal of Critical Legal Challenges in the Belt and Road Space Initiative Context, *Space Policy* 47.