Corruption – Development of Criminal Matter in Slovakia, Criminal Liability of the Government Entities and Legal Persons

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Abstract

In the countries from central Europe we can find corruption not only on high level but also in low level called "less serious corruption". However, this corruption is spread in all parts of the society. It causes that almost all citizens of these regions have already had experiences with concrete and not official, but essential payments in diverse fields, for instances: in health services, educational system etc. Next problem is that the fight against corruption is very difficult because many employees of police, justice and plaintiff who would have to take the responsibility of corruption are often people who are the most influenced by it. Considering the weight of this circumstances we can say about necessity of restructualization in the state for the purpose of more effective fight against the corruption.

Keywords: corruption; criminal liability of legal persons and governments entities; penalties; some historical perspective on the elements of the crime.

1. Introduction

Corruption can occur on different scales. There is corruption that occurs as small favors between a small number of people (petty corruption), corruption that affects the government on a large scale (grand corruption), and corruption that is so prevalent that it is part of the everyday structure of society, including corruption as one of the symptoms of organized crime (systemic corruption).

Petty corruption occurs at a smaller scale and within established social frameworks and governing norms. Examples include the exchange of small improper gifts or use of personal connections to obtain favors. This form of corruption is particularly common in developing countries and where public servants are significantly underpaid.

Grand corruption is defined as corruption occurring at the highest levels of government in a way that requires significant subversion of the political, legal and economic systems. Such corruption is commonly found in countries with authoritarian or dictatorial governments but also in those without adequate policing of corruption.

The government system in Slovakia is divided into the legislative, executive and judiciary branches in an attempt to provide independent services that are less prone to corruption due to their independence.

Systemic corruption (or endemic corruption) is corruption which is primarily due to the weaknesses of an organization or process. It can be contrasted with individual officials or agents who act corruptly within the system. [2]

Factors which encourage systemic corruption include conflicting incentives, discretionary powers; monopolistic powers; lack of transparency; low pay; and a culture of impunity. Specific acts of corruption include "bribery, extortion, and embezzlement" in a system where "corruption becomes the rule rather than the exception." [3] Scholars distinguish between centralized and decentralized systemic corruption, depending on which level of state or government corruption takes place; in countries such as the Post-Soviet states both types occur. [4]

In Slovakia until the adoption of the single Criminal Code No. 86/1950 Coll. applied the Criminal Code on felonies and misdemeanours (Act. no. XXXIII/1896). It differentiated corruption in the form of active and passive bribery. These subject matters were defined in §§ 465 to 470. Offense of accepting a bribe could be committed by a public official, “who for their act, which was carried out by the power of his office gift or reward requires ". The peculiarity of the subject matter was that it was not covered by the usual gifts which were defined in size" which usually give the servants". It was explained that such a "gift" is given normally and the acceptance of such a gift is not contrary in to the Staff Regulations. The public official who breached law in order to receive reward or gift was punished by higher rate. The Penal Code also defined specific

people (entities) accepted a bribe, both with regard to their position in society they were punished by heavier penalties. Such entities were:

- Judges (in connection with accepting a bribe in a criminal or civil case decided illegally);
- Investigating magistrates;
- The officers conducting the auction (in connection with the adoption of a bribe acted illegally and their actions have caused damage in excess of five thousand gold coins).

Bribery was an offense committed by the person who gave a gift or a promise of such rewards. If a person gave a bribe to judge, to investigating magistrate or to a member of jury he was punished by higher criminal rate (up to five years and a fine up to two thousand gold coins).

Criminal law was trying to § 465 (without clear aim) penalize indirect form of corruption committed by the clerk. In that case, if the gift or reward by his approval to the third party was given or promised.[4] In terms of penalties a combination of imprisonment ("prison sentence ") and financial penalties could be used.

Criminal law defined the basic forms of corruption. Although subject matters of these crimes were not perfect, it became a foundation for further development in the future.

In 1924 was passed an Act no.178/1924 Coll. on bribery. For the purposes of this Act was first defined term “public official”. The Act understood under term public official, officers, state employees. They were all considered to be on the same level. When was certain function/position represented by several individuals they were all considered to be public officials.

Offense of accepting a bribe was committed by public official when he issued to someone any license or permit facility or concession and he had or any other benefits from providing such services directly or indirectly exchanged.

Offense of bribery was committed by whoever who specific authorization or permit or agreement with public official for any material asset or benefit that public official was not eligible to. Term benefit was not understood by law only as material asset however if such a benefit was accepted by public officer - the court was obliged notes a judgment forfeiture of property.

Act no.178/1924 Coll. on bribery in terms of the sentence for bribery and accepting a bribe did not bring anything new, moreover at kept tradition of the “little gift". The main importance is in the fact that at introduced the public official and expanded entities who were punished if committed offences above.

In 1943 was passed an Act no.150/1943 Coll. against corruption, which was reaction to the spread of corruption during the war years.

The Act defined i.e. public authority. It was a person who according to the current rules was acting in the area of public authorities.

At this level were built:

a) state employees and public corporations, managed by them or their businesses, institutions and funds;

b) administrative and supervisory bodies (their members) employees and financial institutions, economic and income communities, institutes compulsory insurance and all private enterprises and institutions, which are under state supervision, and to those for which the benefit was offered, promised, given, accepted or desired, or activity, which has been or should have been used to influence the person concerned and was dealing with public interest.

Act no. 150/1943 Coll. canceled the definition of crimes for active and passive bribery as it was defined in the Act No. 178/1924 Coll. and defined those terms again and differently. A bribery committed an entity that directly or indirectly offered or promised to give a bribe.

Offense of the passive bribery was committed when an entity that has received or requested a bribe. Under term bribe we understood almost any benefit that was entity entitled to.

The sentence for the offenses decided according to the Act no .150/1943 Coll. was mentioned that financial profit gained by the corruption conduct under this Act must be confiscated and given to the State.

The law on active bribery and passive bribery introduced institutes that especially for that period of time can be considered revolutionary. The legal standard used modern legal terminology. All forms of corruption were defined (active bribery, passive bribery, indirect corruption) and in relation to these offenses this Act also defined a “close person” (the definition is concerned the offense of active bribery).

In 1950 remove the double track legal system in Czechoslovakia because was passed new Act No. 86/1950 Coll. (Criminal Code).

The law distinguished three forms of bribery, namely: passive bribery, active bribery and indirect bribery and under § 156 Criminal Code recognized the specific offense of bribery at elections (similar to the subject matter was introduced by Act No. 262/2011 Coll. which introduced the crime of electoral corruption and was inserted to amended § 336a of the Criminal Code).

Offense was committed by a person who was responsible for decision-making on matters of general interest or the power of decision and accept or agreed on a bribe. Active bribery committed by whoever else regarding decision making on matters of general interest or in the exercise of such a decision gives or promises a bribe.

The Act also recognized institute of effective regret. The impunity may occur only under the condition that the offender has been asked for bribe or at least indirectly, it has been indicated (and he voluntarily made a notice to the prosecutor or the safety authority).

Criminal Code from 1950 had strong ideological charge, but in global it was important for development of the criminal law. The main benefit was that the double track criminal legislations was removed and the Criminal Code on felonies and misdemeanors was canceled in 1878. Definition of bribe and the public interest as it was explained in the law no.86/1950 Coll. without major changes is still used today (see § 329 of the Criminal Code).

The disadvantage of legislation of this period was that the objective aspect of crime active and passive bribery was conceived quite narrowly, only in relation to decision-making in matters of general interest or in the execution of such a decision. New institute for offenses of bribery provision on repentance was also important.

2. Corruption legislation after 1961 to the current period

In January 1/1962 came into force Criminal Code – Act no.140/1961 Coll. From the present point of view, we can evaluate the original legislation as a step forward because the legislature was trying minimize strong ideological philosophy (also due to changes in society) but it still was a socialist Criminal Code (for instance in terms of the arrangement of the various heads of the Special Part of the Criminal Code). Corruption offenses were incorporated into 3. Title of the Criminal Code under name “bribery”.

The law distinguishes three forms of the following offenses:

- Passive bribery (§ 160),
- Active bribery (§ 161),
- Indirect corruption (§ 162).

Definitions of various forms of these crimes law were derived from the previous Criminal Code but the type and level of penalties were slightly changed. **[6]**

Offenses of accepting a bribe or active bribery were possible to commit only in connection with the things of general interest. This concept was further refined by the law and judicial decisions. **[7]** In the seventies and eighties of the last century the legal practice recognized the seriousness of these offenses. For example, problems were seen in incomplete explanations and circumstances warranting the determination of the nature and amount of the damage caused by the criminal acts of bribery. **[8]**

Important change was the pass of Act no. 102/1995 Coll, which canceled the elements of the crime of active bribery (§ 161 of the Criminal Code) and the provision of effective regret. The government justified its proposal, inter alia, by deleting the aforementioned subject matter will increase the detection subject matter of passive bribe. At the time of the adoption this law a lot of voices of both professional as well as the general public that did not agree with the view to delete the above-mentioned provision of the Criminal

Code. Legislator finally agreed with the opinion of government and § 161 and § 163 of the Criminal Code was canceled. The detection of corruption offenses began to stagnate and decline.

In January 28/1999 came into force law no.10/1999 Coll. This law again introduced elements of the crime of active bribery and provision of effective regret. The third section of the Criminal Code was renamed from bribery to the corruption. This was based on the theoretical - methodological point of view that the concept of corruption is wider than bribery.

The amendment further tried to capture all the requirements of international conventions and instruments, including the OECD, the Council of Europe and the EU, which are binding in Slovak republic. Subject matter was expanded forms of action: give, promise to accept a bribe and vice versa, ask a promise to give a bribe all directly or through an intermediary. The new provision was § 160b, § 161b to criminalize bribery of foreign public officials in international trade and § 160c, § 161c to criminalize bribery of foreign parliamentarians, judges and officials of international, multinational governmental organizations. In these cases, it is sufficient that bribery occurs in the exercise of their functions, although not violated its obligations.

OECD Working Group for combating corruption (CIME) recommended modify the subject matter in Criminal Code so that corruption in the Criminal Code will be rated as "more serious" offense. The new Criminal Code (Act no. 300/2005 Coll. as amended, hereinafter „CC “) was achieved this aim.

Criminal Procedure also allows that the agent (§117) could "provoke" (initiative to guide public officials/foreign public officials to commit corruption offenses, if it can be reasonably assumed that the offender would commit such an offense).

Thus, we can see that the Criminal Code has been done a big change regarding punishing corruption in a historical context.

2.1 Corruption during the elections

As it was already mentioned the offense of electoral corruption was introduced into the Criminal Code with Act no. 262/2011 (§336a of the CC) Coll. The electoral corruption is defined as be giving, offering or promising a bribe for the voter which will vote a certain way.

Exist a fine line between what is and what is not a bribe. Offering souvenirs such as pens or reflective tape with the logo of a political party is not considered as the electoral corruption. Corruption during the elections is therefore only such offering or provision of a variety of gifts, food or any other benefits, which involve a requirement of certain conduct during elections. The form in which such a requirement should be expressed is not statutory. Such a requirement can thus be expressed in words, leaflets, promotional materials, billboards, signs, posters etc. The electoral corruption is also in direct conflict with the principle of secret ballot.

2.2 “Match-fixing”

So far, in Slovakia “match-fixing” (the manipulation of results of sports competitions) has been deemed a form of corrupt behavior, namely accepting of bribe, provided for in Section 329 CC (1), which reads:

- “A person who, in connection with the procurement of a matter of general interest, accepts, requests or causes any other person to promise a bribe for himself or for any other person, directly or through an agent, shall be punished with a term of imprisonment from three years to eight years”,
- as well as the provision of Section 333 CC whose Paragraph 1 reads: “A person who, in connection with the procurement of a matter of general interest, gives, offers or promises a bribe to any other person, or for that reason gives, offers or promises a bribe to any other person, directly or through an agent, shall be punished with a term of imprisonment from six months to three years.” **[9]**

Once again has the more extensive judicature in the Czech Republic shown us in Slovakia that, for instance, football is considered a “matter of general interest”. Of course, football with its history, background and popularity enjoys such a “status”, however, this needn´t hold for all sports. According to the explanatory memorandum on the new statutory instrument, such a vague perception of sport as a subject of general interest would make the investigation into respective criminal activity in terms of any other sport more difficult (or even impossible), which is practically a correct conclusion. Anyway, as regards the activity of prosecution authorities or, as the case may be, investigation, a large amount of other matters/circumstances making the investigation significantly complicated occurs... Also for the reason mentioned the definition of corruption in the area of sports has been specified. **[10]**

It remains to be said that, in terms of Europe, Slovakia is in the forefront as far as the strictness of the lengths of punishment is concerned, and we haven´t been different even in this case. Corruption in sport is linked with substantially stricter, direct or indirect, sanctions for commission (contrary to “ordinary corruption”). It´s the fact that the amendment results in the unification of the range of punishments for giving or accepting bribes in connection with the manipulation of results of sports competitions that may be considered intriguing and reasonable. The reason for such a statutory instrument is the specificity of sports environment and particularly the impossibility of measuring the amount of damage caused by criminal activity. This fact draws attention mainly to the commission of criminal activity by persons directly involved in sports events, namely sports officials, as well as to the aspects of organized criminal activity, which occur very often in practice.

As a rule, an athlete is not the person initiating unlawful action in manipulating a sports competition (match). In the majority of cases, he or she is the addressee of the offer. The person initiating unlawful action usually manipulates more than just one match.

The authors of the definition of the new crime noticed [11] that the outcome of established legal assessment under the provision of Sections 329 and 333 CC was a paradox according to which the person initiating the manipulation (briber) could be punished with a term of imprisonment from six months to three years, i.e. basic range of punishment. On the other hand, the athlete as bribe recipient could be punished, pursuant to basic range of punishment, with a term of imprisonment from three years to eight years. That´s why the proposed wording tried to cope with this paradox by introducing basic range of punishment from one year to five years for both of the parties, i.e. briber as well as bribe recipient.

We will see how corruption in sport will or, as the case may be, will not be spreading in Slovakia after the adoption of the new crime. One can agree with the opinion of Prokeinová [12] that complete elimination of criminality will not be achieved irrespective of the amount of optimism. Nevertheless, we hope that such a measure may introduce fairer approach and more justice into sport.

3. Criminal liability of legal entities

The fact that the criminality of corporations or, as the case may be, legal entities has been growing is nothing new, and it´s the predominantly latent criminal activity, mainly in the form of tax crimes and corruption, that represents a severe political, economic and social issue. That´s why the implementation of an efficient statutory instrument is necessary.

Such a type of criminality hasn´t spared the Slovak Republic either, and therefore the official structured wording of the act on criminal liability of legal entities has been elaborated

(1) A person, who, directly or through an agent, promises, offers or gives a bribe to any other person to act or to refrain from acting with the aim of influencing the course or result of a competition shall be punished with a term of imprisonment from one year to five years.

(2) A person who, directly or through an agent, accepts, requests or causes any other person to promise a bribe for himself or any other person to act or to refrain from acting with the aim of influencing the course or result of a competition shall be punished as laid down in Paragraph

(3) A perpetrator shall be punished with a term of imprisonment from two years to eight years if he has committed an act referred to in Paragraph 1 or Paragraph 2,

a) in spite of the fact that the perpetrator was sentenced for such an act in previous twenty-four months or penalized for similar act in previous twenty-four months,
b) in a more serious manner, or
c) on a larger scale.

(4) A perpetrator shall be punished with a term of imprisonment from four years to ten years if he has committed an act referred to in Paragraph 1 or Paragraph 2

a) as a referee, a sports federation delegate or a sports organization official,

b) in a competition organized by an international sports organization, or

c) on a considerable scale.

(5) A perpetrator shall be punished with a term of imprisonment from five years to twelve years if he has committed an act referred to in Paragraph 1 or Paragraph 2 on a large scale.

over the past years. Notwithstanding the fact that: *"... the search for a concept corresponding to current requirements for social response to criminal activity is a demanding process the primary task of which is to remove generally known issues linked with criminality control, guaranteeing the protection of rights at the same time."* **[13]** the quest for the most appropriate method of punishment of legal entities hasn´t been thus much difficult in this case, given that such a statutory instrument is commonplace in surrounding countries. It remains to be mentioned that, as in many other cases, we were significantly inspired by Czech legislation.

3.1 History of the statutory instrument

In terms of the law of the Slovak Republic, this wasn´t the first initiative in solving the problems of introduction of criminal liability of legal entities in 2015. The introduction of criminal liability of legal entities was proposed as early as 2005 within criminal law re-codification, however, it wasn´t adopted. Also, a special act on criminal liability of legal entities was rejected, as many as two times, firstly in 2006 and subsequently in 2007. In each of these cases the subject matter was the so-called direct liability of legal entities, where direct punishments not conditional upon prosecution against natural persons are imposed on legal entities**.** **[14]**

Criminal liability of legal entities has been incorporated into the law of the Slovak Republic in the form of the so-called indirect criminal liability by adopting the Act No. 224/2010 Coll. This Act introduced new criminal-law sanctions in the form of two protective measures against legal entities: attachment of a sum of money and attachment of property. The imposition of said protective measures is not conditional upon prosecution against natural persons.

Thus, the Slovak Republic physically has met the requirement for the imposition of sanctions of criminal nature against a legal entity in criminal proceedings linked with simultaneous recognition of criminal liability of legal entities for crimes committed by natural persons acting on these legal entities´ behalf, although said requirement hasn´t been expressed from the formal and legal point of view. Based on available statistical data, in Slovakia no use of these provisions in practice has been recorded to date, i.e. they haven´t been applied yet and no legal entity has been punished in criminal proceedings through this instrument, which has been valid since 2010. The concept of the so-called pseudo criminal liability has been introduced by the Slovak Republic following the example of Spain, which, however, abandoned this concept by adopting a special Act No. 5/2010 on Criminal Liability of Legal Entities of 22 June 2010. Taking into

account the aforementioned, we find the adoption of such a statutory instrument by Slovakia a little bit illogical.

The Slovak Republic as a party to OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereinafter referred to as "OECD Convention") is evaluated at WGB/OECD plenum at regular intervals. The most serious flaw ascertained in the evaluation of the Slovak Republic on the part of OECD is non-compliance with the requirements of Article 2 of OECD Convention, namely the absence of efficient regulation of liability of legal entities with respect to the sanctioning of bribery of foreign public officials in international business transactions. In this context, the OECD Working Party concludes that "*the working party fears most the persistent absence of criminal liability of legal entities, which hasn´t been regulated for 12 years since the entry into force of the Convention in the Slovak Republic*", stating at the same time that „*the Slovak Republic has to introduce as a priority the liability of legal entities, so that legal entities may be prosecuted for crimes of bribery of foreign officials, including bribery* "[15]. We may say that the long-term pressure exerted by the OECD Working Party is the primary cause for adoption of the new act on criminal liability of legal entities in Slovakia.

3.2 New act on criminal liability of legal entities

The subject of the Act on Criminal Liability of Legal Entities, no. 91/2016 Coll. (hereinafter referred to as "ACLLE") is the regulation of the essentials of criminal liability of legal entities, the types of punishment imposed on legal entities for committed crimes and the specifics of criminal proceedings against legal entities.

This new statutory instrument *expressis verbis* presupposes subsidiary application of the Criminal Code with respect to criminal liability of a legal entity and the Code of Criminal Procedure with respect to the proceedings against a legal entity, unless otherwise provided for by law and except as excluded by the nature of the matter. The Slovak Republic has made an, in our opinion, unfortunate choice of possibility of punishing legal entities that is based on statutory definition of an exhaustive catalogue of crimes which are specified in a special part of the Criminal Code and give rise to criminal liability of a legal entity. However, we do not find this appropriate in view of the continual development of international agenda, where a need for further modification of this catalogue of crimes may be expected in the future.

The current catalogue of crimes includes, for example, the following crimes: illicit manufacture of narcotic and psychotropic substances, poisons or precursors, the possession hereof and trafficking therein; human trafficking; sexual abuse; laundering of proceeds of crime, unlawful employment; public endangerment; formation, set-up and support of a terrorist group; accepting bribes, bribery, indirect corruption.

The following punishments may be imposed on a legal entity for the crimes exhaustively listed in ACLLE only by a court:

a) dissolution of legal entity,
b) forfeiture of property,
c) forfeiture of thing,
d) fine,
e) prohibition of activities,
f) prohibition of accepting donations and receiving subsidies,
g) prohibition of receiving aid and support from European Union funds,
h) prohibition of participation in public procurement,
i) disclosure of conviction.

When imposing individual punishments, the court considers certain circumstances on the basis of special principles. The principles of punishment of legal entities are based primarily on the principle of punishment proportionality.**[16]** The court, in determining the type and length of the punishment, considers mainly the nature and gravity of crime, the situation of legal entity, including activities already carried out by the same, as well as legal entity´s assets, simultaneously taking into account the fact whether the legal entity has carried out activities in public interest which are of strategic importance for national economy, defence or security. **[17]** When determining the type and length of the punishment, the court also takes care that the legal entity is punished in a way ensuring the least possible impact on its employees, legally protected interests of injured parties and its creditors whose receivables against the criminally liable legal entity arose *bona fide*[18] and do not stem from or pertain to the crime committed by the legal entity, as well as on the functioning of the legal entity after the crime, mainly on its efficient effort to compensate for caused damage or remove other harmful consequences of the crime, on expected implications of the punishment on its further activities, on the extent to which it has derived benefit from complicity in crime.

3.3 Concept of attributability of crime commission to a legal entity

The provision of Section 4 (1) ACLLE defines crimes committed by legal entities and lays down the conditions of holding legal entities criminally liable for crime commission by virtue of the so-called attributability of crime to legal entities. Said concept of attributability of crime commission to legal entities (Section 4 (2) ACLLE) is based on the fact that legal entities are legal persons different from natural persons, and they constitute subjects which have been artificially created by law and have legal personality, legal capacity and liability within legal relationships.

For this reason, the law stipulates that legal entity´s own action is comprised by manifestations of will carried out on behalf of said legal entity by its bodies or representatives as natural persons, and legal

consequences linked with these manifestations will be attributed directly to the legal entity as a legal person. Persons whose unlawful action is subsequently attributed to a legal entity are defined in Section 4 (1) ACLLE, respecting the requirements of international instruments and legally binding acts of the European Union.

The examination of fault in case of crimes of legal entities is, of course, excluded from the nature of the matter because legal entities as legal constructs, in contrast to natural persons, don´t possess any component of will, which forms the basis of fault in natural persons.

3.4 Preconditions for criminal liability of a legal entity

The first precondition for criminal liability of a legal entity is the commission of crime. The second precondition for a crime being deemed committed by a legal entity is, on the one hand, the existence of causality between legal entity´s interest, legal entity´s activity (no matter if the activity is entered in the respective companies register as legal entity´s object) or the circumstance that the legal entity acts solely as a means of committing crime and, on the other hand, the unlawful action of a natural person who

a) acts as authorized representative or a member of authorized representative or any other person authorized to act on behalf of the legal entity or for the legal entity (based on contractual representation, e.g. proxy); an authorized representative or a member of authorized representative is the person authorized to act for the legal entity by virtue of a memorandum of association, a foundation deed or law (Section 20 (1) Civil Code),

b) conducts inspection activities or supervision within the legal entity despite not being related with the legal entity in any other way; the aforementioned doesn't need to apply just to an inspection body whose status is governed directly by legislation (supervisory board, inspection board) but also an inspection body set up by the legal entity beyond the framework of obligatory inspection bodies; in this case the action of this person may be attributed to the legal entity only if said person has acted in the legal entity's interest; thus the legal entity may not be attributed the action of this person, provided that said person has acted on the legal entity's behalf or through the legal entity but said person has at the same time acted exclusively in his or her own interest,

c) exercises decisive influence on the management of the legal entity, provided that his or her action was at least one of the conditions giving rise to the legal entity's criminal liability; this is the case of the so-called shadow managers **[19]**, who formally appoint any other person as an authorized representative or a member of authorized representative, however, the company is factually managed by themselves (e.g. negotiate contracts, although the contracts are factually concluded on behalf of the company by the authorized representative). In this case, the action of this person may be attributed to the legal entity as specified in clause b) above only if said person has acted in the legal entity's interest; thus the legal entity

cannot be attributed the action of this person, provided that this person has acted on the legal entity's behalf or through the legal entity but said person has at the same time acted exclusively in his or her own interest,

d) any other employee or a person with similar status (a person working under an agreement for performance of work or, as the case may be, mandataries, agents or a person fulfilling tasks for the legal entity based on employment relationship or business relationship established by a contract) in fulfilling work-related tasks for the legal entity, provided that he or she acts on the basis of a decision, approval or instruction of bodies of the legal entity or a person specified in clauses a) to d) (irrespective of the method of granting thereof), or if he or she has acted because the bodies of the legal entity or persons specified in clauses a) to d) failed to meet their statutory obligations related to the supervision and inspection of employees´ activities (e.g. in the field of health and safety at work), or if these bodies or persons failed to take necessary measures to prevent or avoid the consequences of crime. Criminal liability of a legal entity is not the result of an excessive action of an employee acting exclusively for his or her own benefit.

Within the meaning of Section 4 (4) ACLLE, in order to hold a legal entity criminally liable it isn't necessary to hold a natural person criminally liable, and it is at the same time laid down that criminal liability of a legal entity is not conditional upon the finding which specific natural person has acted for said legal entity.

The criminal liability of a legal entity doesn't cease to exist upon the declaration of bankruptcy, the opening of insolvency proceedings or in the event of liquidation, dissolution or receivership. The criminal liability of a dissolved legal entity will be transferred to all of its legal successors; this applies also to unexecuted punishments, unless otherwise stipulated by law. The criminal liability of a legal entity is not transferred to a natural person.

3.5 Exclusion of criminal liability

The Act further *expressis verbis* excludes criminal liability of legal entities of certain subjects (Section 5 ACLLE). These subjects directly perform or fulfil the tasks of the state or public administration, or have been established by law. Imposition of criminal penalties on these legal entities means, on the one hand, that the state would punish itself and, on the other hand, that the public administration could be affected as well. Legal entities in which said subjects have ownership interests are the only exception within the meaning of Section 5 (2). Such legal entities may be held criminally liable for committed crime. Among these are mainly legal entities in which the state or self-government has an ownership interest.

Pursuant to this Act, the following subjects are not criminally liable:

a) the Slovak Republic and its bodies,

b) other states and their bodies,

c) international organizations set up on the basis of on international public law and their bodies,

d) municipalities and higher territorial units,

e) legal entities set up by law at the time of crime commission,

other legal entities whose assets as debtor's assets may not be settled under special regulation governing bankruptcy proceedings. [20])

3.6 Legal succession

Criminal liability of a legal entity is closely linked with the problem of legal succession of the given legal entity. It was necessary to expressly modify the question of transfer of criminal liability of legal entities in draft act. Otherwise the dissolution of legal entities having legal successor would represent a simple way how to avoid criminal liability. Such a statutory instrument isn´t unique and may be considered standard as far as statutory instruments governing criminal liability of legal entities are concerned. Based on the aforementioned, criminal liability of legal entities will thus be transferred to all of their legal successors. Legal succession will be closely linked mainly to the transfer of the assets of the dissolved legal entity, a concept which expresses the link to the (original) asset substrate of the legal entity in the most appropriate way. This rule will only have one exception, namely the case when the whole of assets will be taken over by a natural person following the dissolution of the legal entity. The transfer of criminal liability to legal successors pertains also to punishments. If there are more legal successors, all of them will be burdened by criminal liability will to the extent stipulated by court within the meaning of punishment principles (Section 11 (3) ACLLE).

According to the new statutory instrument, all acts leading to the change of legal entity (a change means the merger, fusion or split of the legal entity, transfer of assets to a member, change in the legal form and relocation of the legal entity´s registered office in any other state) will be subject to court´s approval from the moment of the opening of prosecution and the bringing of charges against the legal entity (Section 25 (2) ACLLE). Thus the change of legal entity during prosecution against the same is not excluded, and the court, when punishing the legal entity or, as the case may be, successor legal entity, will consider circumstances under the proposed Section 11 (3) ACLLE, as well as the extent to which the assets corresponding to the benefit or other advantages from committed crime have been transferred to any of the successors, or the extent to which any of the successors continues the activities in connection with which the crime has been committed. The act specially deals with the problem of the change or dissolution of a legal entity during enforcement proceedings, i.e. in the period when restrictions related to the change, dissolution or winding-up of the legal entity under Section 25 ACLLE aren´t applied any longer. In this case the act follows the

principle that legal successors of the convicted legal entity who are legal entities criminally liable as well. The aforementioned applies also to unexecuted punishments and protective measures. In the event that the legal entity merges with any other legal entity, splits, or changes its legal form, etc. during the enforcement proceedings, criminal liability will be transferred directly by virtue of law to all legal entities which are the successors of the original legal entity. It is necessary to adopt this conclusion in order to prevent the avoidance of the execution of the punishment (or protective measure) after the end of criminal proceedings. However, the fact that successor legal entities are different from the original legal entity is considered as well, and therefore a court may change the effects of the transfer of criminal liability upon these successor legal entities´ request, i.e. decide whether criminal liability will be transferred to all legal successors, and if so, to what extent.

Example

> Finally convicted company A, which has been punished by a court with the prohibition of participation in public procurement for the period of five years, will split into companies' B and C yet prior to the execution of the whole punishment. Under Section 7 (1) ACLLE in conjunction with the Business Register Act, the Register Court, when registering new companies' B and C, will enter in the Business Register also the fact that these companies have been punished with the prohibition of participation in public procurement and that this punishment has not been executed yet. However, company B or company C will be allowed to make an application to the court for a decision that said unexecuted punishment does not apply to them or that it applies to them to a limited extent only. The court will review under Section 11 (3) ACLLE the extent to which the assets corresponding to the benefit or other advantages from committed crime have been transferred to any of these companies, or the extent to which any of these companies continues the activities in connection with which the crime has been committed, and deliver a new judgement accordingly.

3.7 Active repentance

Except for derogations provided for by this draft act, all provisions of the general part of the Criminal Code regarding the preparation for crime, attempt, circumstances excluding the unlawfulness of action, the fundamental principles of sanctioning, the imposition and execution of individual punishments and the lapse of punishability are applied to criminal liability of legal entities as a matter of course.

The concept of active repentance is specially regulated in relation to legal entities. These provisions are the result of the adaptation of hitherto established statutory instrument to the needs considering the functioning of legal entities. The statutory instrument lays emphasis on the prevention of harmful consequence or its

rectification in the event of occurrence of the same. Thus, the reparative action by legal entities before holding the same criminally liable is given precedence.

However, the application of active repentance will be excluded in case of crimes of corruption, where the Slovak Republic, by ratifying the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Announcement No. 318/1999 Coll.) and Criminal Law Convention on Corruption (Announcement No. 375/2002 Coll.), has accepted an undertaking that excludes the application of the provisions on active repentance to crimes of corruption, and said application is likewise excluded with respect to the crime of damaging European Communities´ financial interests under Section 261 Criminal Code.

4. Conclusion

Corruption offenses are placed in the eighth head of the Special Part of the Criminal Code - Offences against public order matters. In corruption cases but also in other cases, for example environmental damage shows that it is necessary to have criminal liability not only for the individual workers (statutory bodies) but also for the organization. We also need a lot of alternative punishments for instance prohibition of certain activities. We may say that the long-term pressure exerted by the OECD Working Party is the primary cause for adoption of the new act on criminal liability of legal entities in Slovakia, and it is probable that without the pressure by OECD the act on criminal liability of legal entities wouldn´t have been adopted in Slovakia at all.

In corruption activities which affect the public officials as beneficial in the world seems the test of integrity, which is practically used in U.S, UK and consists of lifelong control of assets (the asset increases over time) among the relevant employees and their related parties.

The introduction of offense of the electoral bribery in the Criminal Code is a step in the right direction because it ensures the freedom of elections and equality of individual candidates in elections. Difficulties during the proving before the court we can see in particular difficulties in filling of the characters of the subject matter. In my view, we cannot apply the provisions of § 336a/1 letters a) to d) on the conduct "of who has the right to vote ...". It is important interpreted this article along the lines intention of the offender (as an intentional offense) - to achieve the desired behavior selector (which according to § 336a/1 is protected).

In terms of penalties and their species it is important to realize that the penalties for corrupt behavior could not be too low because then the police and the bodies active in criminal procedure thinks that corruption is not serious crime. On the other side, very strict penalties are not acceptable due to their refusal by society.

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14. It is necessary to note that the very essence of criminal liability of legal entities is to a large extent at odds with the principles of the continental model of criminal law, namely with the existent strictly individual nature of criminal liability or, as the case may be, the perception of said liability as the liability of a natural person. On the other hand, current development trends speaking in favour of the introduction of criminal liability of natural persons are doubtlessly connected with new social, economic and political changes.
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16. The Act stipulates also the conditions for the punishment of legal successors of a legal entity, and it is laid down that in such a case it is necessary to consider primarily the extent to which the assets corresponding to the benefit have been transferred to any of the successors, secondarily other benefits from the crime committed and subsidiarily also the extent to which any of the successors resumes the activities in connection with which the crime has been committed.
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19. See Article 22 (7) of the proposal for the Directive of the European Parliament and of the Council on single member unlimited liability companies with (COM (2014) 212), within the meaning of which: "*Any person whose orders or instructions are usually complied with by executives of a company shall be deemed an executive, without being formally appointed, as regards all obligations and liabilities that executives are bound by*".

20. Provision of Section 2 of the Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on amendment to certain acts as amended by the Act No. 348/2011 Coll.

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