https://doi.org/10.22364/iscflul.8.2.21

Valentija Liholaja, *Dr. iur., Professor*
Faculty of Law, University of Latvia, Latvia

Diana Hamkova, *Dr. iur., Lecturer*
Faculty of Law, University of Latvia, Latvia

APPLICATION OF COERCIVE MEASURES TO A LEGAL PERSON: LAW, THEORY, PRACTICE

Keywords: legal person**, "**in the interests of a legal person", "for the benefit of a legal person", "as a result of inadequate supervision or control"

Summary

The application of coercive measures to a legal person in Latvian criminal law is a relatively new institute of law, which isbecoming increasingly relevant. Although some issues of the application of coercive measures have already been addressed in legal doctrine, there still remains a great deal of uncertainty regarding this institute. The purpose of this article is to address the regulation contained in Section 70[1] of the Criminal Law, clarifying the content of such features as "in the interests of a legal person", "for the benefit of a legal person" and "as a result of inadequate supervision or control", providing an understanding of these features.

1. Relationship of a legal person with a criminal offense and the natural person who committed it

Section 12 of the Criminal Law[1] (hereinafter also the CL) stipulates that a criminal offense committed by a natural person acting in the interests of a public legal entity, for the benefit of that person or as a result of improper supervision or control thereof shall be held criminally liable, whereas coercive measures provided for by law could be applied to a legal person. It follows from the content of Section 12 of the Criminal Law that legal persons cannot be the subjects of criminal liability; natural persons who are guilty of criminal offenses in connection with

[1] Krimināllikums [The Criminal Law]: LV likums. Latvijas Vēstnesis, 08/07/1998, Nr. 199/200.).

the activities of legal persons shall be held criminally liable.[2] A legal person, having established its legal connection with a criminal offense and a natural person, who has committed a criminal offense, may be subject to coercive measures provided for in the Criminal Law, the application of which requires a legal basis established in Section 70[1] of the CL.

Section 70[1] of the CL provides for three types in which a legal person may be involved in a criminal offense, namely:

1) the offense is committed in the interests of a legal person;
2) the offense is committed for the benefit of a legal person;
3) the offense is committed as a result of improper supervision or control of a legal person.

Then again, in order to establish a legal connection between a natural person who has committed a criminal offense and a legal person against whom coercive measures may be applied, the provisions of Section 70[1] of the CL should be taken into account regarding an individual or viewing him/her as a member of a collegial institution:

1) on the basis of the right to represent a legal person or to act on its behalf;
2) on the basis of the right to take decisions on behalf of the legal person;
3) in implementing control within the scope of the legal person.

According to Professor Uldis Krastiņš, the content of the authorization given by a legal entity to the natural person provided by law is quite extensive. The exercise of such an authorization constitutes a *de facto* link between the conduct of the natural person and the legal person. This connection is not criminal in itself if the natural person fulfils the obligations imposed in good faith. Crime occurs when a natural person commits a criminal offense while performing his or her duties. [3]

The doctrine of criminal law emphasizes that an illegal activity of a legal person, which manifests itself in the practical realization of a certain interest, may occur in cases when the interest of the legal person is illegal or when the interest of the legal person is legal but implemented by illegal means. A natural person is to blame for the fact that the unlawful or legal interest of his or her legal person is realized in an unlawful manner for which criminal liability has been established in one of the articles of the Special Part of the Criminal Law. Thus, there is a link between the two activities, it has to be stated and proven. If such a link does not exist, the natural person is liable for a specific offense, but the legal person has no grounds to apply the coercive measures provided for by law.[4] Reference to this

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[2] Krastiņš U. Juridiskās personas atbildības krimināltiesiskie aspekti [Criminal Aspects of the Liability of a Legal Person]. In: Krastiņš U. Theory and Practice of Criminal Law. Opinions, Problems, Solutions 2009–2014. Rīga: Latvijas Vēstnesis, 2015, p. 216.

[3] Krastiņš U. Juridiskajām personām piemērojamo piespiedu ietekmēšanas līdzekļu reglamentācijas aktualitātes [Topicalities of Regulation of Coercive Measures Applicable to Legal Persons]. Administratīvā un Krimināla Justīcija, Nr. 1 (62), 2013, p. 3.

[4] Krastiņš U. Juridiskās personas atbildības krimināltiesiskie aspekti [Criminal Aspects of the Liability of a Legal Person]. In: Krastiņš U. Theory and Practice of Criminal Law. Opinions, Problems, Solutions 2009–2014 Latvijas Vēstnesis, Rīga, 2015, p. 216.

thesis can also be found in case law.[5] In the absence of a connection between a legal person and a criminal offense, or in the absence of a connection between a legal person and a person who has committed a criminal offense, there are no grounds for imposing any coercive measure on the legal person.[6]

2. Criminal offense committed "in the interests" or "for the benefit" of the legal person

Chapter VIII[1] "Coercive Measures Applicable to Legal Persons" was included in the Criminal Law by the Law of 5 May 2005 "Amendments to the Criminal Law".[7] In the original version of Section 70[1] of the CL, there was a reference to only one feature, namely, the criminal offense was committed "in the interests of a legal person" (as well as the feature "as a result of inadequate supervision or control), while the feature – "a criminal offense committed for the benefit of a legal person" was included in the Law of 14 March 2013 "Amendments to the Criminal Law"[8], which entered into force on 1 April 2013.

It should be noted that, for example, under the first part of § 14 of the Estonian Criminal Code[9], a legal person is liable in statutory cases for an act committed on behalf of a legal person by its body, its member or senior official or competent representative. Thus, unlike the Criminal Law, the Estonian Criminal Code has only one feature.

Looking at the international framework, it can be concluded that Art. 18 of the Council of Europe Criminal Law Convention on Corruption requires each Party to take such legislative and other measures as may be necessary to ensure that legal persons are held liable for bribery, trading in influence and money laundering under this Convention and performed for their benefit by any natural person [...].[10]

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5 Decision of Supreme Court of 27 January 2021 in Case No. SKK-90/2021 (11816000520); Decision of the Supreme Court of 14 June 2016 in Case No. SKK-6/2016 (15830604408). Available: www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/kriminallietu-departaments/hronologiska-seciba?lawfilter=0&year [viewed 20.07.2021.].

6 Rozenbergs J. Piespiedu ietekmēšanas līdzekļu juridiskajām personām krimināltiesiskais raksturojums [Criminal Law Description of Coercive Measures for Legal Persons]. In: The 73rd Scientific Conference of the University of Latvia "The Effectiveness of Law in a Postmodern Society". Rīga: LU Akadēmiskais apgāds, 2015, p. 148.

7 Grozījumi Krimināllikumā [Amendments to the Criminal Law]: LV likums. Latvijas Vēstnesis, 25.05.2005., Nr. 82..

8 Grozījumi Krimināllikumā [Amendments to the Criminal Law]: LV likums. Latvijas Vēstnesis, 27.03.2013., Nr. 61.).

9 Criminal Code of the Republic of Estonia. Available: https://www.legislationline.org/download/id/8244/file/Estonia_CC_am2019_en.pdf [viewed 05.07.2021.].

10 Par Eiropas Padomes Krimināltiesību pretkorupcijas konvenciju [On the Council of Europe Criminal Law Convention against Corruption]: LV likums. Latvijas Vēstnesis, 20.02.2000., Nr. 460/464.

It follows from the given regulation that the Convention, as regards the legal connection of a legal person with a criminal offense, provides for the feature – a criminal offense is committed for the benefit of a legal person.

Although the theory of criminal law is of the opinion that the content of these two features, respectively, a criminal offense is committed in the interests of or for the benefit of a legal person, as if no question arises, it is rightly emphasized that what really differentiates an offense it is not really clear from an offense committed in someone's interest. The question is also raised whether it is possible to commit a criminal offense for the benefit of a legal person if it is not in the interests of that legal person, and *vice versa* – what would be the situation when the offense is committed in the interests of the legal person but not for its benefit. [11]

Despite the apparent similarity of the aforementioned features, the fact that "in the interests" and "for the benefit" are distinguished in the Criminal Law as two alternative features, obviously presuming that the legislator is characterized by their autonomous content, cannot be ignored.

As alternative features, these concepts are also singled out in Section 1, para. 5 of the Law on the Prevention of Money Laundering and Terrorist and Proliferation Financing[12], indicating to the legislator that the real beneficiary is a natural person who is the owner of the customer – legal person – or controls the customer, or in whose name, for whose benefit, a business relationship is established or an occasional transaction is executed , [...].

When trying to establish the content of these two features – "in the interests" and "for the benefit", which could serve as the delimiting criterion of these features, it should be noted that nowadays in Latvian criminal law the term "interests" is primarily related to the object of a criminal offense. In its turn, at the end of the 20th century the term "benefit" was used to define the object of a criminal offense, the criticism of which is related to the object of a criminal offense. The term "interests" is interpreted as needs[13], values[14]; its content is determined by the needs of society or individuals, various benefits, expediency[15].

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[11] Rozenbergs J., Strada-Rozenberga K. Krimināltiesiskie piespiedu ietekmēšanas līdzekļi juridiskajām personām, to piemērošanas process un tā aktuālās problēmas Latvijas krimināprocesā [Criminal Law Coercive Measures for Legal Persons, the Process of their Application and its Current Problems in Latvian Criminal Proceedings]. In: Public Legal Liability of Legal Persons: topical issues, problems, possible Solutions. The team of authors. Rīga: LU Akadēmiskais apgāds, 2018, p. 181.

[12] Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums [Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing]: LV likums. Latvijas Vēstnesis, 30.07.2008., Nr. 116.

[13] Latviešu valodas vārdnīca [Latvian language dictionary]. Rīga: Avots, 1987, p. 296.

[14] Baumanis J. Jēdziena "intereses" interpretācija krimināltiesību normās [Interpretation of the Term "Interests" in Criminal Law]. Administratīvā un Krimināla justīcija, 2015., Nr. 3 (72), p. 3.

[15] Krastiņš U. Noziedzīga nodarījuma sastāvs un nodaŗijuma kvalifikācija. Teorētiskie aspekti [Composition of the Criminal Offense and Qualification of the Offense. Theoretical Aspects]. Rīga: Tiesu namu aģentūra, 2014, p. 54.

Professor Uldis Krastiņš has pointed out that, in connection with the definition of the object of a criminal offense, "interests" include such a concept as "benefit"[16].

A similar view is expressed in the legal doctrine relating to the application of coercive measures to a legal person: a natural person has committed a criminal offense in the interests of a legal person if that legal person directly or indirectly obtains or may receive an undue benefit or advantage. [17]

Thus, the term 'interests' is broader in content than the term 'benefit'. It should be noted that a review of case law allows concluding that it is basically established that a criminal offense is committed in the interests of a legal person and not in its favour.

The actions of a natural person in the interests of a legal person have been reasonably established in criminal proceedings, in which it is stated that A, being the Chairman of the Board of JSC "Latvijas tilti", on 4 February 2016 gave a bribe in the value of 5175 euros to the acting director B for the fact that as a representative of the contracting authority – state enterprise "Klaipeda State Seaport Authority" (SE KSSA), within the scope of his authority, will make decisions favourable to the performance of works by JSC "Latvijas tilti" in accordance with the contracts concluded with SE KSSA construction company. [18]

The Chamber of the Criminal Court of Latgale Regional Court has found the following considerations indicated in the judgment of Rēzekne court regarding the fact that the offense was committed in the interests of a legal person to be justified: "Pursuant to the provisions of Section 70^8, para. 1 of the Criminal Law, the court shall take into account the nature of the criminal offense committed in the interests of this legal person and the damage caused. It can be established from the evidence obtained in the criminal case that the serious crime provided for in Section 218, para. 2 of the Criminal Law was committed in the interests of SIA / name/, because unjustified overpaid VAT overpayments were diverted to other taxes of this company [...]".[19]

In another criminal case, it is clear from the protocol of agreement with the representative D of SIA "Alīna U" that the agreement was reached with the representative of the legal entity that the prosecutor will ask the court to impose a legal sanction on SIA "Alīna U" – deprivation of the right to perform activities with

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[16] Krastiņš U. Noziedzīga nodarījuma sastāvs un nodarījuma kvalifikācija. Teorētiskie aspekti [Composition of the Criminal Offense and Qualification of the Offense. Theoretical Aspects]. Rīga: Tiesu namu aģentūra, 2014, p. 54.

[17] Rozenbergs J. Juridiskajām personām piemērojamo krimināltiesisko piespiedu ietekmēšanas līdzekļu juridiskā daba [Legal Nature of Coercive Measures Applicable to Legal Persons]. Juridiskā zinātne, Nr. 4, 2013, 217. lpp.; Sk. arī Danovskis E. Administratīvā pārkāpuma subjekta noteikšanas problēmas [Problems of Identifying the Subject of an Administrative Violation]. In: The 73rd Scientific Conference of the University of Latvia "The Effectiveness of Law in a Postmodern Society". Rīga: LU Akadēmiskais apgāds, 2015, p. 58.

[18] Judgment of Riga City Vidzeme Suburb Court of 30 November 2020 in Case No. 16870001619. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/433476.pdf [viewed 23.08.2021.].

[19] Judgment of Latgale Regional Court of 4 October 2019 in Case No. 15830001815. Availabe: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/396964.pdf [viewed 15.08.2021.].

wood chips production. It follows from the protocol of the agreement that the State Prosecutor, when choosing the type of coercive measure for the legal person, has taken into account the nature of the criminal offenses committed in the interests of SIA "Alīna U" and the damage caused – the accused committed two serious crimes and one less serious crime in the interests of the legal person. The State suffered a large loss of 223 547.41 euros as a result of tax evasion in connection with the movement and production of wood chips. In selecting the coercive measures against the legal person, the prosecuting authority has taken into account the actual actions, nature and consequences of the legal person, measures taken by the legal person to prevent the commission of a criminal offense, size, type of activity and financial situation, measures taken for compensation of damages – the implementation of the legal protection process of SIA "Alīna U" was announced by the court judgment of October 26, 2019, approving the plan of process measures, which the company successfully implemented, the company's declared activities ¾ forestry service activities, road freight transport, other transport service activities. According to the annual report of SIA "Alīna U" for 2018, the company owns fixed assets in the amount of 419 078.00 euros, current assets in the amount of 108 272 euros. In 2018, the company had 8 employees, owned two real estates, seven registered transport units and eight technical units. [20]

Court rulings indicate, for example, the desire to use the money obtained and laundered from the sale of illegally purchased diesel to supplement the company's financial resources as a justification for the accused committing a criminal offense in the interests of a legal person; [21] large-scale use of trademarks for the purpose of offering and placing on the market counterfeit goods with trademarks, the use of which is not authorized, in the interests of the company; [22] illegal storage of alcoholic beverages for sale in order to obtain fiscal advantages for the company in the form of unpaid taxes; [23] tax evasion and avoidance of taxes and similar charges in the interests of a legal person which has thus benefited from other taxpayers. [24]

In the proceedings regarding the application of coercive measures to a legal person – SIA [X], it was clarified that during the activity of B, who was an official of SIA with the rights to represent the company separately, the mandatory tax and fee payments declared by SIA to the state budget were not made, causing material damage to the state in the amount of 41 085.43 euros. The court noted that in the criminal proceedings it had not been established that SIA had taken measures

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[20] Judgment of Daugavpils Court of 15 September 2020 in Case No. 15840026219. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/433744.pdf [viewed 20.08.2021.].

[21] Judgment of Kurzeme District Court of 4 March 2021 in Case No. 11151029319. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/442925.pdf [viewed 21.08.2021.].

[22] Judgment of Riga City Vidzeme Suburb Court of 2 March 2021 in Case No. 1181600520. Available: manas tiesas.lv/eTiesasMyc/nolemumi/pdf/442667.pdf [viewed 23.08.2021].

[23] Judgement of Riga City Vidzeme Suburb Court of 9 December 2020 in Case No. 11816005218. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/435276.pdf [viewed 23.08.2021.].

[24] Judgment of Kurzeme District Court of 3 January 2020 in Case No. 15840013619. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/401252.pdf [viewed 22.08.2021.].

to prevent the commission of a criminal offense, and found that the interest of a legal person in committing a criminal offense provided for in Section 218, para. 2 as a result of the activities, avoiding the payment of taxes and similar payments, unjustified financial advantages were created for SIA, as financial resources were unreasonably left at its disposal, while large losses were incurred to the state. [25]

Examining the case law of the Republic of Estonia, it can be pointed out that the Estonian Supreme Court, recognizing the fact of copyright infringement (music was played in the store without the author's permission), stated that since the music playback was inextricably linked to the main activities of the store, there was a reason to believe that the activity has been committed in the interests of the legal person. [26]

In another criminal proceeding, the Supreme Court of Estonia, in analysing whether a senior official or a body of a legal person has acted in the interests of a legal person, has ruled that not only acts offering a financial benefit to a legal person can be considered the acts committed on behalf of that legal person. In order for an offense to be considered to have been committed in the interests of a legal person, it must be linked to a legal person. The offense should be committed in the sphere of activity of a legal person or in a related sphere. Of course, not all activities of senior officials or units of a legal entity are performed in the interests of the legal entity. Activities of senior officials committed solely in their personal interest may not be attributed to a legal person. However, the interests of a legal person go beyond mere financial gain and may cover areas that are far from the main activities of the legal person (e.g., registration in a trade register). Therefore, the question whether an act is committed in the interests of a legal person must be decided in each case according to the circumstances of the case. [27]

As already emphasized, the notion of "benefit" is, in fact, a part of the content of the term "interests", which means that it has probably not been necessary to distinguish between such two alternative features. At the same time, it is possible that the attribute "for the benefit of the legal person" is more related to the material benefit. Thus, in cases where a legal person obtains a benefit consisting of property as a result of a natural person's offense, it is presumed that the question of whether the offense was committed "for the benefit of a legal person" is decisive, as this criterion could be primarily related to a material benefit. On the other hand, if we talk about "interests of a legal person", then, in our opinion, they could be broader (related to any advantages, intangible benefits, etc.). For example, if a natural person is arbitrarily cutting down trees, a legal person could acquire a larger construction site, which could be considered a criminal offense committed in the interests of the legal person.

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[25] Judgment of Kurzeme District Court of 12 August 2020 in Case No. 15840004118. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/425196.pdf [viewed 22.08.2021.].

[26] CLCSCd, 23.03.2005, 3-1-1-9-05. – RT III 2005, 12, 118. Available: http://www.nc.ee/?id=11&tekst=RK%2F3-1-1-82-04&print=1 (in Estonian). [viewed 05/03/2021]

[27] CLCSCd, 23.03.2005, 3-1-1-9-05. – RT III 2005, 12, 118. Available: http://www.nc.ee/?id=11&tekst=RK%2F3-1-1-82-04&print=1 (28.07.2009) (in Estonian). [viewed 05.03.2021.].

3. Necessity and "sufficiency" of establishing interest / benefit

The wording of Section 12 of the CL
on a criminal offense committed in the interests of a legal person of private law for the benefit of that person [...] by the natural person concerned shall be held criminally liable, but the legal person may be subjected to coercive measures
presumes that not every criminal offense committed by an employee of a legal person is a ground for imposing a coercive measure on a legal person.

Whether the interest/benefit is sufficient to be able to apply a coercive measure must be assessed in each specific case within the scope of the provisions of the Criminal Law and the Criminal Procedure Law[28] (hereinafter – also the CPL). The purpose of the norm included in Section 12 of the CL is to prevent the application of a coercive measure to a legal person in cases when a natural person commits a criminal offense in his or her personal interests that does not coincide with the interests of the legal person.

Section 439[1], para. 1, clause 3 of the CPL stipulates that in the decision on commencement of the coercive measure application proceedings the person conducting the proceedings shall indicate the grounds for the presumption that the investigated criminal offense is most likely committed in the interests of a legal person. In its turn, in accordance with Section 548, para. 1, clause 3 of the CPL, when reviewing the materials of the proceedings regarding the application of coercive measures to a legal person, the court shall decide together with other facts specified in the section having acknowledged that the facts referred to in para. 1 of this section have not been proved, namely, a natural person's independent interest and initiative to commit a criminal offense has been established, the court terminates the application of coercive measures to a legal person.

It can be concluded from the regulation included in the Criminal Law and the Criminal Procedure Law that not every criminal offense from which a legal person can theoretically benefit will always be committed in the interests or for the benefit of this person. Legal writers rightly point out that a situation cannot be ruled out where a mid-level employee, in accordance with his understanding of what is and what is not in the interests of a legal person, has committed a criminal activity from which the legal person could theoretically benefit, but the company's board considers that such conduct is in no way in the public interest.[29] In such a situation, although a legal link between the natural person concerned and the legal person will be established, the legal person will lack

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[28] Krimināprocesa likums [The Criminal Procedure Law]: LV likums. Latvijas Vēstnesis, 11.05.2005., Nr. 74.

[29] Sk. Rozenbergs J., Strada-Rozenberga K. Krimināltiesiskie piespiedu ietekmēšanas līdzekļi juridiskajām personām, to piemērošanas process un tā aktuālās problēmas Latvijas krimināprocesā [Criminal Law Coercive Measures for Legal Persons, the Process of their Application and its Current Problems in Latvian Criminal Proceedings]. In: Public Legal Liability of Legal Persons: Topical Issues, problems, Possible Solutions. The team of authors. Rīga: LU Akadēmiskais apgāds, 2018, pp. 181–182.

a link with the criminal offense, as a result of which there will be no grounds to impose a coercive measure on the legal person. It must be agreed that, in order to apply the coercive measures provided for in the Criminal Law to a legal person, it will not be sufficient to establish that the offense was committed with the tools or means of the legal person or that the offense was committed by an employee of the legal person. In order to establish that a natural person has committed an offense in the interests of a legal person, it must be established that a legal person has also benefitted from such an offense. [30]

The Supreme Court has indicated: if, when applying a coercive measure to a legal person, the court does not decide and substantiate the interest of the legal person in committing each separate criminal offense, then the provisions of Sections 440 and 548 of the Criminal Procedure Law are not observed.[31]

It follows from the provisions of Section 1, para. 2 of the Commercial Law[32] that "commercial activity is an open economic activity which is performed by a merchant in its own name for the purpose of gaining profit", thus, this norm defines the purpose of economic activity: gaining profit. When assessing the potential "benefit" of a legal entity, several factors need to be considered.

Section 440, clause 1 of the CPL states that in the pre-trial proceedings for the application of coercive measures to a legal person the circumstances of the commission of a criminal offense shall be ascertained, while clause 6 regulates that the size, occupation and financial position of the legal person must also be ascertained. Thus, in the process of applying coercive measures, it is necessary to find out and evaluate the amount of "gain" or "benefit" of a legal person, as well as such indicators as the company's monthly turnover, profit, paid taxes, company size, etc.

European Commission Regulation declaring certain categories of aid compatible with the internal market, in application of Sections 107 and 108 clause 2 of the Treaty clarifies that a small enterprise is one whose annual turnover and/or annual balance sheet total exceeds 2 million euros, but not exceeding 10 million euros. Large company – with an annual turnover exceeding 50 million euros and/or an annual balance sheet total not exceeding 43 million euros. A medium-sized enterprise corresponds to a category between small and medium-sized enterprises (for more details, see Annex 1 of the Regulation). [33] As can be seen, the amount of turnover is a criterion for the gradation of companies according to their size.

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[30] Danovskis E. Administratīvā pārkāpuma subjekta noteikšanas problēmas [Problems of Identifying the Subject of an Administrative Violation]. In: The 73rd Scientific Conference of the University of Latvia "The Effectiveness of Law in a Postmodern Society". Rīga: LU Akadēmiskais apgāds, 2015, p. 58.

[31] Decision of Supreme Court of 14 June 2016 in Case SKK-6/2016 (15830604408. Available: www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/kriminallietu-departaments/hronologiska-seciba?lawfilter=0&year [viewed 20.07.2021.].

[32] Komerclikums [The Commercial Law]: LV likums. Latvijas Vēstnesis, 04.05.2000., Nr. 158/160.

[33] Commissions Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevence. Official Journal of the European Union, 26.6.2014 L 187/1.

Such financial indicators of a legal person are important in assessing whether a legal person, gaining any property benefit from a criminal offense committed by a natural person, benefits within the meaning of Section 12 of the CL.

In the opinion of the authors of the article, when assessing whether a legal person benefits from a criminal offense committed by a natural person, the property criteria incorporated in the legal norms of the Special Part of the Criminal Law should be taken into account. Thus, for example, the first part of Section 23^1 of the Law "On the Procedures for the Coming into Force and Application of the Criminal Law" provides that liability for a criminal offense under the Criminal Law committed to a significant extent arises if the total value of the criminal offense was not less than the total amount of ten minimum monthly wages established in the Republic of Latvia during the period. Pursuant to Section 218 of the CL, criminal liability for tax evasion and payment of taxes equated to them is provided only in cases where it has caused losses to the state or local government to a large extent, which in accordance with Section 20 of the Law "On the Procedures for the Coming into Force and Application of the Criminal Law", the total value of the object of the crime at the time of the commission of the offense has not been less than the total amount of fifty minimum monthly salaries established in the Republic of Latvia at that time.

4. Insufficient supervision or control

In Section 12 of the Criminal Law, one of the ways in which a legal person may be associated with a criminal offense is the commission of an offense as a result of insufficient supervision or control of the legal person. The reference in the law to a criminal offense committed by a natural person as a result of insufficient supervision or control creates a need to ascertain whether the natural person who committed the criminal offense has not sufficiently controlled the legal person or the legal person has not sufficiently controlled the actions of the natural person. The doctrine of criminal law emphasizes that this issue is important "because they are two completely different situations and it is necessary to find out which of them may be the basis for the application of coercive measures to a legal person". Jānis Rozenbergs, applying the method of grammatical interpretation of a legal norm, translating Section 70^1 of the CL "offense committed by a natural person as a result of insufficient supervision or control of a legal person", concludes that there is no reason to exclude either of these two cases. [34]

Art. 18 of the Council of Europe Criminal Law Convention on Corruption provides that each Party shall take such legislative and other measures as may

[34] See: Rozenbergs J., Strada-Rozenberga K. Krimināltiesiskie piespiedu ietekmēšanas līdzekļi juridiskajām personām, to piemērošanas process un tā aktuālās problēmas Latvijas krimināprocesā [Criminal Law Coercive Measures for Legal Persons, the Process of their Application and its Current Problems in Latvian Criminal Proceedings]. In: Public Legal Liability of Legal Persons: Topical Issues, problems, Possible Solutions. The team of authors. Rīga: LU Akadēmiskais apgāds, 2018.

be necessary to ensure that legal persons are held liable for bribery, trading in influence and money laundering in accordance with this Convention performed by any natural person, acting either individually or as part of a governing body of that legal person and based on: the right to represent that legal person, or the right to take decisions on behalf of that legal person, or the right to exercise control within that legal person. The second paragraph states that, in addition to the cases already referred to in the first subparagraph, each Party shall take the necessary measures to ensure that legal persons are held liable where a lack of supervision or control by a natural person referred to in the first subparagraph has the offenses referred to in para. 1 for the benefit of a given legal person.[35]

The second paragraph of Art. 10 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime provides that, notwithstanding the cases referred to in subpara. 1, each State Party shall take the necessary measures to ensure that a legal person may be held liable if: the said natural person has not exercised supervision or control and thus the natural person who is subordinated to the said legal person has an opportunity to commit the criminal offenses referred to in subpara. 1 for the benefit of that legal person.[36]

It follows from the given regulation that inappropriate supervision or control can be applied only to such persons who are entitled to exercise control within the given legal person.

Looking at Art. 18 of the Criminal Law Convention against Corruption and Art. 10 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime for Lack of Control, criminal law doctrine states that the liability of legal persons is due to inaction (lack of control), as a result of which another person may commit a criminal offense. Subject to the regulations contained in conventions and national laws and regulations, the doctrine of criminal law states that coercive measures against a legal person for insufficient supervision or control, as a result of which a natural person has committed a criminal offense, may be applied both if it is criminal and punishable insufficient supervision and control (for example, negligence of the responsible official), as well as if insufficient supervision has led to another person (employee) having the opportunity to commit a criminal offense.[37]

In the opinion of the authors of the article, insufficient control or supervision does not apply to such persons who act under the supervision or control of another person, because the obligation of control and supervision applies only to persons entitled to supervise and control. At the same time, this does not

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[35] Council of Europe Criminal Law Convention on Corruption of 27 January 1999. Available: https: rm.coe.int/168007f315 [viewed 07.08.2021.].

[36] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990. Available: https://rm.coe.int/168007bd23 [viewed 07.08.2021.].

[37] Rozenbergs J. Piespiedu ietekmēšanas līdzekļu juridiskajām personām krimināltiesiskais raksturojums [Criminal Law Description of Coercive Measures for Legal Persons]. In: The 73rd Scientific Conference of the University of Latvia "The Effectiveness of Law in a Postmodern Society". Rīga : LU Akadēmiskais apgāds, 2015, pp. 149–150.

rule out the possibility that a company with a multi-level management system has a complicated division of responsibilities, as a result of which, for example, the head of a company controlled and supervised by the company's board did not take specific control. In such circumstances, the heads of unit would be subject to insufficient control or supervision.

Section 301 of the Commercial Law[38] explains that the board is the executive body of the company, which manages and represents the company. The board knows and manages the company's affairs. It is responsible for the company's business activities, as well as for lawful accounting. The board manages the company's property and handles its funds in accordance with the laws, the Articles of Association and the decisions of the shareholders' meeting.

Whether insufficient control or supervision applies to a member of the board depends on a number of factors, such as whether there is a division of responsibilities between the members of the board, if there are several, or whether all decisions are taken collegially or by a member of the board, what are the supervisory and work organization responsibilities in the company, whether the responsibilities of the board member include employee control, etc. If such control and supervision responsibilities apply to the board member in question, and it is as a result of the failure or improper performance of this control or supervision measures that a natural person commits a criminal offense, a legal link between the natural person and the legal person will be established.

Assessing the range of persons who could be blamed for insufficient supervision or control, is debatable whether a board member who is empowered to make decisions on behalf of a legal entity will be justified in blaming a lack of control if he commits a criminal offense himself. The Criminal Law Division of Latgale Regional Court has concluded that "/ pers. D / was the only member of the board in the company, only he had the right not only to represent this legal entity, but also to decide on all issues related to the operation of the company. In such circumstances, when SIA /the name/ as a legal person did not have the possibility to control its manager, the appellate court recognizes that the degree of liability of the company is minimal".[39]

In this context, account should also be taken of the fact that supervision and control are a set of measures that can be taken against persons other than themselves.

The liability of legal persons is determined on the basis of two conditions: the first, whether the legal person was able to ensure compliance with the rules for which criminal liability is envisaged, and the second, whether the legal person took the necessary measures to ensure compliance with those rules.

In accordance with the provisions of Section 440 of the CPL, the person conducting the proceedings must ascertain the following circumstances:

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[38] Komerclikums [The Commercial Law]: LV likums. Latvijas Vēstnesis, 04.05.2000, Nr. 158/160.

[39] Judgment of Latgale Regional Court of 4 October 2019 in Case No.15830001817. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/396964.pdf [viewed 15.08.2021.].

1) the circumstances of the commission of a criminal offense;
2) the status of the natural person, if known, in the institutions of the legal person;
3) the actual actions of the legal person;
4) the nature of the activities performed by the legal person and the consequences thereof;
5) the measures taken by the legal person to prevent the commission of a criminal offense;
6) the size, type of occupation and financial position of the legal person.

Thus, it follows from the regulatory framework that in order to establish "insufficient supervision or control", the measures taken by a legal person to prevent the commission of a criminal offense, which could be the basis for the establishment of insufficient supervision or control, should be examined. In order to establish insufficient control and supervision, in our opinion, it must be stated that no measures have been implemented within the legal person in the organization of work, division of responsibilities, supervision and observance and enforcement of norms contained in regulatory enactments and the absence of these measures has been the cause to the commission of the crime.

It is necessary to assess whether the supervision and control measures of the legal person have been implemented at all, whether they have been taken, and if they have been taken, then to assess their adequacy. Thus, for example, the Vidzeme Suburb Court of the City of Riga has established that on 27 September 2019, JSC "Latvijas tilti" with the order of the member of the Board /pers. K/ has adopted a company code of ethics, which also defines anti-corruption policy; the company's employees have held a seminar on corruption risks in construction and in 2020 on preventive measures to prevent corruption. Since 20 June 2016 /pers. A/ has been released from the position of the Chairman of the Board and transferred to the position that is not related to decision-making on behalf of the mentioned legal entity.[40]

The construction of "insufficient supervision or control" provided for in Section 12 of the CL is characterized by non-performance or insufficient performance of certain duties, which is comparable to the objective side of the criminal offense provided for in Section 319 of the CL.

The explanation of insufficient control is included in the decision of the Supreme Court of 29 October 2019, which reads that "the accusation indicates what obligations the accused has not fulfilled – has not controlled the legality and reasonableness of the transfers to be made, has not established an internal control procedure to ensure the legality of salary payments. Considering that the charge indicates specific money transfers, as well as indicates a violation of Section 4, para. 2 of the Law "On Prevention of Squandering of the Financial Resources and Property of a Public Person" the court has acknowledged that the description

[40] Judgement of Rīga City Vidzeme Suburb Court of 30 November 2020 in Case No. 16870001619. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/433476.pdf [viewed 23.08.2021.].

of the accused's criminal activities reveals all criminal offenses provided for in Section 319, para. 3 of the Criminal Law constituent elements of the offense".[41]

On the other hand, in a criminal proceeding in which the accusation was brought in accordance with Section 319 of the Criminal Law for insufficient accounting control, the person was acquitted. Jūrmala court justifying person A in the accusation against her regarding the failure to perform control, indicated: "[...] the points mentioned in the job description of the Accounting Officer with reference to Cabinet Regulation No. 585 "Regulation Regarding the Conduct and Organisation of Accounting" of 21 October 2003 paragraph 69.2. "On bookkeeping" and "/Title /" of January 23, 2009 "Accounting description" paragraph 7 – are not specified in the accusation. Control, monitoring and inspection are general concepts and are included into concrete actions. Such specific acts or omissions are not reflected in the prosecution." [42]

Thus, in order for a legal person to be subjected to any of the coercive measures, it is necessary to establish which control measures the person concerned did not take or did not carry out sufficiently, and whether the lack of control or insufficient supervision was the cause of the natural person's criminal activity.

When evaluating the circumstances mentioned in Section 440 of the Criminal Procedure Law, in order to answer the question of what measures are taken by a legal person to prevent the commission of a criminal offense, the organization of the legal person's internal control process and its compliance with the legal person's size, type of activity and financial position should be examined.

The Director of the Treasury's Quality and Risk Management Department explains that internal control is a process implemented by the institution's management and staff and implemented to provide reasonable assurance on the achievement of objectives regarding: the institution's operations (efficiency and effectiveness); accountability (timeliness, completeness, accuracy) and compliance (regulatory enactments and other binding documents). Internal control is an integrated process in the operation of the institution and it covers all areas of the organization. [43]

Thus, whether a criminal offense has been committed as a result of "insufficient supervision or control" is to be determined on the basis of an assessment of the legal person's internal control measures.

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[41] Decision of Supreme Court of 29 October 2019 in Case No. SKK-485/2019 (12360000617). Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/393834/pdf [viewed 20.07.2021.].

[42] Judgment of Jurmala Court of 23 February 2017 in Case No. 12502000813. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/228546.pdf [viewed 20.07.2021.].

[43] Galandere-Zīle I. Iekšējās kontroles sistēma kā stratēģiskās vadības instruments [Internal Control System as a Tool of Strategic Management]. Open Lecture for Local Governments Rīga, 2018. Available: http://old.varam.gov.lv/files/text/Valsts_kase_2018_03_IKS.pdf [viewed 21.07.2021.].

5. In the interests of the legal person, for its benefit or as a result of its insufficient supervision or control

In order to apply a coercive measure to a legal person, one of the features provided for in Section 70^1 of the CL must be established, namely, the natural person has committed a criminal offense in the interests of the legal person, for the benefit of that person or as a result of insufficient supervision or control.

Looking at the case law, it can be concluded that the coercive measure is not always applied, indicating the legal connection, motivation as well as the causal link between the criminal offense committed by a natural person and the legal person. Sometimes there is a formal rewriting of legal norms, without any specification and connection with the actual circumstances of the offense. Thus, for example, in the judgment of Liepāja court it reads that "on 29/09/2015 a decision has been made to initiate proceedings for the application of coercive measures to a legal person – SIA "Lora D", reg. No. / registration number / [...]. Section 70^1 of the Criminal Law provides that a court or a prosecutor may apply a coercive measure to a legal person of private law, including a state or local government company, as well as a partnership, for a criminal offense provided for in a special part of this law if the offense is in the interests of the legal person, committed for the benefit of this person or as a result of its improper supervision or control by a natural person, acting individually or as a member of a collegial institution of the relevant legal person: 1) on the basis of the right to represent the legal person or act on its behalf; 2) based on the right to take decisions on behalf of the legal person; 3) exercising control within a legal person. The legislator has determined that when considering a case, a court shall also make a ruling on the application of a coercive measure to a legal person, upon adoption of which, in accordance with Section 548, para. 1 of the Criminal Procedure Law, it must be decided: 1) whether a criminal offense has occurred; 2) whether the circumstances referred to in Section 440 of this law have been clarified; 3) whether the criminal offense has been committed in the interests of the legal person, for good or as a result of insufficient supervision or control; 4) what coercive measure is applicable. According to Section 70^2 of the Criminal Law, the following coercive measures may be imposed on a legal person: liquidation; restriction of rights; confiscation of property; money recovery. The court considers that the most severe of the coercive measures provided for by law for a legal person in this case is the liquidation of the legal person, as the company has not made any tax payments within three years. At present, the company is not operating and its liquidation will not affect the interests of other persons or employees" [44]. It should be noted that the Court of Appeal upheld the judgment in that regard. [45]

[44] Judgment of Liepāja Court of 24 March 2016 in Case No. 15830015913. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/271637.pdf [viewed 21.08.2021.].

[45] Judgment of Kurzeme Regional Court of 25 May 2016 in Case No. 15830015913.913). Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/271485.pdf [viewed 15.08.2021.].

In other criminal proceedings, the establishment of the legal link regulated by the Criminal Law and the Criminal Procedure Law between a criminal offense committed by a natural person and a legal person is not paid attention at all, even without a formal reference to the legal features. Thus, the indictment reads that the duties of a member of the Board of SIA "Three L Technologies" as a director of the company included all activities necessary to ensure the performance of the company's business activities, including the provision of technical support and the provision of necessary computer programs for business activities. B, being aware that computer programs are the object of copyright, because their reproduction and use in the economic activity of SIA "Three L Technologies" requires the acquisition of licenses, deliberately violated the procedure for reproduction and use of computer programs and independently installed counterfeit computer programs obtained at an unspecified time and under conditions not clarified in pre-trial criminal proceedings, thus causing material damage to copyright holders in the amount of 145 896 euros by reproducing computer programs.

The court found that by his actions B had committed a criminal offense provided for in Section 148, para. 3 of the Criminal Law. It was also decided to apply a coercive measure to SIA "Three L Technologies" – recovery of money in the amount of 25 (twenty-five) minimum monthly salaries set in the Republic of Latvia, i.e., in the amount of 10 750 euros. [46] Whether it is in the interests of the legal person, in its favour or as a result of insufficient control or supervision, nothing is said.

In turn, in the criminal case A accused of the crimes provided for in Section 218, para. 2 and Section 195, para. 3 of the CL, the court acknowledged that these criminal offenses were committed in the name of a legal person – SIA [X], in the interests of the company and payments to the state budget, as well as to legalize the financial resources obtained as a result of the commission of the criminal offense, changing their location, concealing and disguising their ownership and true origin, as a result of which A together with B and V acquired these financial resources. A committed the criminal offenses as an official of SIA [X], based on the right to represent the legal entity and make decisions on behalf of the legal entity, as well as exercising control over the company. [47] It should be noted here that it is not clear from the accusation what was the interest of the legal person and why the criminal offenses should be considered as committed in its favour, if the accused actually benefited.

At the end of the article, it should be noted that in some cases, in quite similar circumstances, the issue of liability of a legal person is dealt with differently.

Thus, for example, the court, examining and evaluating the submitted agreement between the prosecutor and the accused A on 30 April 2020 regarding the admission of guilt and punishment, as well as examining the materials of

[46] Judgment of Riga District Court of 11 September 2019 in Case No. 11816911718. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/391271.pdf [viewed 21.08.2021.].

[47] Judgment of Riga City Latgale Suburb Court of 21 July 2020 in Case No. 15840089919. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/420085.pdf [viewed 22.08.2021.].

the criminal case, found that A committed a copyright infringement in the following circumstances: SIA "Smartteh" 10 computer programs were reproduced (stored electronically) in two computer systems without the permission of the copyright holder until 8 January 2019, thus violating copyright and causing large-scale losses to the copyright holder. It follows from the judgment that "/ pers. A /, being a member of the Board of SIA "Smartteh" with the right to represent the company separately, whose responsibilities included ensuring the legality of computer programs used in SIA "Smartteh" economic activities and monitoring employees using computer systems with computer programs, recognizing that computer programs are copyrighted, including temporary or permanent reproduction, requires the permission of the copyright holder in the form of a license agreement or license, in the interests of SIA "Smartteh" assumed that two computer systems of SIA "Smartteh" were installed for the purpose of using them in the performance of the economic activity of SIA "Smartteh" ".

By reproducing and ensuring the use of computer software of the copyright holder "Dassault Systemes SolidWorks Corporation" in the total value of 64 067 euros in the economic activity of SIA "Smartteh" without the permission of the said copyright holder, without concluding a license agreement and obtaining a license, A violated the Copyright Law The prohibition to use works if permission of the copyright holder has not been received specified in Section 40 first part and thus also exclusive rights of the author in relation to the use of a computer program provided for in Section 15, para. 2 of the Copyright Law, including, temporarily or permanent reproduction, that in accordance with Section 68, para. 1, clause 1 shall be recognized as a copyright infringement committed to a large extent and qualified in accordance with Section 148, para. 3 of the CL. [48]

Although the indictment established the right of a board member to represent the company separately, as well as clarified that his responsibilities included ensuring the legality of computer programs used in SIA "Smartteh" business activities and monitoring employees using computer systems with computer programs. In the interests of SIA "Smartteh", it was assumed that counterfeit computer programs obtained in time and under conditions not specified in the investigation were installed in two computer systems of SIA "Smartteh" – the issue of application of coercive measures to a legal person was not discussed in the specific criminal proceedings. In another criminal proceeding, in which a person has been charged in accordance with Section 148, para. 3 of the CL, an agreement has been reached with the accused and an agreement has been reached with the legal person that the prosecutor will ask the court to apply a coercive measure to the legal person – money recovery 35 minimum monthly wages established in the Republic of Latvia. The judgment in question states that A, as the company's chief executive officer, was the chairman of the board with the right to represent the company separately, whose responsibilities included ensuring the legality of computer programs used

[48] Judgment of Riga District Vidzeme Suburb Court of 28 May 2020 in Case No. 11816003519. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/416691.pdf [viewed 21.08.2021.].

in, including temporary or permanent reproduction, requires the permission of the copyright holder in the form of a license agreement or license, in the interests of the company ensured that in pre-trial investigation in unspecified circumstances in 14 (fourteen) computer systems counterfeit computer programs obtained at time and in circumstances not clarified in the investigation were installed. Reproduction and provision of Microsoft Corporation computer software with a total value of 5 208.00 euros, "Autodesk Incorporated" software with a total value of 46 800.00 euros, and "Dassault Systemes SolidWorks Corporations" software with a total value of 88 200.00 euros in the economic activity of SIA "BIC" without the permission of the mentioned copyright subjects, without concluding a license agreement and obtaining a license, A as a member of the SIA Board violated the prohibition to use works specified in Section 40, para. 1 of the Copyright Law if the permission of the copyright holder has not been received and also the author's exclusive right to use a computer program, including temporary or permanent reproduction, provided for in Section 15, para. 2 of the Copyright Law, that according to the Section 68, para. 1, clause 1 of the Copyright Law, is considered to be a copyright infringement committed on a large scale. A coercive measure applied to a legal person – recovery of money in the amount of 35 minimum monthly salaries established in the Republic of Latvia, that is 15 050 euros.[49]

By the judgment of the Court of Appeal D was also found guilty of committing the criminal offense provided for in Section 148, para. 3 of the CL. The appellate court found that the directly accused D, as a member of the board and technical director of SIA [X], deliberately assumed that SIA [X]'s computer systems contained and used for commercial purposes computer programs obtained in violation of the copyright of computer software owners.

The Court of Cassation found that the accusation brought by D and maintained by the prosecutor in the Court of Appeal, as well as the description of the criminal offense recognized as proven by the court did not set out the objective side of the criminal offense provided for in Section 148 of the Criminal Law, namely content of D alleged acts – ensuring reproduction – content. Nor is such a content disclosed in the grounds of the judgment of the Court of Appeal. Additionally, in the prosecution maintained by the prosecutor, D was charged with an act, but in the court judgment – inaction. The Court of Appeal thus found different factual circumstances. D's findings of fact were not known to the court, and counsel therefore rightly stated that D could not defend himself against such an accusation. Acknowledging that the Court of Appeal, by failing to provide the content of the notion – ensuring reproduction – in the specific case has committed a violation of Section 511, para. 2, Section 512, para. 1, Section 20, para. 1 and Section 564, para. 4 of the CPL, which is a material violation of the CPL within the meaning of Section 573, para. 3 of this law and led to an illegal ruling in the case, the Senate of

[49] Judgment of Riga City Pārdaugava Court of 19 December 2019 in Case No. 11816004817. Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/405697.pdf [viewed 21.08.2021.].

the Supreme Court annulled the judgment of the appellate instance court and sent the case for a new hearing in the regional court.

At the same time, assessing the merits of the appellate court's opinion that D as a member of the board and technical director of SIA [X] was responsible for the legality of computer programs in the company, the Senate pointed out that Section 169, para. 1 of the Commercial Law states that a member of the board and council must perform his or her duties as an honest and careful manager. One of the basic duties of a member of the board of a commercial company is to ensure the legality of the company's activities. If a member of the Board, while performing the tasks of managing the company entrusted to him, acts contrary to the requirements of regulatory enactments, then there is no reason to talk about the compliance of such activity with the standards of a serious and careful owner. It was therefore concluded that the objections rose in the cassation appeal in that regard could not be used to call into question the legality and validity of the court decision.

The Senate of the Supreme Court also pointed out that the accusation of committing the criminal offense provided for in Section 148, para. 3 of the CL was brought against D and not to other persons; nor has criminal proceedings been instituted in the case regarding the application of coercive measures to legal persons.[50]

Conclusion

1. It follows from the regulatory framework, as well as from the findings of legal doctrine and case law that in order to consider that a criminal offense has been committed "in the interests of a legal person", it is necessary to establish a link between the activities of a natural person and a legal person; secondly, the content of the authorization of the natural person given by the legal person, thirdly, the fact that the legal person obtains, directly or indirectly, a benefit or advantage to which they are not entitled as a result of the criminal offense.
2. Despite the *prima facie* appearance of the features "in the interests of the legal person" and "in favour of the legal person", the Criminal Law distinguishes these features as two alternative features, thus the legislator presumes that each of them is characterized by its own autonomous content.

2.1. In the opinion of the authors, the feature "in the interest" is broader in terms of content than the feature "benefit" (for the benefit). It should be noted that the review of case law allows concluding that it is basically established that a criminal offense is committed in the interests of a legal person and not for its benefit.

3. Whether the interest/benefit is sufficient to impose a coercive measure on a legal person must be assessed in the context of the individual case, assessing the size, financial position, "size" or "amount" of the benefit, etc. actual circumstances.

[50] Decision of Supreme Court of 19 July 2019 decision in Case No. SKK-154/2019 (11816006415). Available: manas.tiesas.lv/eTiesasMyc/nolemumi/pdf/387383.pdf [viewed 20.07.2021.].

4. When assessing whether a legal person benefits from a criminal offense committed by a natural person, the property criteria incorporated in the legal norms of the Special Part of the Criminal Law should also be taken into account, which in a number of cases serve to separate criminal liability from other types of legal liability.
5. In order to establish "insufficient supervision or control" of a legal person, it must be ascertained: 1) whether the particular person is entitled to exercise control within the given legal person; 2) whether the legal person had the opportunity to ensure compliance with the regulations for the violation of which criminal liability is provided, as well as whether the legal person took the necessary internal control measures to ensure compliance with the relevant regulations; 3) it must be established which direct control measures the legal person has not taken; 4) it is also necessary to establish a causal link, namely, that it is the lack of control or insufficient supervision that has caused the natural person to have committed a criminal offense.

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