

Criminal Liability of Legal Entities and Feasibility of their Exculpation by Means of Compliance Programs

Abstract

Our thesis discusses the criminal liability of legal entities and the issues of compliance programs. The wide field of compliance program application was opened by criminal liability of legal entities amendment implemented by Law No. 183/2016 Coll. Provision § 8 par. 5 was implemented in Legal Entity Criminal Liability Act through this amendment. This provision allows legal entities, providing that certain legally required conditions are met, to exculpate themselves from criminal liability.

The aim of this thesis is primarily to introduce the field of compliance, including compliance programs' creation, its implementation and contents. We would like to point out that compliance programs should not be perceived solely in connection with a possibility of exculpation, but on the contrary, that legal entities should take an advantage of the interdisciplinary character of these programs, and transform them into a universal tool of prevention. We shall introduce the compliance program of the pharmaceutical company Teva and herewith demonstrate that it is indeed possible to create and implement an efficient compliance program. Last but not least, we mean to bring attention to the fact that for legal entities to exculpate themselves from the criminal liability, it is not enough to solely formally adopt a compliance program. It is decisive, whether the compliance program is truly fulfilled, or else "put to life".

Regarding the fact that the field of compliance, including compliance programs, is solely a partial problem of the criminal liability of legal entities, our thesis is also devoted to the very institution of criminal liability of legal entities and selected areas of legislation included in Legal Entity Criminal Liability Act.

Our thesis is systematically divided into four chapters. The first chapter defines the concept of a legal entity and introduces the development of criminal liability of legal entities in Civil and Anglo-Saxon laws.

The second chapter focuses on the fact that there has not been a mutual agreement on introducing criminal liability of legal entities. We offer the arguments of the supporters of criminal liability of legal entities, as well as the arguments of the group which was opposed to

an introduction of such a kind of liability. This chapter also describes the way which led to the very acceptance of Legal Entity Criminal Liability Act, the concept of the criminal liability of legal entities, the applicability of Legal Entity Criminal Liability Act and the institute of attribution, which is the core of the legal amendment of this liability.

The third chapter approaches the exculpation provision § 8 par. 5 of Legal Entity Liability Act. It discusses the inappropriately chosen terminology and wording of the provision, the interpretation of exculpation conditions and perspectives of applicability of § 8 par. 5 of Legal Entity Criminal Liability Act, which has been worded by the Prosecutor General's Office.

The fourth and concluding chapter indicates the interdisciplinary character of compliance programs. It concentrates on creation, implementation and contents of compliance programs, on the significance of a compliance department and a compliance officer. A subchapter devoted to the compliance program of the pharmaceutical company Teva reflects a practical experience, which the author of this thesis gained during her internship at the compliance department of the above mentioned company. The fourth chapter is concluded by focusing on the steps which shall be taken by the prosecuting and adjudicating bodies when evaluating, whether a compliance program may really be a means of exculpation of legal entities.