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LEGAL ENTITIES AS SUBJECTS OF CRIME

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Abstract:

This article addresses the issue of recognizing legal entities as subjects of crime in criminal law. The study analyzes fictional, realist, functional, and institutional theories of the criminal liability of legal entities. It also examines approaches to regulating the criminal liability of legal entities in the legislation of foreign states. Relying on the principles of classical criminal law, the author expresses a position on the issue of directly recognizing legal entities as subjects of crime and substantiates the necessity of developing effective and modern legal mechanisms to combat corporate crime. The article also highlights the advantages and disadvantages of introducing criminal liability for legal entities.

Keywords: Legal entity, subject of crime, criminal liability, corporate crime, corporate fault, criminal law, international practice

In Resolution[1] No. RP-3723 of the President of the Republic of Uzbekistan dated May 14, 2018, it was noted that a number of criminal law institutions recognized in international practice had not been sufficiently implemented, including the absence of criminal liability of legal entities, which was identified as a systemic problem and shortcoming in this field.

In order to enhance the effectiveness of combating environmental and corruption-related crimes, proposals to establish the criminal liability of legal entities are increasingly being advanced by scholars. In particular, G. Alimov and D. M. Kushbakov propose introducing the criminal liability of legal entities into legislation [2]. They justify this proposal by pointing to the possibility of suspending the activities of legal entities involved in corruption and environmental offenses, as well as expanding opportunities for recovering damages caused by such offenses.

At present, the criminal liability of legal entities is enshrined in the legislation of more than 70 countries worldwide [3].

The recognition of legal entities as subjects of crime is one of the most topical and controversial issues in criminal law. This issue requires comprehensive analysis from theoretical, legal, and practical perspectives.

In foreign legal doctrine, theoretical approaches to the criminal liability of legal entities have developed in various directions and are mainly divided into fictional, realist, functional, and institutional approaches. Below, the content and core ideas of these theories are examined.

Fiction Theory.

According to the fiction theory, legal entities are not regarded as subjects of crime in the proper sense but are considered artificial constructs (legal fictions) created by the legal system. Under this theory, a legal entity does not possess independent will; all its actions are carried out by natural persons.

The roots of this theory can be traced back to nineteenth-century legal doctrines. Its development is associated with Friedrich Carl von Savigny and his followers. Savigny regarded the legal entity as a "legal fiction" and considered its legal status to be formed on the basis of the conditional consent of the state. In his view, the rights of a legal entity are powers artificially granted by the state [4].

The British legal philosopher John Austin also emphasized the fictional nature of legal entities, noting that they exist within the legal system solely at the discretion of the state. According to his theory, the rights of legal entities are not inherent by nature but are artificially created by the state [5].

Similarly, the British jurist Frederick Pollock linked the legal subjectivity of legal entities exclusively to the will of the state. In his opinion, a legal entity is a legal fiction, and in practice its will is expressed only through individual natural persons [6].

According to the views of the above-mentioned scholars, a legal entity is an artificial construct that lacks consciousness and free will comparable to that of a human being. It is merely a symbolic structure created by the legal system. A legal entity always carries out its actions through real individuals. Therefore, responsibility for criminal acts should, in essence, rest

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with natural persons. The application of criminal sanctions to legal entities is justified not so much on legal grounds as on political or practical considerations. An important aspect of this theory lies in its explanation of the significance of legal and political factors in determining the role and status of legal entities within the legal system. At the same time, this theory emphasizes the need for a cautious approach to establishing criminal liability for legal entities.

Critics of this theory argue that it fails to take into account systemic and structural deficiencies in the activities of legal entities and does not provide sufficient legal mechanisms to effectively address contemporary corporate crime.

The Real Entity Theory recognizes legal entities not merely as legal fictions but as real subjects possessing independent will and legal personality. According to this theory, a legal entity is a genuine organization that performs a specific social role and operates independently within society. The core content of this theory can be summarized as follows: first, a legal entity is not merely a legal fiction but a real subject with its own social nature and institutional structure; second, its activities are carried out through collective decision-making, corporate culture, and internal organizational norms; third, a legal entity may independently possess rights and obligations, including criminal liability.

One of the founders of this theory, Otto von Gierke, characterized legal entities as "real social organisms." In his view, legal entities are not merely legal innovations but organizations that have emerged on the basis of natural social needs [7].

Ernst Freund linked the legal subjectivity of legal entities to functional processes within the organization [8]. His views significantly influenced the development of legal theories among American legal scholars.

Harold J. Laski regarded legal entities as "persons endowed with social will" and considered them independent subjects acting through collective decision-making processes [9].

John Dewey, a representative of the American pragmatic school, adopts a broad approach to the personality and legal subjectivity of legal entities, defining them as social institutions engaged in real and effective activity [10].

The realist theory constitutes an important scholarly foundation for substantiating the criminal liability of legal entities. Its main advantages include the following: it links corporate crime to the organization's own activities, viewing criminal behavior as shaped by internal policies, corporate culture, and control systems of the organization;

it promotes social justice, as the realist approach assigns liability not only to individual employees but also to the organization itself, thereby creating an effective mechanism of responsibility;

it provides opportunities for systemic prevention, since the liability of legal entities encourages the review of organizational activities, strengthening of internal control, and prevention of crimes.

In general, the realist theory makes it possible to regard legal entities as full-fledged subjects of criminal law. Unlike legal fiction approaches, this theory takes into account the real activities and social impact of organizations. In international practice, systems of liability for legal entities based on this approach are already being implemented. Therefore, in Uzbekistan as well, the scholarly and legal study of the realist theory is of significant importance in combating corporate crime.

Functional Theory

The functional theory is associated with the work of the American legal scholar Mihailis Diamantis, who analyzes the liability of legal entities by linking it to the performance of specific functions, internal systems, and decision-making processes within organizations [11].

According to the functional approach, a legal entity commits criminal acts as a subject of criminal law as a result of organizational deficiencies in its internal operations, dysfunctions in management systems, or the lack of effective control mechanisms.

Legal entities are not real persons but institutions that perform social functions. Therefore, criminal liability is aimed not at punishing individual persons but at compelling the organization itself to review and reform its activities.

Diamantis links crime to an organization's "corporate knowledge." In his view, the liability of a legal entity depends on how collective knowledge and internal information flows are organized. If an organization's management fails to effectively structure communication between employees or departments, such a system may lead to crime through a "failure of knowledge transmission." For this reason, crime should be assessed not as personal fault but as a manifestation of systemic dysfunction at the functional level.

According to Diamantis, an organization is a collective subject in which knowledge and decisions are distributed and expressed through functional structures. The advantages of this approach include, first, the possibility of linking collective fault to organizational functions; second, the requirement to analyze the internal systems of the organization rather than assigning full responsibility to individual actors; third, the opportunity to conceptualize corporate crime as an

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independent institutional phenomenon; and fourth, the potential to improve legislation through preventive measures, inter-agency cooperation, and mechanisms of collective responsibility.

As for its shortcomings, determining and measuring corporate knowledge through legal means is a complex process; during the determination of fault, the boundaries between functional units may be unclear; and in practice, while this approach may be effective for large organizations, it presents certain difficulties when applied to small businesses.

Diamantis's functional approach has influenced corporate law reforms in the United States. Similar practices of assessing corporate liability based on organizational functions are also emerging in the European Union, Australia, and Canada.

This theory is increasingly gaining importance as an approach that calls for evaluating crime not as an individual act but as a form of institutional behavior.

Within the legal system of Uzbekistan, this theory may also serve as a theoretical foundation for protecting organizational activities from criminal conduct, strengthening control mechanisms, and shaping corporate culture.

The institutional approach stands out as an effective theoretical framework for explaining crime based on the internal structure, culture, and norms of modern corporate organizations. The Dutch criminologist and legal scholar Judith van Erp is considered a leading representative of this approach. According to her analysis, corporate crime constitutes a systemic problem that is formed not at the level of individuals but at the level of institutions (organizations) [12].

Under the institutional approach, organizations operate not merely as legal entities but as social institutions. They develop specific cultures, norms, and institutional practices that influence all decisions and actions of the organization.

According to this approach, crime may arise not from an individual's personal intent but as a result of accepted practices and corporate rules prevailing within the organization. Corporate crime is thus viewed as a phenomenon of a structural, systemic, and cultural nature, and responsibility should be directed not at individuals but at the institution itself.

In this context, corporate culture, labor relations, power hierarchies, and ethical standards within an organization are identified as key factors shaping a propensity toward criminal behavior. The institutional approach emphasizes that in organizations where excessive pressure is placed on achieving specific targets, employees often come to perceive unlawful behavior as normal; where internal control mechanisms are weak and incentives are linked to results rather than ethics, the incidence of criminal conduct increases. In such environments, behavior emerges not as an individual deviation but as an institutional pattern.

Within this approach, liability is conceived not merely as punishment but as a set of measures aimed at encouraging internal organizational change, such as reviewing internal control systems, reshaping corporate culture, and introducing mechanisms of ethical education.

Since the early 2000s, the practice of determining liability on the basis of corporate culture has become widespread in EU member states, particularly in the Netherlands, France, and Germany. In criminal cases brought against major banks, multinational corporations, and pharmaceutical conglomerates, internal ethical standards, management processes, and decision-making procedures within organizations have become central objects of analysis.

A number of foreign scholars consider the liability of legal entities primarily in terms of corporate liability.

Jennifer Arlen has analyzed various theoretical approaches to corporate criminal liability and sought to assess their effectiveness. In order to prevent corporate criminal conduct and ensure proper corporate behavior, she proposes the following legal mechanisms:

the introduction of effective liability mechanisms, whereby, in determining corporate criminal liability, due consideration should be given to the effectiveness of internal control systems and compliance programs. This approach is regarded as playing an important role in preventing corporate criminal behavior;

the effectiveness of internal compliance programs, emphasizing that improving and strengthening corporate compliance programs can reduce the incidence of criminal conduct;

cooperation, proposing that criminal liability may be mitigated by encouraging corporations to cooperate with law enforcement authorities and by introducing reporting and self-disclosure mechanisms [13].

Judith Gabriël van Erp emphasizes that corporate crimes are not merely the result of the "bad intentions" of individual actors, but are closely connected with the structure, culture, and practices of organizations in which employees operate. Corporations provide their members with positions, incentive systems, networks, rules, routines, and systems of trust, all of which increase opportunities for criminal behavior [14].

Stephen F. Smith criticizes the concept of corporate criminal liability and argues that it should be abolished. In his view, the current system of corporate criminal

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liability is ineffective and unjust, and should be replaced by strengthened civil and administrative sanctions.

In his view, corporate criminal liability suffers from several shortcomings:

absence of genuine culpability – corporations cannot possess personal criminal intent (*mens rea*). Any criminal act is committed by individuals working within the corporation. Therefore, holding a legal entity criminally liable lacks a proper legal basis;

over-punishment and double liability – when a corporation is subjected to criminal liability, this often produces negative consequences for its shareholders, employees, and customers. Moreover, culpable employees are prosecuted separately, which effectively results in double punishment being imposed on the corporation;

punishment does not serve crime prevention – imposing large fines or financial sanctions on corporations is ineffective in preventing crime. Such sanctions tend to harm ordinary shareholders and employees rather than senior management or the individuals actually responsible;

contradiction with the fundamental nature of criminal law – criminal law is based on personal responsibility, whereas corporations are not persons but organizations; therefore, the application of criminal punishment to them is conceptually meaningless [15].

A. I. Rarog characterizes the introduction of criminal liability for legal entities as a "departure from anthropocentrism" and emphasizes that this institution should be applied with caution within the classical system of criminal law. At the same time, he supports the development of special models of liability for legal entities. In his view, within the traditional (classical) model of criminal law, the human person occupies the central place in the system of subjects of crime. This approach is referred to as *anthropocentric*, according to which:

the subject of crime can only be a conscious, volitional person possessing legal capacity;

crime and guilt are formed within human consciousness, a capacity that legal entities do not possess;

therefore, recognizing a legal entity as a subject of crime contradicts the fundamental principles of criminal law.

At the same time, A. I. Rarog acknowledges that legal entities cannot be regarded solely as legal fictions, given their significant impact on social life. However, he argues that directly recognizing legal entities as subjects of crime may undermine the fundamental principles of criminal law. While he does not deny the possibility of holding legal entities liable, he proposes the introduction of a separate legal institution for this purpose. According to his view, such an institution should exist outside the framework of criminal law proper, within a boundary or adjacent field of law (for example, economic law or administrative law). The forms of liability should differ from those applicable to natural persons and may include fines, suspension of activities, revocation of licenses, liquidation, and similar measures. In this way, the application of a "separate, modified model of liability" to legal entities would be appropriate [16]. From A. I. Rarog's perspective, the lawful and scientifically grounded application of liability to legal entities requires not merely a revision of the boundaries of classical criminal law, but also the development of new legal approaches.

N. V. Radutnaya emphasizes that in introducing criminal liability for legal entities, it is impossible to attribute mental elements such as guilt, intent, and purpose to a legal entity. Since guilt and punishment are inherently personal in nature, imposing criminal sanctions on legal entities presents a fundamental problem. According to the principles of criminal law, punishment must be a moral and legal measure directed at a person, which makes its application to legal entities problematic. At the same time, without entirely excluding the possibility of liability for legal entities, she proposes establishing such liability through a separate legal institution (or a hybrid system), avoiding the conflation of liability regimes for natural and legal persons, and applying distinct mechanisms specifically designed for legal entities [17].

I. I. Kucherova examines the issue of criminal liability of legal entities from the perspectives of legal practice and comparative analysis. She acknowledges that criminal liability of legal entities does not formally exist in the Russian Federation; however, administrative liability norms (especially within the framework of combating corruption) allow for establishing the fault of legal entities (note: Article 2.10 of the Code of Administrative Offences of the Russian Federation provides for the administrative liability of legal entities). Nevertheless, she argues that these measures are insufficient, as administrative sanctions often prove ineffective. For this reason, she considers that assessing and sanctioning the conduct of legal entities through the criminal law system would be more effective.

To substantiate her position, she refers to the existence of liability of legal entities (corporations) in France, Germany, the United States, and the United Kingdom as comparative examples. She proposes introducing liability of legal entities into Russian criminal legislation, emphasizing that such liability should serve not only punitive purposes but also preventive ones, including strengthening internal control mechanisms. She further suggests that the law should clearly define mechanisms

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for establishing the fault of a legal entity (for example, through the actions of its governing bodies) [18].

Ye. V. Sidorenko adopts a cautious and critical approach to the issue of criminal liability of legal entities. In her view, recognizing legal entities as subjects of crime may give rise to potential violations of human rights, including:

the failure to fully ensure the right to defense;

the inadequate implementation of the presumption of innocence;

the blurring of the boundary between individual and organizational liability by attributing guilt to a company based on the actions of specific individuals.

For these reasons, she emphasizes that conducting criminal proceedings against legal entities may contradict international standards of fair justice.

Instead of recognizing legal entities as subjects of crime, Ye. V. Sidorenko proposes the following alternative solutions:

establishing administrative liability for legal entities;

the introduction of a system of **financial sanctions** (fines, compensation payments, freezing of assets, and similar measures);

the application of **organizational restrictions** (revocation of licenses, deprivation of the right to participate in tenders, and other measures);

the use of **measures affecting business reputation** (establishing and maintaining "blacklists," inclusion in such lists, and public disclosure thereof).

The author assesses these measures not as punishment, but as effective preventive tools. Her approach is aimed at safeguarding the normative and theoretical foundations of criminal law. She argues that the introduction of criminal liability for legal entities should be assessed not only from a legal perspective but also from a moral one. Emphasizing that criminal law is an *ultima ratio*, the author stresses that this institution should be approached cautiously and on the basis of generally recognized principles of legal science [19].

O. Yu. Bakaev emphasizes that, at present, the necessity of establishing criminal liability for legal entities has arisen. He advances the concept of **"corporate fault"** as the key notion underlying the liability of legal entities. In this context, fault is reflected not in individual will but in the internal structure of the organization and its managerial decisions (for example, the absence of control mechanisms, lack of a risk management system, or the absence of corporate ethics). Crime thus occurs not solely because of individual actions, but due to the organization's culture and functional characteristics. This approach is closely aligned with the concept of "corporate fault" in the Anglo-Saxon legal system.

O. Yu. Bakaev proposes the following mechanisms for determining whether a legal entity has committed a crime:

the **"acting on behalf of the organization" model**, whereby liability is imposed through individuals who acted in the interests of the company;

systemic deficiencies in control, requiring proof that internal organizational processes enabled the commission of a crime;

absence of compliance institutions, indicating that the organization failed to fulfill its preventive obligations.

Based on the above, O. Yu. Bakaev advances the following conclusions regarding the establishment of criminal liability for legal entities:

it is a **legal necessity**, since crimes are increasingly committed at the organizational level;

it is a **social necessity**, as corporate crimes pose a threat to public safety;

however, the establishment and implementation of criminal liability for legal entities must be accompanied by caution and legal clarity [20].

D. M. Kushbakov considers it necessary to introduce criminal liability for legal entities and proposes supplementing the Criminal Code with a separate chapter entitled **"Criminal Law Measures Applicable to Legal Entities"** [21].

G. Alimov, based on an analysis of international standards, proposes establishing liability of legal entities for corruption-related crimes [22].

A. S. Yakubov and Sh. O. Azim note that the issue of criminal liability of legal entities is not new for Uzbekistan. They point out that this issue was discussed as early as 1994 during the drafting of the Criminal Code; however, it was not sufficiently implemented. According to them, conservative views prevailed at that time, yet such approaches now hinder the resolution of contemporary legal challenges.

They propose regulating the criminal liability of legal entities in two main directions: 1) establishing an independent chapter on the liability of legal entities in the General Part of the Criminal Code; 2) supplementing specific provisions of the Criminal Code with rules concerning the liability of legal entities [23].

In doing so, they suggest relying on Article 39 of the Civil Code of the Republic of Uzbekistan, which recognizes legal entities as organizations capable of acting as plaintiffs and defendants in court, and argue that these provisions may also serve as a basis for the criminal liability of legal entities.

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Above, we have examined a number of studies concerning the criminal liability of legal entities (their capacity to act as subjects of crime). In presenting these studies, we deliberately refrained from expressing evaluative judgments within the text. From the perspective of the classical school of criminal law, the subject of crime can only be a sane natural person, which excludes the possibility of recognizing legal entities as criminally liable subjects. We adhere to this position as well, believing that the liability of legal entities ultimately produces negative consequences for individuals working within such entities who are not culpable for the criminal outcome, such as job losses or reductions in wages.

However, the development of modern society, the rapid penetration of new technologies into social life, the transformation of social relations, and the growing scale of corruption-related and environmental crimes necessitate a reconsideration of the foundations of criminal law.

The study of introducing criminal liability for legal entities constitutes a pressing issue in the context of legal reforms, economic liberalization, and the need to ensure public safety in Uzbekistan. This is due to the increasing number and danger of crimes related to tax evasion, corruption, environmental harm, and illegal financial operations, as well as the fact that when crimes are committed through individuals for the benefit of an organization, responsibility may lie not solely at the personal level but at the organizational level. Moreover, international legal obligations, including the **United Nations Convention against Corruption (2003)**, require states to introduce effective sanctions against legal entities.

In order to establish the criminal liability of legal entities, the following measures must first be undertaken:

reconsideration of the **fundamental foundations of criminal law** (such as guilt and punishment);

development of the concept of a **new subject of crime — the legal entity**;

elaboration of **new legal mechanisms**, including forms of guilt (corporate fault, organizational responsibility) and types of sanctions (fines, suspension of activities, liquidation);

scholarly examination of **procedural innovations** in criminal proceedings, such as establishing grounds for appointing a legal representative to protect the interests of a legal entity.

Below, an attempt is made to illustrate the possible **advantages and disadvantages** of establishing the criminal liability of legal entities in the form of the following table:

Advantages and disadvantages of establishing criminal liability for legal entities	
Advantages	**Disadvantages**
Prevention of corporate risks – strengthens compliance institutions and internal control mechanisms within organizations.	**Personal nature of criminal law** – legal entities lack subjective elements such as guilt, intent, and free will.
Enhancement of public safety – may serve as an effective measure against crimes committed under the influence of large companies, particularly transnational corporations.	**Risk of shifting guilt from individuals to the organization** – in some cases, the likelihood increases that the actual offender may evade responsibility.
Improvement of international trust and investment climate – legal stability creates a more reliable environment for foreign investors.	**Over-punishment and double liability** – when a legal entity is held criminally liable, negative consequences often affect shareholders, employees, and customers; moreover, culpable employees are prosecuted separately, resulting in de facto double punishment for the corporation.
Reduction of violations by large corporations – the existence of criminal liability encourages greater caution in corporate decision-making processes.	**Punishment does not necessarily prevent crime** – imposing large fines or financial sanctions on legal entities is often ineffective in crime prevention and tends to harm ordinary shareholders and employees rather than senior management or the actual offenders.

We believe that the issue of criminal liability for legal entities (their ability to be subjects of crime) should be the object of separate research.

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