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New Developments on Liability of Legal Entities for Criminal Acts in Bulgaria

Legal entities cannot commit crimes under Bulgarian law; crimes can only be committed by individuals.

Nevertheless, the Bulgarian Administrative Offences and Penalties Act ("AOPA") contains provisions which allow the **imposition of administrative penalties on legal entities (in practice, fines) for certain crimes committed by individuals connected to the respective entity in a specific way.**

The list of **crimes covered by the said provisions is sufficiently long** and it includes, among others, tax evasion, fraud, crimes against intellectual property, embezzlement, blackmailing, hiring of illicit foreign workers, customs offences, money laundering, and any crime committed upon an instruction or in implementation of a decision of an organized crime group.

The essential conditions for the liability of legal entities to occur are:

- the **existence of a certain link between the perpetrator of the crime and the respective entity**

Legal entities could be held liable if the perpetrator is a person having the power to bind the legal entity or is a representative, a member of a statutory body or an employee to whom the legal entity has assigned a particular task, where the crime was committed in the exercise of or in connection with that task.

- the **respective entity should have been enriched, or could be enriched, as a result of the crime**

The liability of legal entities may **reach up to BGN 1,000,000 (roughly EUR 512,000) but in any event cannot be lower than the value of the pecuniary advantage for the legal entity**. Not only Bulgarian legal entities are exposed to such sanctions but also any foreign legal entity provided the relevant crime has been committed on the territory of Bulgaria.

The imposition of a penalty requires the observance of a specific procedure laid down in the AOPA. As a first step, the prosecution is supposed to file a proposal to this end to the competent court. The case is then heard with the participation of the threatened entity and the court must ascertain if the legal entity has received an illicit benefit/advantage, what the type and value of such benefit is and whether there is a link between the benefit and the crime committed. The decision of the court is subject to appeal. The decision of the court of appeal is final.

What is interesting is that until 2015 the law required that a judicial decision convicting the perpetrator (or a decision with a similar effect on the existence of a crime) became final before a penalty could be imposed on a legal entity under the regime described. The AOPA was then amended and ever since it allows the sanctioning of legal entities even without a final court decision in place establishing the fact of the crime.

The matter has recently been brought to the attention of the Court of Justice of the European Union ("CJEU") in case C - 203/2021 initiated upon a reference for a preliminary ruling from the Regional Court of Burgas which raised its doubts as to the compatibility with EU law of the amended procedure under the AOPA.

In its ruling of 10 November 2022, the CJEU analysed the local provisions in light of the Charter of Fundamental Rights of the European Union ("the Charter") and the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR").

In brief, **referring to the principles of legality of criminal offences and penalties, the presumption of innocence and the right of defence, the CJEU has concluded that the regime discussed contradicts EU law** as it infringes in a manifestly disproportionate manner the said principles given the fact that the relevant Bulgarian court called upon to impose a penalty on a legal entity (in a system considered by the CJEU criminal in nature) is empowered only to rule on certain specific factors, without being able to assess the existence of the offence on which such a penalty may be based.

And the CJEU considered that this conclusion cannot be called into question by the fact that the legal entity concerned is entitled to appeal the court of first instance decision or to apply for the proceedings to be reopened with a view to having the financial penalty imposed on it discharged, inter alia where the relevant individual has later been exonerated from the charges brought against him/her.

The particular ruling of the CJEU has **direct implications for the respective local case in Burgas and in broader terms for cases of legal entities benefitting from crimes related to implementation of EU law** (evasion of VAT is a typical example) where the interpretation of the Charter given by the CJEU is relevant in the strict sense.

While, the case in Burgas concerns a situation with pending criminal proceedings against the manager of the legal entity concerned, it's highly questionable that the AOPA may be applied as it stands also to other situations where no crime has been established with a final court act, e.g., liability of a legal entity where the perpetrator has died or criminal proceedings have not been opened due to a time bar.

Furthermore, the ECHR contains the very same principles referred to by the CJEU (actually the ECHR inspires and defines legally their meaning and scope in the Charter). Even though, we are not aware of a decision of the European Court of Human Rights related to these provisions of the AOPA, one could hardly imagine any different interpretation on the basis of the ECHR and the current setup of the AOPA should also be seen as contradictory to the ECHR. Thus, the **effects of the CJEU ruling should be seen as spilling over to any other crime covered by the AOPA** and not limited only to those related to implementation of EU law.

Overall, the **CJEU ruling will have a substantial impact. On one hand, it will be a solid defence tool in pending procedures under the AOPA, and on the other hand it would most probably result in the avoidance of new cases for the imposition of penalties on legal entities where there is not a court act in force establishing a criminal offence**.

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This article was prepared by Plamen Peev, Partner and Director of PETERKA & PARTNERS for Bulgaria.