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THE CRIMINALISATION PROBLEMS IN FINANCE AND BUSINESS ORDER IN LITHUANIAN LAW

Giedrius NEMEIKŠIS
Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
Kazimieras Simonavičius University
Dariaus ir Girėno str. 21, LT 02189, Vilnius, Lithuania
E-mail: giedrius.nemeiksis@yahoo.com
ORCID ID: *0000-0003-3900-2559*

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Abstract. *The current wording of the 97th Lithuanian Criminal Law still has not solved significant problems related to a clearer definition of the limits of criminal liability in relation to administrative liability. The huge scale of business activities till the pandemic situation and especially present difficult situation regarding the long-term economic downturn because of the post-pandemic situation and military actions in Ukraine – all this naturally increase the risk of possible crime in finance and business order in order to survive this difficult situation. This grounds the topicality of this theme and necessity to re-examination of significant Lithuanian legal regulation. Therefore, the purpose of the research is to analyse the issues of the relationship between criminal and administrative responsibilities in the field of finance and business order and its application in Lithuanian case-law. So, the tasks of the research are based on three main area of this analysis, i.e. criminal and administrative responsibilities for illegal economic activity, fraudulent and negligent accounting, and for violating the procedure for submitting financial documents and data to institutions, according to legal regulation and case-law of the Court of Cassation. The article uses basic research methods such as document analysis, systematic analysis, comparative analysis, the deduction analysis and generalization methods. The analysis of this article substantiated the incompleteness of Lithuanian legal regulation on these questions, as the problems seen in the case-law of the Court of Cassation clearly require a substantial adjustment of the criteria for delimitation of criminal and administrative liabilities, i.e. legal regulation of criminal liability for unauthorised engagement in economic, commercial, financial or professional activities requires a serious consideration of the waiver of feature "the form of a business", as well as the criminal liability for fraudulent and negligent management of accounts needs the establishment of a specific criterion defined in monetary terms, meanwhile the criminal liability for violation of the procedure for submission of financial documents and data to state institutions requires the increase of inadequately low the amounts of minimum standard of living.*

Keywords: *financial crimes, criminal liability, administrative liability, crimes against business*

Introduction

Administrative liability and criminal liability often compete with each other, however, the principle of *ultima ratio* in criminal liability obliges entities to apply this liability, which provides for the most restrictive measures on human rights, with the utmost responsibility. However, the current 97th edition of the Lithuanian criminal law has not substantially resolved all the significant problems related to a clearer definition of the limits of criminal liability in relation to administrative liability during the entire twenty years of its existence. By failing to formulate clear criteria for dealing with different responsibilities, the legislature has left everything to the prerogatives of the courts, which seek solutions to these problems by applying abstract rules of law, and the solutions they propose are often complex and overly confusing, especially for lower courts. However, such a mission entrusted to the courts is a clear distortion of the constitutional purpose of the courts, i.e. to apply the law rather than finish defining it, all the more so when it comes to applying the strictest legal liability. As a result, this study seeks to reassess some of the sensitive and hitherto unresolved issues of the delimitation of administrative and criminal liability in the areas of financial and business order. These areas

are significant in that the number of legal entities registered according to official data of the State Enterprise Centre of Registers (2022) has more than halved in twenty years and continues to grow steadily, and in 2020-2021, although the turnover of companies decreased due to the pandemic situation, it still amounted to 99.9 billion EUR (Business in Lithuania, 2021). Moreover, there is a difficult present situation regarding the long-term economic downturn because of the post-pandemic situation and military actions in Ukraine, which has affected negatively all economic indicators and especially considering the inflation, that reached 22 precent in Lithuania on October, 2022. Such huge scale of activity and difficult economic situation naturally increase the risk of crime in the areas of finance and business order in order to survive these difficult times. So, these grounds the topicality of criminalisation process in these areas and a necessity to re-examination of significant Lithuanian legal regulation in order to bring it into line. On this basis, and given the limited scope of this study, this paper aims to assess the problems identified in the case-law only in relation to three criminal offenses of illegal economic activity, fraudulent and negligent accounting, and violations of the procedure for submitting financial documents and data to public authorities. It is precisely because of these offenses that clear criteria for the delimitation of criminal and administrative liability and a coherent system of legal liability are most lacking today. Moreover, there is a lack of scientific research on this issue and only a several researchers have examined this topic in some specific aspects, such as G. Kuncevičius (2007), O. Fedosiuk (2013).

The object of the research – regulation of criminal and administrative liability for violations of the law in the field of finance and business order and its application in case-law.

The aim of the research – to analyse the peculiarities and problems of the regulation of criminal and administrative liability for violations of the law in the fields of finance and business order and its application in case-law.

The tasks of the research:

1) to analyse the issues of regulation of criminal and administrative liability for illegal pursuit of economic, commercial, financial or professional activities and its application in case-law;

2) to examine the issues of regulation of criminal and administrative liability for fraudulent and negligent accounting and its application in case-law;

3) to analyse the issues of regulation of criminal and administrative liability for violation of the procedure for submission of financial documents and data to state institutions and its application in case-law.

Methodology of the research: depending on the topic, goals and objectives of the scientific article, the following research methods are used: the document analysis method is used in detailing the analysed issues in legal regulation and case law; the systematic analysis and comparative analysis methods are used when comparing legal provisions and case law; the deduction analysis method made it possible to define specific problems arising in legal practice from the general requirements, while the generalization method helps to systematize the entire analysis and to provide structured conclusions.

Abbreviations in the research:

1. the Criminal Code – the Criminal Code of the Republic of Lithuania;
2. the Administrative Code – the Code of Administrative Offences of the Republic of Lithuania;
3. the Court of Cassation – the Supreme Court of Lithuania, Criminal division;
4. the MSL – the amounts of minimum standard of living.

The application of criminal liability and administrative liability for unauthorised engagement in economic, commercial, financial or professional activities

Lithuanian tax laws oblige subjects to register as taxpayers, to cooperate with the tax administration institutions and to fulfil the tax obligations, so in case of ignoring of these obligations the tax administrator loses control the taxpayers and this could damage the state's financial interests. As a result, the unauthorised (illegal) economic activities are criminalized, but they may differ in their danger nature considering their possible damages to state-regulated economic, commercial, financial order, so there are criminal and administrative liabilities for that.

The illegal engagement in economic activities is criminalized under Paragraph 1 of Article 202 of the Criminal Code while the administrative responsibility for that is established in Paragraphs 1 and 5 of Article 127 of the Administrative Code. After analysing of dispositions of these legal norms, it can be seen that the illegal acts are formulated similarly in both norms, i.e. the illegality of engagement in commercial, economic, financial or professional activities is related with such activities without a license or in any other illegal manner. Meanwhile, the distinction between criminal liability and administrative liability for these illegal activities is formulated in a less informative way, i.e., from a linguistic point of view Article 202 of the Criminal Code and Article 127 of the Administrative Code are distinguished by evaluative type and alternative features "the form of a business" and "on a large scale" provided in the Criminal Code. So, in order to have a better understanding of this distinction between different liabilities, the content of these both features need to be analysed in detail.

Because both entrepreneurial and large-scale criteria are not directly defined in criminal law, it is considered that the legislator, in view of the fact that criminal liability is perceived as an *ultima ratio* measure, has defined the criterion of "large scale" negatively, i.e. provided that this concept was to be followed by all cases where the turnover exceeded the ceiling laid down by administrative law. A systematic comparison of the provisions of the commented norms shows that this limit is linked to 500 MSL. The other criterion of "entrepreneurship" is not defined in the criminal law, thus, the legislature left the interpretation of this concept to the case-law. In case No. 2K-148/2015 the Court of Cassation defines the term "undertook an activity" established in Article 202 of the Criminal Code as the permanence of an activity and its permanent nature, especially as additional assessment criteria are indicated: the nature of the income from these activities (must be the main or ancillary source of livelihood) and may include other indications of how to carry out the preparatory work for organizing and carrying out illegal commercial or other activities, acquiring and possessing appropriate activities, managing these activities, etc. It should be noted that the case-law of the Court of Cassation does not contain an exhaustive list of circumstances, so as it was set in criminal case No. 2K-130-976/2018 the concept of entrepreneurship and must be reassessed each time in the case. This means that the same circumstances that shape entrepreneurship in one case will not necessarily be sufficient to justify it in another. Given that the characteristic of entrepreneurship is indefinite, the case-law takes the view that this characteristic must be applied very responsibly and only if the court has an internal conviction that this characteristic actually exists in a particular case. This is perfectly illustrated in criminal case No. 2K-515/2014, where the entrepreneurship of the illegal activity was based by the lower courts on the fact that the person had carried out preparatory actions and had established a system for issuing loans, which, at first sight, was in line with the Court of Cassation's previous interpretations in criminal case No. 2K-7-58/2013, that the carrying out of certain preparatory work for an illegal commercial

or other activity may constitute evidence of the entrepreneurial nature of such activity. However, in the present case, the Court of Cassation criticized the application of the entrepreneurial criterion, since criminal liability for illegal economic activity could only be imposed if the court was satisfied that the activity was genuinely dangerous, which the Court of Cassation did not consider in the present case. It should be noted that the subsequent case-law of the Court of Cassation has somewhat supplemented these interpretations, stating in criminal case No. 2K-262-697/2016 that the continuity and systematic nature of the activity alone are not sufficient, as these criteria are inherently inherent in an analogous administrative infringement and therefore do not play an identification role. Such a position has made it even more difficult to define the scope of the criminal liability in question, since certain relevant assessment criteria identified in the case-law become even more conditional, which must be assessed in the light of other circumstances which are not clearly defined.

Before analysing the individual characteristics of entrepreneurship and their interpretation, the significance of the determination of a large-scale characteristic in the application of the entrepreneurial characteristic should be assessed. It should be noted that in the case law of the Court of Cassation, e.g., criminal case No. 2K-303-507/2016 the scope of activities is quite clearly defined and is related to the developed infrastructure of illegal business, extensive relations with suppliers, active search for users, availability of employees, high organizational effort to conduct business, etc. It should be noted that in case-law (e.g. criminal cases No. 2K-240-696/2015, No. 2K-262-697/2016 etc.), the nature of the act itself may lead to a greater scale, i.e. activities with a complex infrastructure, scope, specific management, or activities involving complex and responsible economic operations requiring time and some professionalism. Meanwhile, the sign of entrepreneurship, as mentioned, is an alternative and independent qualifying sign, however, some of their links can also be seen in case-law, for example, when in criminal case no. 2K-515/2014, the Court of Cassation expressly stated its opposition to the case-law of artificially criminalizing small-scale illegal economic activities on the grounds of entrepreneurship. As a result, it seems at first sight that the application of the entrepreneurial criterion without the “large-scale” feature is not acceptable, however, its subsequent case-law, especially criminal case No. 2K-7-176-3-3/2015, shows a fairly clear position of the Court of Cassation that criminal liability is possible even in the absence of a large-scale feature, but in the presence of a clear entrepreneurial feature. In the light of these interpretations by the Court of Cassation and a comparison with the previous practice, it can be concluded that the application of criminal liability where the scale of the activity, which is not linked solely to the scale of the law, is not sufficient to conclude that the activity is more dangerous.

Returning to the features of the concept of entrepreneurship and the disclosure of its content, it should be noted that the first feature, the duration and permanent nature of the activity, is a necessary but not sufficient feature to justify entrepreneurship. The case-law does not distinguish between the long and short duration of an activity, which testifies to the permanent nature and intensity of the activity, for example, in one case No. 2K-303-507/2016, in the opinion of the Court of Cassation, the duration of one year is not relatively long. Meanwhile in another case No. 2K-347-696/2015 - recognized a period of less than 2 years as quite a long time. It is also noted that even a very long period of activity, when it is lacking in its stability and permanence, is not sufficient to justify entrepreneurship, for example, in one case No. 2K-27-689/2018 the Court of Cassation refused to apply criminal liability on the grounds that although the activity had been carried out for 8 years, it did not have sufficient intensity and stability. It should also be noted that the feature of basic or additional income is

equally important, which is quite logical, considering that the very idea of any activity is to receive income or other financial benefits. In view of this, the court must in all cases make sure that this feature is satisfied. Although examples can be found in the case law, in the procedural decisions of the Court of Cassation in criminal cases No. 2K-347-696/2015 and No. 2K-165-976/2018, when the income from illegal activities was the main and only source of personal income, however, in some cases the proceeds of crime are not the only source of income. So, the court basically assesses the percentage of the proceeds of crime, for example, in one of its case No. 2K-262-697/2016, the Court of Cassation ruled that the proceeds of crime should be classified as additional income, however, they accounted for about 58 percent of the revenue received each year, which accounted for a significant amount of revenue received. This naturally leads to even more uncertainty, where is a threshold at which such additional income will no longer constitute a "significant amount of the income received". Furthermore, the conclusion that certain income constituted a person's main or additional regular income is not always reasoned by the courts, such as in case No. 2K-455-693/2016 the Court of Cassation criticized the lower courts for failing to assess what income a person could have received or received from a criminal offense, because in the absence of such data - the person's actions could not be criminalized. Thus, the case-law of the Court of Cassation, as mentioned above, takes the view that the first two characteristics (continuity and permanence of activity, nature of income, main or secondary source of livelihood) must be determined on a case-by-case basis, and the characteristics of the third category do not have an exhaustive list and are generally described in the case-law as indicating a higher risk of an act. Given that only those features, in principle, make it possible to distinguish between criminal and administrative liability, the case-law especially in criminal cases No. 2K-262-697/2016 or No. 2K-7-102-222/2018, takes the view that at least one such additional feature must be identified and, in the absence of such a feature, administrative rather than criminal liability should apply.

In summary, criminal and administrative liability for illegal economic activity is limited to the criteria of "large-scale" and "entrepreneurial", which are not directly defined in the criminal law, and the interpretation of their content is left to the case-law. However, an analysis of the case-law reveals that the characteristic of entrepreneurship provided for in the Criminal Law is not informatively defined and is interpreted as a non-exhaustive list of circumstances, therefore, in order to establish that characteristic in an act on a case-by-case basis, it is necessary to establish the circumstances which indicate the seriousness of that act in comparison with the administrative offense. Unfortunately, the finding of this qualifying feature is essentially based only on the court's internal conviction that the activity is "more dangerous". In this way, relatively wide limits are formed by the courts to subjectively interpret the content of the term "more dangerous" and allow for an unjustifiably extended application of criminal liability, especially considering that the case-law of the Court of Cassation constantly needs to correct procedural decisions of lower courts. Such circumstances should not be inherent in criminal law, which, as the strictest form of legal liability, must be characterized by objectivity. Therefore, in the light of that, the complex case law, there is a sufficient basis for considering the abandonment of the characteristic "entrepreneurship" character.

Application of criminal and administrative liability for fraudulent and negligent accounting

In the following, it is appropriate to take a broader look at the issue of the application of criminal and administrative liability in the financial field, in order to delimit this liability for

irregularities related to fraudulent and negligent accounting practices. Comparing the concepts of fraudulent and negligent accounting in Articles 222 and 223 of the Criminal Code with the provisions of Article 205 of the Administrative Code, it can be seen that these concepts do not acquire any distinctive features in comparison. Nor does the case law indicate that these acts could manifest themselves in any other way in the context of the Administrative Code, which would indicate their lower danger compared to the above-mentioned norms of the Criminal Code. The only delimitation of these acts is the legal consequences, i.e. all the alternative acts listed in Articles 222 and 223 of the Criminal Code are of a material nature, therefore criminal liability on the basis of these norms arises only if it has been established that the performed acts have had certain consequences – "The size and structure of a person's activities, assets, equity or liabilities cannot be determined in whole or in Para". It should be noted that the law formulates the latter consequences as alternatives, so it is sufficient to establish at least one of them in order for a person to be prosecuted, according to the Court of Cassation in criminal case No. 2K-7-176-3-3/2015. Meanwhile, Article 205 of the Administrative Code does not provide for the same consequences and here the consequences are only related to non-payment or evasion of taxes. The Court of Cassation also emphasizes the consequences as a criterion for delimitation in criminal and administrative competition matters, e.g. criminal cases No. 2K-144-788/2017 or No. 2K-11-648/2018 etc. Thus, given that the legislature defined fraudulent and negligent accounting practices in a similar way in both criminal and administrative offenses law, it is the criterion of consequences that must be regarded as a "cornerstone" in determining whether administrative or criminal liability is to be applied. The doctrine of law also states that in the law of administrative offenses, fraudulent and negligent accounting is formed exclusively as a way of tax evasion (concealment), whereas, in the meantime, Articles 222 and 223 of the Criminal Code provide for consequences of a broader content, which are not necessarily related to tax evasion (concealment) (Fedosiuk, 2013). In this respect, however, it is debatable whether these "wider consequences" do not, in principle, allow courts to criminalize less dangerous acts by distorting the application of the *ultima ratio* principle.

In the case-law of the Court of Cassation, i.e. in criminal case No. 2K-245-303/2017 the wording "The size and structure of a person's activities, assets, equity or liabilities cannot be determined in whole or in part" means not the abstract inability to identify such information, but the total or partial inability to do so on the basis of documents provided and held by the entity. Therefore, according to the Court of Cassation, in cases where this can only be done through cross-checks, pre-trial investigation, etc., the consequences mentioned in the criminal law are considered to have occurred. It should be noted that according to the above-mentioned wording of the norm, it is sufficient to conclude that at least Paragraph of the structure cannot be determined and no matter what indicator (assets, capital or liabilities) it is related to, which means that making at least one incorrect entry can in principle lead to criminal liability. In this context, there are examples of case law where the proportionality of criminal liability is in dispute, e. g. in criminal case No. 2K-159/2014 the Court of Cassation has considered the issue of criminalizing the one-off exclusion of income received from the accounts and concluded that, given the insufficient seriousness of such an act, the issue of administrative liability may be considered. The Court of Cassation also took a similar position in another case No. 2K-245-303/2017 where the issue of failure to submit one cash receipt order to the accounts was considered, although the expert's report directly stated the consequences of the criminal act. Meanwhile, in the case-law of lower courts, including the latter case, the norm provided for in Article 222 of the Criminal Code is formally observed and this offense is incriminated when the consequences provided for in this article are established. However, at present there is a clear

tendency developed by the Court of Cassation to tighten the interpretation of Articles 222 and 223 of the Criminal Code, e. g. in criminal case No. 2K-277-696/2017 the Court of Cassation has stated that in order to accuse the consequences provided for in these Articles, it is not sufficient to establish a single violation, however, "many" irregularities need to be identified, and the court explains this concept as a several or a dozen of accounting transactions. This may be due to the fact that this type of act is not committed through individual acts, which are episodes of such activity, but through a system of acts, according to the Court of Cassation position in criminal cases No. 2K-26-788/2017, No. 2K-245-303/2017. Although a stricter approach to these crimes is being developed as a continuing criminal offense, it makes it possible to apply criminal liability more responsibly, but at the same time this position makes it difficult to draw the line between the different types of liability. On the other hand, although the case-law developed by the courts restricts the ability of lower courts to interpret these legal consequences too broadly, such a situation is not acceptable when the boundaries of a criminal offense are substantially narrowed or widened by a court, especially when applying the strictest liability. Moreover, even the rules formed by the case-law can be interpreted very subjectively, because in one case the court may consider the same number of violations as sufficient to establish that the consequences established by the criminal law have occurred, in other cases, on the contrary, such violations cannot be classified as causing the consequences provided for in Articles 222 and 223 of the Criminal Code.

In addition, the case-law of the Court of Cassation states that the impossibility of determining the size and structure of an undertaking's activities, assets, equity or liabilities must be real. For example, in one case like in criminal case No. 2K-356-696/2017 the Court of Cassation ruled that the structure of assets and liabilities had been distorted because the falsification of a cash expense order had a negative effect on determining only the actual cash flow, but the transaction itself was recorded. In another case, like in criminal case No. 2K-26-788/2017 the Court of Cassation noted that all records of cancelled transactions remained in the cash register program, therefore, from the court's point of view, the main parameters of the company's activity, assets, equity or liabilities or the structure of the amount of unpaid taxes could also be calculated. It is these examples of case-law that unequivocally substantiate that the current definition of the consequences of Articles 222 and 223 of the Criminal Code is too abstract and creates preconditions for criminalizing less serious acts in comparison with an administrative offense.

Another related problem – the precise definition of the limits of criminal liability in question. It should be noted that Paragraphs 5 and 7 of Article 205 of the Administrative Code only provides for a lower limit of administrative liability under these parts - 50 MSL, which means, in principle that all acts, even in excess of that threshold, may fall within the scope of both administrative law and criminal law. The conclusion regarding the consequences of criminal law, as mentioned above, can be made only after the court has additionally assessed whether the actions of a person cause the consequences provided for in the criminal law. In this context, it is considered appropriate to amend the existing regulation focussing on the seriousness of the offenses and the resolution of criminal and administrative liability competition issues. Given that the consequences of Paragraph 7 of Article 205 of the Administrative Code are defined only by providing for a lower limit, it is appropriate to consider the question of setting an upper limit from which criminal liability could be imposed. The rates provided for in Paragraph 5 of Article 205 of the Administrative Code and Articles 222 and 223 of the Criminal Code should be adjusted accordingly, instead of abstract legal consequences enshrined in the criminal law, by introducing a new criterion of criminal liability, which would

be related to the amount of hidden taxes exceeding the upper limit set by the Administrative Code. Such a position can also be found in legal literature, noting that the criterion of criminality in question should not be linked to the criterion of establishing fairness in accounting, which lacks clarity and objectivity, and since these acts are criminal offenses in the financial system, the consequences of such acts should be linked to a reduction in the tax burden (Fedosiuk, 2013). Therefore, it is considered that a specific criterion defined in monetary terms would prevent an expanding interpretation of Articles 222 and 223 of the Criminal Code, and would resolve the issues of delimitation of criminal and administrative liability. Although such a solution would be quite effective, the question of the expression of a specific threshold definition, which would be related to the level of hidden taxes, remains open to discussion. In this case, it can only be pointed out that the legislature has also included specific monetary criteria in the definition of the limits of criminal liability in the case of other criminal offenses classified as criminal offenses in the financial system. The relevant provisions of Article 219 or Article 220 of the Criminal Code, which link the minimum level of criminal liability for non-payment of taxes and the submission of incorrect financial data to the avoidance of taxes in the amount exceeding 100 MSL, are relevant. Whereas, as already mentioned, it is expedient to define the boundaries of the acts defined in Articles 222 and 223 of the Criminal Code by using a specific criterion, which would be related to the amount of hidden taxes, and the position of the legislator expressed in Article 219 or Article 220 of the Criminal Code regarding the criminalization of tax law violations would be an important basis for consideration of the transfer of such a criterion and for criminal offenses related to improper accounting. However, it is not possible to elaborate precisely on the solution to this issue, as such a final decision can only be taken by the legislator, however, what is unequivocally clear is that the issue of the delimitation of criminal and administrative liability must be addressed in a more rational way, using specific criteria, so as not to unduly extend the scope of criminal liability.

Application of criminal and administrative liability for violation of the procedure for submission of financial documents and data to state institutions

It is further appropriate to focus the analysis on the provisions of the so-called tax fraud legislation, which also show the problems that arise in practice. First of all, it should be started from the fact that for a long time the criminal liability of Article 220 of the Criminal Code for submitting incorrect data on income, profit or property to state authorized institutions has been linked regardless of the amounts of taxes sought to be avoided, and subsequently, amendments to the criminal law introduced a criterion for the application of criminal liability for the purpose of avoiding (concealing) taxes in the amount of more than 10 MSL. Meanwhile, in Paragraph 1 of Article 221 of the Criminal Code, the threshold for the occurrence of criminal liability for failure to submit declarations, reports or other documents is established when the aim is to avoid (conceal) taxes in the amount of 500 MSL. Thus, despite the fact that the norms established in Articles 220 and 221 of the Criminal Code criminalize tax evasion, however, as can be seen from the previous regulation, the disproportion of these norms in determining the threshold for the occurrence of criminal liability was obvious, thus giving these relative norms a different danger. In the current criminal law, the amendments to Articles 220 and 221 of the Criminal Code have abolished these disproportions, i.e. the provisions of Articles 220 and 221 of the Criminal Code were last amended by the Law of Amending Articles 220 and 221 No. XIII-791 of the Criminal Code of the Republic of Lithuania adopted on November 21st, 2017, by which, the limits of criminal liability provided for in these two articles have been harmonized, linking

it to the clearly defined criterion of 100 MSL. Thus, criminal liability no longer depends on whether known data are entered in tax returns, certified statements or other documents in order to conceal taxes, and such data are provided to the authorities authorized by the State, or such data are not provided in order to conceal information about income, profits, assets or their use. In view of the current legal regulation, it can be stated that the amendments to the Criminal Law of 21 November 21st, 2017 were a rational step in establishing and enshrining a uniform criterion for the application of criminal liability, if the aim was to avoid taxes in the amount of more than 100 MSL. At the same time, it should be noted that the liability for the submission or failure to submit data on income, profits, assets or their use to the authorities authorized by the State is also provided for in Article 187 of the Administrative Code, which provisions, taking into account the amendments to Articles 220 and 221 of the Criminal Code on November 21st, 2017, were also adjusted and harmonized with the Criminal Law. Thus, a comparison of the dispositions of all these three articles of the law allows to conclude that the dividing line between criminal and administrative liability for similar acts is the amounts of taxes to be avoided (concealed). However, although the existing legal framework establishes and harmonises the criterion by linking it to a specific monetary amount, which has made it possible to clearly define the limits of tax fraud and has solved the significant problem of delimiting criminal and administrative liability, however, the criterion of 100 MSL, which limits these limits of liability, remains a matter of debate, the basis for which is dictated by the needs of the actual practice of applying this liability.

In particular, it is necessary to start with the fact that the specificity of tax evasion is characterized by the fact that it is usually a continuous criminal offense, and the amounts of hidden taxes are determined and calculated for the longer period during which no taxes were paid (Fedosiuk, 2013). It should be noted that the criteria for the application of criminal liability established in Articles 220 and 221 of the Criminal Code in order to avoid (conceal) taxes exceeding 100 MSL (5,000 EUR) can be established with sufficient ease in a short period of time, for example, with the current minimum wage per employee in the company, it is estimated that 2 years will be enough to prevent the company from paying more than 100 MSL per employee. Meanwhile, on November 21st, 2017, when the amendments to the criminal law currently in force were adopted, this term was 3 years. There are also other economic indicators, one of the most important being inflation, i.e. according to Lithuanian Department of Statistics (2022) the change in consumer prices in November 2022, as compared to January 2017, increased by as much as 18.5 percent. This means that almost a fifth of the increase in the general price level has naturally led to an increase in the financial performance of companies and, at the same time, in the scale of corporate tax fraud. In the recent case-law of the Court of Cassation alone, there is a clear trend in tax fraud cases that the monetary amounts involved in these offenses vary from several times to several dozen times: 1) in criminal case No. 2K-106-628/2021 persons deliberately did not declare 22,553.72 EUR and another 12,984.76 EUR VAT; 2) in criminal case No. 2K-49-1073/2021 organized the entry of known incorrect data in VAT declarations and submission of these declarations to the State Tax Inspectorate, as a result of which 988,943 LTL (286,417.69 EUR) of damage was caused to the state budget of the Republic of Lithuania; 3) in criminal case No. 2K-70-719/2021, in order to avoid value added tax payable by the company in the amount of 189,149.52 EUR, the person entered known incorrect data in the company's value added tax return and submitted it to the State Tax Inspectorate; 4) in criminal case No. 2K-272-511/2020 person did not intentionally declare and did not pay a total of 264,711.73 EUR in taxes etc. All these examples in the cases of the Court of Cassation show a clear tendency that in cases related to the application of Articles 220 and

221 of the Criminal Code, the amounts of hidden taxes payable sometimes even exceed 50 times the minimum threshold from which criminal liability arises, which is natural given the changing economic indicators mentioned above. Therefore, it is reasonably doubtful that the criterion for the application of criminal liability established in Articles 200 and 221 of the Criminal Code, which is related to the amount of 100 MSL, correlates with the real situation in criminal cases and the country's economic situation that has changed significantly over five years. Together with the evaluation of the tendencies and frequency of increasing the size of MSL, which was last increased by the Government of the Republic of Lithuania on August 30th, 2017 by Resolution No. 707 by only 12.34 EUR, it is clear that the problems in question will not be resolved in principle. Unfortunately, such an inadequately low criterion in itself presupposes wider possibilities for prosecuting individuals, and criminalizing less and less serious offenses. This situation is inappropriate when it comes to the most severe criminal liability, therefore, in order to ensure a significant balance between administrative and criminal liability for similar acts, which was achieved five years ago with the introduction of clear criteria for the application of Articles 200 and 221 of the Criminal Code, and in order to update the scope of criminal liability, the qualifying feature is that these criminal offenses seek to avoid (conceal) the amount of taxes, expressed in terms of MSL, should be unambiguously increased.

Conclusions

The analysis of relationship between criminal liability and administrative liability for unauthorised engagement in economic, commercial, financial or professional activities has shown that “the form of a business” and “on a large scale” as alternative features set in the Criminal Code for delimiting these both responsibilities are not clearly defined in case-law that provides only the non-exhaustive list of circumstances related with that. However, analysed case-law of the Court of Cassation raises a number of difficulties related with the identification and incrimination of feature “the form of a business” and even its assessment ways identified in case-law are still conditional, leaving its assessment to the court's internal conviction, that lead to an unjustified extension of criminal liability and the artificial criminalization. Considering this and the fact that the Court of Cassation constantly has to explain to lower courts in this regard, there is a sufficient basis for consideration of the waiver of feature “the form of a business”.

The systematic analysis of case-law on criminal liability and administrative liability for fraudulent and negligent management of accounts has revealed that the necessary legal consequences of an evaluative nature in the Criminal Code are extremely abstract and uninformative. Although in analysed case-law the Court of Cassation seeks to restrict the ability to interpret these legal consequences too broadly, but such situation is unacceptable when the limits of criminal liability are adjusted or even changed by the courts because of laconic and unclear statutory regulation. So, such uncertainty of statutory regulation must be resolved in more rational way by considering the establishment of a specific criterion defined in monetary terms in the Criminal Code and combining it with other provisions of this law.

Analysing the issue of the relationship between criminal and administrative liability for violation of the procedure for submission of financial documents and data to state institutions, it was established that in this case, the criterion established in the criminal law - the amount of taxes sought to be concealed (avoided), which is linked to a specific monetary expression, provides a basis for a clearer definition of the above-mentioned limits of legal liability, however, it is clear that the criterion of the current size, which is linked to the size of 100 MSL,

no longer correlates with the actual situation in criminal proceedings and with the substantial change in the country's economic situation over the last five years, especially in view of the continuity inherent in these crimes. As such an inadequately low criterion presupposes the application of criminal liability to less and less serious offenses, the value of this criterion should be unambiguously increased in order to ensure a significant balance between administrative and criminal liability and to update the scope of criminal liability.

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