

Role of the subject in crime prevention connected to monopolic activity in the Republic of Kazakhstan

Laura Shitenovna Kopbayeva

Institute of the Law and Economy of the Abai Kazakh National University, Dostyk Str., 13, Almaty, Republic of Kazakhstan

Abstract. In the article the author addresses to the issue of criminal liability for unlawful acts against the competition. In the qualification of such acts, according to the author, a very significant role played by the correct determination of the perpetrator. The author believes that the current criminal legislation of Kazakhstan does not contain a clear definition of the perpetrator. The more difficult is to determine the perpetrator seems of monopolistic activity (Article 196 of the Criminal Code). According to the author, the issues related to the definition of the subject of crimes against competition in Western countries are successfully resolved within the institution of criminal liability of legal persons is not in the legislation of Kazakhstan, concludes that the subject under the consideration of the offense must be special.

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Introduction

Competition is primarily economic adversarial relationship in the market between business entities associated with making them competitive actions to maximize profit. These relationships can be carried out both legal and illegal ways, with the latter not only harming themselves by entrepreneurs, but also consumers and society as a whole.

Main part

As you know, the competition is an essential and indispensable attribute of a market economy. It makes economic entities in the fight for the consumer to operate more efficiently, produce better quality products, develop new technologies to raise productivity, improving the efficiency of economic activities of businesses, ultimately leading to accelerated economic development of the state. [1]

Socio-economic importance of competition recognized by the Constitution of the Republic of Kazakhstan, according to which our country is guaranteed to support the competition (including St - RK Constitution) and not allowed economic activity aimed at monopolization and unfair competition. [2]

Therefore, the subject of prevention, restriction or elimination of competition must be special as this may be a sole proprietorship, a person performing managerial functions in a commercial or other organization or official.

In the theory of criminal law institute of the perpetrator has been always paid great attention. Criminal law has not provided a clear definition of "perpetrator". In his work "The subject of the crime as a condition of criminal responsibility" A.Yalin explained that it is necessary because raises of

specific questions about the possibility of qualification activities adult offender involve a minor in the commission of a crime under Art. 196 of the Criminal Code.

Theory of criminal law and offense subject believes an individual is guilty of a socially dangerous act under criminal law, and subject to the act for criminal liability. It should be added that the subject of any crime can only be imputed to an individual over a certain age set by the criminal law.

Along with the concept of "perpetrator", there is the concept of "identity of the perpetrator." These categories are not identical. Perpetrator is an element of the offense that the qualification of a socially dangerous act. Moreover without a subject there is no transgression. Definitions of the perpetrator in the article 196 of the Criminal Code "offenses committed in economic activity" in general, and in Article 18 of the Criminal Code and to avoid restriction or elimination of competition "in particular is one of the most important and significant issues, and primarily for enforcement person.

Signs and the role of the subject in the prevention of crimes related to monopolistic activity in the Republic of Kazakhstan established by analyzing a large conglomerate normative legal acts, as defined and governed directly against the market and indirectly related to competition issues. Emphasizing determinism disposition "economic" rules and regulatory standards, " I.V. Shishko concludes that" not all the criminal law does not give the final representation of the perpetrator. «Sometimes it can be deformed signs disposition of the criminal law". [3]

Considering the problem of the subject in the prevention of crimes related to monopolistic activity

I.A. Klepitsky indicates that article 196 of the Criminal Code does not reveal signs of the perpetrator. Economic legislation this prohibition (business entities, individual entrepreneurs, commercial organizations, as well as non-profit organization engaged in income-generating activities), has a dominant position on the market. The question is what exactly should be responsible for such acts can only be through the interpretation of the law. [4]

As you know, the subject is a person committed the criminal law who made an illegal public dangerous act and able to bear criminal responsibility for it. So, what person can be held criminally responsible for the not prevention, restriction of competition, to be the subject of this crime?

First of all, it is a natural person as clearly referred to in art. 196 LC.RK. Russian criminal law resting on crime entity. Meanwhile, domestic criminal science seriously discussed the possibility of recognition of legal persons entities selected environmental crimes and crimes in the sphere of economic activity.

Thus, AV Naumov said that the involvement of legal persons to criminal responsibility will make unprofitable economic activity environmentally harmful activities for the Manufacturing of all the employees of the respective oftheorganization, not only for its owner and management personnel. He believes that the market and market relations necessitate criminal liability of corporations for economic and economic crimes. [5]

Institute criminal liability of legal persons for a long time and is widespread in Western countries [6]. In western law to date has developed several doctrines of criminal liability of legal persons. In England, for example, there are three doctrines, according to which one of the legal people shall be criminally responsible for an offense committed by an official, as a performer for the perfect employee - as a partner. [7] In Canada, the responsibility of the legal person occurs even if the individual is not found, to whom may be assigned personal responsibility [8]. In the United States, in accordance with the Act Sherman (Sherman Antitrust Act, 15 USC § 2, 2002) provides three independent structures associated with the anti-competitive activities. They are the monopolization, attempt to monopolize, monopoly collusion. In all cases, the perpetrator is a legal entity [9].

However, despite the consistent and thorough argumentation necessary corporate criminal liability, it is a point of view has not received legislative use and the applicable criminal law; subjects of the crime can only be a natural person.

But not any individual is able to be held criminally responsible. The offender may be list that a natural person who is sane and has reached the Age of criminal responsibility.

Based on the definition of insanity, formulated in Art. 196 CC, sanity is the ability to face the actual nature and social danger of the act (intellectual moment) and guide (volitional moment). In criminal law, the presumption of sanity used, whereby sane until proven otherwise.

By virtue of article 196 of the Criminal Code, a mandatory attribute of the perpetrator, in addition to sanity is to reach the age of criminal responsibility. The age of criminal responsibility, set 1 tbsp. 20 of the Criminal Code and composes 16 years. That and this time the person there is an ability to understand the social meaning and significance of his actions to see the danger of their social character.

For the definition of the categories of offenses listed in Part 2 of Art. 20 of the Criminal Code, criminal liability age less than 14 years. This applies to those offenses, public danger which is realized at 14 years of age. The law provides a list of such crimes exhaustive, and preventing, or eliminating competition of restriction as a crime under Art. 196 of the Criminal Code, this list does not appear. Accordingly, criminal responsibility for preventing, or eliminating competition of restriction may be subject to a person 16 years old [6].

It should be noted that in criminal literature was another point of view, according to which responsibility for crimes in the sphere of economic activity comes from 13 years, i.e. when a person acquires full civil capacity. But this position was critically perceived, quite justly as civil law comes from the fact that not having full capability allows you to engage in entrepreneurial activity, and vice versa, entrepreneurial activity causes receive full capacity.

Individual responsibility and achievement of the age of criminal responsibility are features common to all subjects without exception crime. But, in some cases, to bring the person to criminal liability is required to establish the presence of his other attributes. And if the prerequisite is the availability of criminal responsibility in a subject other than age and imputability, signs, we are dealing with the so-called special subject of the crime.

Special perpetrator is a person who, apart from essential characteristics of the subject (and sanity of a certain age), must also possess special additional features, limiting the possibility of involvement of other persons criminally responsible for the commission of a specific crime.

Conclusion

Analysis of the provisions of antitrust law leaves no doubt that the subject in the prevention of crimes related to monopolistic activity is special.

Corresponding Author:

Dr.Kopbayeva Laura Shitenovna

Institute of the Law and Economy of the Abai Kazakh National University. Dostyk Str.,13, Almaty, Republic of Kazakhstan, Candidate of juridical sciences, Senior teacher

References

1. Karagusova, G.D., I.I. Rogov, G.B. Samatova and R.N. Sudakova, 1996. Problems of struggle against economic crime in Kazakhstan. Alma-Ata: Zheti Zhargy, pp: 187.
2. Constitution of the Republic of Kazakhstan of 30.08.1995. Almaty, 1995.
3. Shishko, I.V., A.S. Gorelik and G.N. Hlupina, 1998. Crime in the economic sphere and against the interests of service in commercial and other organizations. Krasnoyarsk, pp: 57.
4. Klepitsky, I.A., 2005. The system of economic crimes. Moscow: Statute, pp: 485.
5. Naumov, A.V., 2000. Russian criminal law. Overview: The course lectures. Moscow, pp: 162 -163.
6. Wells, C., 2004. Corporations and Criminal Responsibility (Second Edition). Oxford: Oxford University Press.
7. Simpson, S.S., 2005. Corporate Crime, Law, and Social Control. Cambridge: Cambridge University Press.
8. Snider, L., 2004. Bad Business: Corporate Crime in Canada, Toronto: Nelson.
9. Woods, D., 2004. Hybrid Single Entitles and the Market Power Requirement for Conspiracies to Monopolize. University of Illinois Law Preview, Vol. 2004.
10. Criminal Code of the Republic of Kazakhstan. Almaty, 2010.

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