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## LEGAL REGULATION OF RESPONSIBILITY FOR PRIVATE SECTOR CORRUPTION

### *Summary*

In 2003, the Constitutional Court of the Republic of Lithuania in its case-law formulated a thesis telling that the rule of law requires the state to provide the legislator with both a right and an obligation to prohibit acts which result in injuring or endangering the interests of persons, society or the state. The international agreements ratified by the Seimas, the membership in the European Union and the Organisation for Economic Co-operation and Development as well create legal obligations relating liability for corruption in private sector for our country.

Thus, appropriate legal liability (including liability for corruption in private sector) might be only conditionally regarded as the issue of discretion of the Seimas. In case the acts in question are sufficiently harmful and (or) the criminalisation thereof is connected with the implementation of the obligations of Lithuania, their inclusion into the Criminal Code of the Republic in Lithuania and active prosecution in respect of them is the duty of the Republic of Lithuania.

The research paper aims to evaluate the regulation of liability for corruption in private sector in Lithuanian legal system. It must be noted that it examines not only the issues of criminal liability for corruption in private sector. Taking into account the fact that the standards for the application of criminal liability are particularly high (including *inter alia* the presumption of innocence), the research question was set on whether the existing legal regulation (labour law) provides possibilities to protect from employees displaying unacceptable standards of behaviour.

Legal requirements relating the legal liability for corruption in private sector are provided for in a few international and supranational legal acts, i.e. (a) Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector; (b) United Nations Convention against Corruption of 31 October 2005 (c) Council of Europe Criminal Law Convention on Corruption of 27 January 1999; (d) Additional Protocol to the Council of Europe Criminal Law Convention on Corruption of 15 May 2003; (e) Council of Europe Convention on the Manipulation of Sports Competitions of 18 September 2014 (this Convention has not entered into force yet).

Regrettably, these few international instruments are as well rather limited: for example, the Framework Decision requires criminalisation of only active and passive bribery in private sector, and the scope of application thereof fails to include not only any unilateral acts of corruption, but as well the corruption acts related to the aspiration to receive other benefit rather than remuneration, whereas the only one universal instrument of international law, the

United Nations Convention against Corruption, requires the contracting states only to consider the criminalisation of corruption in private sector rather than the criminalisation itself.

All three documents mentioning active and passive bribery in private sector (including Council of Europe Criminal Law Convention on Corruption besides the two already referred) are applied in restricted scope, i.e. only in cases when a bribe is given for acts or refraining from acting, in breach of the duties. This means that criminal liability is not applied in case the bribe is taken or even forced to give for proper performance of duties.

However, Lithuania fails to properly implement even the limited duties formulated in the mentioned documents. Although in accordance with these three mentioned documents the subject of corruption in private sector is considered to be any employee in the private sector, Article 230(3) of the Criminal Code of the Republic of Lithuania provides that criminal liability for active and passive bribery may arise only in cases when an employee holds administrative powers or is entitled to act on behalf of the legal person or other organisation, or provides public services.

As according to the Criminal Code of the Republic of Lithuania most of employees in private companies are not held “persons to be treated as public servants”; therefore, they might be held liable only for a restricted number of criminal activities – fraud, commercial espionage or disclosure of a commercial secret. Even upon the evidence of existence of dangerous acts, they may not be held liable for active and passive bribery or embezzlement. Due to the settled case-law which links the status of the “persons to be treated as public servants” with the exceptional importance of the company where they work for the public interest, even the majority of directors of companies and other persons acting on behalf of them may not be prosecuted for the mentioned acts.

A part of corruption activities of the companies connected to their relations with clients, users and partners are standard ones, another part of corruption activities differ according to the field of activities of companies. Most of corruption activities of private companies occur either in the field of supply chain (production, distribution, marketing), or the purchasing field. These usually include active and private bribery, fraud, unfair commercial activities, misleading advertising or similar activities, subject to criminal or economic sanctions. Meanwhile, in the field of provision of legal services, pharmacy, healthcare, education, etc. possible corruption activities are of specific nature, and the prevention is provided for in special laws and codes of behaviour.

Neither international, nor European Union legal acts regulate liability for corruption in labour relations, therefore, this issue is regulated only in national legislation.

The main sanctions in labour law applicable in respect of an employee for corruption activities are the suspension of the performance of the labour agreement (a provisional measure) and termination of labour contract on the initiative of the employer upon the fault of the employee (Article 58 of the Labour Code). Besides, in respect of employees who act as directors a measure of revocation may be applied, and indeed, this measure is an important one for the protection of the company from a corrupted director. As well, particular sanctions for failure to execute the duties or improper execution thereof might be established in the internal documents of a company. These may include a warning, termination of additional payments or bonuses, etc.

Due to the open list of measures applicable in labour relations, the liability for corruption activities in labour relations is broader in scope than criminal liability. On the other hand, rather short time-limits for the termination of the labour agreement on the initiative of the employer in case of fault of an employee and its weak deterrence weakens the effectiveness of this sanction. The problem of application of short time limits is not acute when the revocation of an employee is applied; however, the latter instrument is possible only in respect of heads of a legal person.