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ADMINISTRATIVE AND CRIMINAL LIABILITY IN THE CASE OF ILLEGAL EMPLOYMENT

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Annotation
In this article analyses the theoretical and practical aspects of administrative and criminal liability application in the cases of the illegal employment in Lithuania justice. The purpose of the article is to investigate specific features and attributes of the application of administrative and criminal liability and the peculiarities of liability application in the cases of the illegal employment. By using qualitative document analysis method is investigated legal doctrine, scientific literature and the newest judicial practice of the themes within. Article is written by using the summation, systematic analysis and linguistic methods, to ensure the qualified analysis of research and to provide eligible conclusions. By analyzing the Lithuanian law practice tendencies in the presented cases, it is being aimed to assess the essence of the applied responsibility and identify advantages and disadvantages of these legal regulation violations, as well as present possible proposals for their improvement.
KEY WORDS: administrative liability; criminal liability; illegal employment**.**

Introduction

Currently in Lithuania there is a rapid increase in the number of start-ups. As compared to 2011 year, the number of established small and medium-sized enterprises reaches 16000 (reviewed 2017-03-29), so it is natural that in Lithuanian justice a growth of illegal work and illegal infringement cases becomes more and more relevant. By selecting the administrative and criminal legal proceedings, it is aimed to analyze the problems of its demarcation point. The competing articles of the Code of Administrative Offences and the Criminal Code (hereinafter CAO and CC), in case of illegal work, which composition and characteristics are similar and which impart the relevant circumstances, that may lead to administrative or criminal liability. By analyzing the Lithuanian law practice, it is being aimed to assess the essence of the applied responsibility and identify advantages and disadvantages of these legal regulation violations.

The subject of the article: Administrative and criminal liability in the case of illegal employment.

The aim of the article: to investigate the application of criminal and administrative liability in illegal employment infringement cases.

The objectives of the article: to investigate specific features and attributes of the application of administrative and criminal liability and to analyze the key aspects of the criminal and administrative liability application in the illegal work infringement case.

During writing this article were used working methods: analysis of legal doctrine, an overviewing of scientific literature, analysis of regulatory legal acts, investigation of judicial practice.

The specific features and attributes of the application of administrative and criminal liability

The Supreme Court of Lithuania (hereinafter the SCL) has stated that "the application of administrative penalties is in line with the requirement of proportionality of the committed offense, when there is a right balance between the committed offense, prescribed penalty, the desired objective and means to achieve the goal. It is fair and reasonable to regard such a penalty, which application could lead to achievement of penalty goals and which, in assessing the nature, circumstances, the offender's personality, is not too strict" (SCL, Nr. 2AT-73-2014). It should be noted that criminal liability is applied as an extreme measure (ultima ratio) (SCL, Nr. 2K-262/2011). The purpose of criminal liability is to defend legitimate interests and protected values of the society in those cases, where less restrictive means are not effective. According to the court decisions, it can be said that the purpose of criminal law and general law principles established in Lithuanian legal democratic state jurisprudence, imply that formation of legal practice is not possible, when the norms of the criminal law are applicable to the offenses reglamented by other legal responsibility norms (administrative, civil). It should be noted that the Constitutional Court of the Republic of Lithuania (hereinafter CCRL), that investigated the compliance of some provisions of administrative offences code with the Constitution, stated, that the Constitutional principle *non bis in idem,* means that if a person for acounter-law action was brought to administrative, rather than criminal justice, and received a penalty for an administrative offense, one cannot be prosecuted in criminal terms (Baltusis, 2013). Based on this statement, it should be concluded, that delimitation of the

administrative and criminal liability issue is very important, because once the person is punished by applying administrative or criminal liability type, in case of a mistake, the re-prosecution for a particular liability or requalification for the same offense is not possible. In order to find out similarities and differences of the applied administrative and criminal liability in case of illegal employment, it is necessary to review the legal doctrine, explore the norms, governing the aspects of liability application. And then distinguish the features defining the administrative or criminal liability segregation, as well as state the main criteria describing that, legal liability form must be applied for law offense. A review of legal doctrine, based on the insights of the scientists (Petkevičius, Drakšas, Abramavicius, Andriuškevičius Petkevičius, Fedosiuk) present the following key administrative and criminal liability features, separating these proceedings:

-an administrative liability applies for guilty persons who have committed administrative offenses, in order to ensure the legitimacy as well as law and order, in its turn criminal - condemnation of a dangerous criminal offense and a perpetrator, even if not officially declared guilty, on behalf of the state;

-the constituent elements of the infringement of administrative responsibility: object of infringement (stored values), objective side (the act, a causal connection between the conduct and consequences of a crime, scene, method, tools, equipment), the subject (offender);

-subjective side (guilt, motive, aim); the constituent elements of the infringement of criminal responsibility: object of infringement (stored values), objective side (the act, a causal connection between the conduct and consequences of a crime, scene, method, tools, equipment), the subject (offender);

-subjective side (guilt, motive, aim). The analysis of administrative and criminal responsibility definitions leads to the conclusion that, administrative responsibility arises due to person`s committed the administrative offense, guilt. Criminal responsibility is a criminal offense committed by a person whose guilt has to be proven, whereas according to the Constitution of the Republic of Lithuanian, Article 31 (Legislative register 2014, Nr. 220-0), a person is considered innocent until proven guilty. Based on these considerations, it can be said that, a crucial difference of administrative and criminal liability is a feature, indicating that the administrative liability arises when the guilt, which should be argued by the prosecuted entity, is proven. However, a guilt of the prosecuted person being accused of criminal offense is argued during the trial, after a person is accused of committing a criminal offense and his guilt has to be proven. The comparative examination of the constituent elements of administrative and criminal liability infringement reveals the following noticeable signs of similarity of responsibilities. In order to state the fact that administrative law standards were violated and bring the offender to justice, it is necessary to objectively determine the existence of the infringement evidence and underlying features of the administrative offense, without their presence, in accordance with the provisions of law doctrine, administrative liability cannot be applied. The determination of these signs as a whole, called the composition of criminal offenses, allows to determine whether a crime has been committed. Criminal liability offense features describe the essence of the crime, its nature, severity, separate one crime instance from the other. In the absence of these signs as a whole, criminal liability does not apply. It should be noted that the composition of the offense is not identified with the rule of law. According to Paulius Veršekis (2012, 82 tome), composition to be regarded as a description of criminal offense features, while the norm includes subject`s prohibited behavior, responsibility and reasons for the behavior. Also, it should be noted that in the legal doctrine the causal link between the occurrence of consequences and the committed act is not ignored, therefore in order to bring the person to administrative or criminal prosecution it is necessary to determine the facts showing the cause-effect relationship. Obviously, there is clearly highlighted the necessity to ascertain the fact of a guilt. Vitalij Papijanc (2008, 95-102) in his scientific work has stated that there is no need to prove a guilt, if dishonest actions, which negate the presumption of bad faith, are proved. On the basis of this statement, it should be concluded that having proven an illegal, contrary to the law, implementation of the act, it is presumed that the subject who performed the act is guilty and the proof of guilt is not necessary.

After having analyzed articles on illegal work, provided in administrative and criminal legal proceedings, it can be noted that composition of the disposition norm and some of the features are similar. In the ANC Article 95 (LR, Nr. 11216) (the old version of this article was marked as Article 41^3 (Nr. 1-1, consolidated version of 2015-05-01)), for illegal work employers are fined from one thousand to five thousand euros, after a repeated offense, a fine imposed on employers or other responsible individuals varies from five thousand to six thousand euros. CC 229^1 (LR. Nr. 89-2741) foresees liability only for the work of third-country nationals, illegally staying in the Republic of Lithuania: when the employer or his authorized individual for business purposes employed third-country nationals, illegally staying in the Republic of Lithuania; or employed five or more third-country nationals illegally staying in the Republic of Lithuania; or employed third-country citizen illegally staying in the Republic of Lithuania, particularly for exploitative working conditions; or illegally employed third-country juvenile national illegally staying in the Republic of Lithuania. It should be noted that the analyzed articles indicate that the employer or his authorized individual is responsible for the violation of legal norms, in regards to criminal liability, as opposed to administrative, there appears one more subject, a legal person. It is important for the interpretation of the ANC provisions on employer`s liability, as administrative responsibility for violation of an employer's obligation will be held not by the employer-legal entity, but by a head of the legal entity or one`s authorized individual responsible for the implementation of duties assigned by the employer. The very structure of blanket-type article, when the legislature describes only the generic features of the offense, and in order to examine it in detail it is necessary to look at the

other regulatory provisions, is quite uninformative and does not distinguish administrative and criminal liability segregation framework. The Constitution of the Republic of Lithuania (LR. 2015, Nr. 220-0, 48 Art. 1) proclaims that every person has the right to adequate, safe and working conditions. Illegal work is contrary to the imperative provisions of the law as well as violates the Constitutional human rights, since illegal work is contrary to the proper job description. Due to growth of illegal employment in Lithuania, distorted labor market, emergence of conditions for unfair competition, this offense is considered to be one of the most dangerous in the context of administrative justice. Criminal liability is foreseen for third-country national workers illegally staying Lithuania. The Criminal code of the Republic of Lithuania does not foresee responsibility for illegally working citizens. Through analyzing the features at the disposition of the above mentioned articles, arises a question - why are contrasted exactly these articles of possibly arisen administrative and criminal liabilities, and they both define a rise of responsibility for illegal work? It should be stated that criminal liability, specified for the employment of third-country nationals illegally staying in the country, falls into description of further examined concept of illegal work, which is concretized by the Labor Code of the Republic of Lithuania (hereinafter LC), Article 98 (V. Ž. 2002, Nr. 64-2569). According the set of features at the disposition of the Criminal Code Article Nr. 2921, when third-country nationals illegally staying in Lithuania, who perform job functions and are employed without taking into account an illegal staying in the country`s territory, presuppose the existence of illegal work circumstances, as the work is performed by violating Lithuanian laws, prohibiting such activities, particularly because of these features, it can be claimed that statement of circumstances mentioned in the Criminal Code Article Nr. 292^1 confirms the existence of illegal employment relationship, equivalent to the relationship defined in the analyzed CAO Article Nr. 95. It should be noted that at the disposition of both administrative and criminal liability articles, there is no definition of illegal employment, these articles are blanket-type, because illegal work, as the composition of the offense and the interpretation of this concept should be examined in the LC Art.98, Art. 98^1, Art. 99 (v. ž. 2002, Nr.71-0). In order to find the features, indicating the infringement of Articles, it is necessary to review the LC on the topic of description of the illegal work activity provided in Article Nr.98 and Article Nr.98^1. According to the aforementioned law norms, illegal employment is considered to be an employment that meets at least one of the following: an employee performs work functions (i.e. for a reward) for the benefit of the employer or under his leadership; absence of a written contract of employment; the State Social Insurance Fund Board institution (hereinafter - SSIFB) is not notified about individual`s start of work ; work is done by foreign nationals or stateless individuals, employed avoiding the regulatory procedure that is set out for employment; work is done by third-country nationals employed prior to arrangement of the contract of employment without asking for a valid document granting the right to residence or domicile in the Republic of Lithuania (LC Art. Nr. 98^1). Through analyzing the provided characteristics, in order to state an administrative offense, it is necessary to set the absence of employment contract; employee`s implementation of work functions on behalf of the company or implementation of the leader`s commands; failure to notify the SSIFB about employment; in order to state the instance of criminal offense, it is necessary to determine the absence of residence permit or a permit to be in the country`s territory. In studying the concept "authorized individual", based on the LC Article Nr. 24, a head of the company, who committed an offense by inaction, loss of control in legitimate labor relations and non-compliance with the norms of the law, is held liable for illegal employment. It should be noted that, according to the CAO Article Nr.95 and CC Article Nr.292^1, the sanction applies only to the employer or his designee, there is no liability foreseen for an illegal worker. In analyzing each case, according to the law and the company's documents, it is necessary to identify each individual`s job remit, in written and spoken forms in a set out organization nature of the company. In analyzing the subjective indication - form of guilt- of administrative and criminal liability applied to an individual in terms of illegal employment, it should be concluded that in both administrative and criminal law violation cases, the guilt must be considered as done intentionally or negligently. Intentional form of guilt can be imposed on the head of the company in case it is proved that the subject intentionally, in order to avoid payment of taxes to the state budget or conceal illegal employment of third-country nationals, did not inform the "Sodra", did not request the documents proving the worker's legal stay in Lithuania. Negligent form of guilt is imposed, when the head of the company failed to control the subordinate, when subordinate employees hired workers by violating of legal attributes specified in the labor law. This provision has been stated by the Supreme Administrative Court of Lithuania, in the synthesis of cases of Administrative Law Violations on illegal employment (LRVAT bulletin, reviewed 2015-05-16). Which explains that in case of a complex corporate structure, where it is not clear which person has to be brought to administrative responsibility, without having determined which employer's representative made an agreement with the employee, it is advisable to follow the general rule, which foresees that, - when the laws, company's internal documents do not indicate the specific duties of the person responsible for an employment contract, the head of the company should be considered as an employer's authorized person. After having analyzed the compared administrative and criminal articles, which infringement for illegal employment can lead to administrative or criminal liability, it should be noted that the object is different. Because in case of administrative misconduct, it is being encroached upon the employee's constitutional rights, upon fair and safe working conditions, when the employee is not provided with job guaranties, they are not insured and free compulsory social charges, which give him the required social guarantees, are not paid. In case of violation of criminal law, it is being encroached upon public order, when illegally staying third-country nationals occupy the labor market, without having the right to be legitimate participants of this market. In such a way they undermine

the established national procedure that protects the stored values and society's legitimate interests. According to the interpretation of Lithuanian Constitutional Court (LCC), the punishment for law violations should be established in advance (*nulla poena sine lege*), it is emphasized that the act not foreseen in the law is not considered as being a criminal (*nullum crimen*) (LCC Nr. CC 11-N4 / 2014). After a review of administrative and criminal sanctions assigned for illegal work, it should be pointed out that, the administrative order foresees only a fine, which size is defined specifically, while criminal liability does not foresee a specific amount of the fine, the question of the fine amount is left for the court, which imposes a penalty, according to the dangerousness of offense and the degree of its circumstances severity. For the illegal work signs offense a head of the company, when features of the Criminal Code are established, can be assigned to arrest or imprisonment for up to two years, severity of the sanction presupposes the view that offenses against public order are sufficiently dangerous. State`s legal mechanism clearly points out that it is necessary to obey the governmental order and its imperative norms, thus behavior contrary to the law is intolerable, providing appropriate legal consequences for a failure to comply with the community's law norms. It should be noted that throughout the analysis of the sources of legal doctrine, there is a positioned opinion that the purpose of punishment for the subject`s committed guilty offense, highlights the purpose and essence of state`s power realization (Vaišvila, 2000, 388; Svedas, 2003, 69).

By summarizing the articles, which infringement in regards to illegal work may lead to administrative or criminal liability, analyzed using comparative-logical method, it becomes clear that the fundamental differences that eliminate arise limits of these liabilities is the determination of different features. Having examined the composition of an offense, the administrative liability arises, having determined the existence of at least one of the illegal employment characteristics (absence of employment contract, failure to inform „Sodra“, pecuniary), while criminal responsibility applies to the situation of discovery of illegally staying third-country nationals, when the work is performed by third-country nationals, who do not have a legitimate permit to live or stay in Lithuania. Based on the analyzed LC, the stated features are consistent with the concept of illegal work, the composition of these features distinctly defines the difference of application of administrative and criminal liability for the illegal work to the company`s managers. The legislator quite accurately stated the distinguishing features of the administrative and criminal liability in regards to illegal labor. Examination of the composition of the analyzed articles, pointed out that the subjects of administrative and criminal liability for illegal work are identical, a head of the company can be punished by both administrative and criminal prosecution for illegal labor law violations. The mentioned liabilities possess different objects, in case of administrative offense it is being encroached upon the constitutional rights as well as appropriate working conditions, in case of a criminal liability it is being encroached upon state governance regime which protects the stored goods and public interests. Having assessed the importance of objects on a values level, respectively there is formed a different sanctioning system, when the strictness of the applied penalties defines the severity level of possible consequences of the infringement and a degree of dangerousness.

Application features of administrative and criminal liability of illegal employment in practice of Lithuania`s courts

In analyzing the peculiarities of application of administrative and criminal liability from the selected competing articles, on the basis of Lithuanian statistical indicators, for illegal labor violations in 2015, were carried out over 3000 illegal employment inspections and established almost 1500 illegal workers (reviewed 2015-05-12). According to the data provided by the State Labor Inspectorate of the Republic of Lithuania, in 2016 the State Labor Inspectorate (reviewed 2017-03-29) carried out 7 012 illegal labor inspections, which resulted in a check up of 6,749 subjects (including checked companies - 5 115, farms- 188 and 1,446 - individuals) and identified 1129 illegally working individuals. CAO 778 protocols were drawn up to 991 individuals, according to CAO 41^3 (currently AO Art. 95) article, foreseeing offenses in the field of illegal work. In 2016 year the number of illegally employed individuals, as compared to 2015, increased in the wholesale and retail trade from 5.18 per cent to 9.30 per cent, in accommodation and food service sphere from 5.18 per cent to 6.38 per cent, a number of illegally employed individuals in economics sector related to service activities increased by 2.54 per cent (reviewed 2017-03-29). According to statistical data, it can be stated that illegal work is an act, which negative consequences are a failure to pay taxes to the state budget and obligations arising from a failure to implement legal contract relationships with employees and the state, as a consequence it violates legitimate interests of employees, the state and society as a whole (Klaipeda District Court Nr. A2.1.-14-736/2015). A motive of the committed offense for a company`s head is clearly visible, as the person carrying out an offense, is seeking personal financial gain, because taxes payable to the state budget, contributions to social insurance funds account make up a large amount, if compared to the wage paid for an employee. From the composition of the committed offense, it can be stated that in case of such a violation, the head of a company is to be found guilty, only after the form of guilt is determined- intentionally or negligently, one may be held administratively liable. Lithuanian Supreme Administrative Court has repeatedly stated that a guilt must be based on evidence that contains actual data, which determines the fact of commitment of administrative offense (Klaipeda City District Court Nr. A2.8.-36-358/ 2015). In court practice, in order to qualify an act as illegal employment, it is necessary to determine objective and subjective features of illegal employment as an administrative offense.

The most important objective feature is the actual start of paid work, when officially there is no signed contract and it is unreported to SSIFB department in accordance with the established procedure (KCDC No. 4-06-3-02945-2014-0). A subjective feature required for illegal labor, administrative law violation composition is determination of the special subject being brought to justice - employer or an authorized individual (Vilnius City District Court No. A2.1.-14624-716/2014). In law practice it is stated (VCDC No. A2.1-13712-960/2014) that in each case it is necessary to identify each individual`s job remit, in written and spoken forms in a set out organization nature of the company. It is stated that one of the objective features of undeclared work infringement is a report to SSIFB (VCDC No. A2.1.-9318-961/2014), there are cases when the court considers a failure to inform the institution as violation of CAO Article 41 Part 1 (currently ANT 96 Art. 3 d.). The case examined by Vilnius Regional Court, considers a situation when the court of first instance, for the presence of all the employment contract features with the absence of a written contract of employment and failure to inform the territorial SSIFB department about the employment agreement, in accordance with the established procedure, reclassified actions from the Republic of Lithuania CAO Art 41^3 part1 (illegal work) to the CAO Article 41 part 1 (a violation of labor laws) and imposed a fine (VAC Nr. 1122-487/2013). In this situation emerge disadvantages of ANC blanket-type Articles, when arises a collision of application of material norms, because of diverted, violation composition foreseeing, coincidence of features of legal norms. From the circumstances specified in the case, it was stated that due to the fact that the contract was signed, though VSFDV department was not properly notified about it, there is a basis for exemption from liability for illegal labor violation, because there is one of the main illegal work features, absence of written contract with the employee, when employer and worker share a paid employment relationship. From the analyzed circumstances it can be concluded that two features of illegal employment (actual work performance and failure to report to VSFDV) are not enough for determination of illegal work and administrative liability does not arise having established existence of a signed contract of employment. It should be emphasized that in the theoretical part it is stated that administrative responsibility should arise in a presence of at least one of the constituent elements of illegal employment, this provision is clearly reglamented in the disposition of the DK Article Nr. 98. The analysis of the aforementioned administrative case, it should be stated that the Lithuanian courts do not always rely on the rule of law in classifying the offense and deviate from the norms of laws. It is likely that this happens due to blanket-type law norms, when it is not properly got deep into the content of the legislation. The examined situation proves that the administrative responsibility for the illegal work could be regulated in a more appropriate way. In considering the question of emergence of responsibility, the actual possession of an employment contract may not be a sufficient basis for exemption from liability, a deeper look should be given into the circumstances, determining the features that evidence the fact that workers actually work and it is reported about their employment in accordance with the established procedure. After an appeal of a decision of the analyzed case, the Vilnius Regional Court, after considering all the circumstances of the case, once again reclassified the Article and applied CAO Art 41 part 1 (CAO Art. 95 illegal work) and imposed administrative penalty on the head of the company (VAC Nr. 1122-487/2013). In view of the reviewed cases, it can be claimed that the rule of law indicated in the ANC is not clearly regulated. A clarification of offense commitment features at the disposition of the article would help to avoid confusion in characterizing the acts, thereby saving time and money costs of courts and public citizens. In examining remuneration characteristic, it should be noted that in practice of Lithuanian courts, even the absence of the fact of compensation for completed work, having proved the circumstances determining a failure to comply with the rules established in the employment contract, a failure to inform „Sodra“ about employment, when a person is working in the employer's favor, does not invalidate the probability of administrative responsibility for illegal work (VAC Nr. 4-68-3-14234-2014-2). The company`s manager`s duty, before committing an offense, is to think about possible consequences and thus emerging inconvenience. However, through a review of Lithuanian court practice, it can be concluded that the amount of penalties (usually fines are 868.00 Euros (Nr. A2.1.-34-445 / 2015; Nr. A2.2.1-49-308 / 2015; Nr . A2.1.-9318-961 / 2014; Nr. 4-03-3-11945-2015-8)) is not sufficient to deter law subjects from offenses in the future, and this is confirmed by data provided by the State Labor Inspectorate of Lithuania, which states that in 2014 there were1429 individuals illegally employed in the country (reviewed 2015-04-19). From the provided statistics, it can be claimed that the imposition of administrative liability on the company`s managers is not sufficiently effective measure to reduce the number of such violations in Lithuania. Considering the dangerousness of the act, it would also be inappropriate, unfair and disproportionate to increase fines. Also it would be contrary to the laws of the Republic of Lithuania, as the Constitutional Court of the Republic of Lithuania has stated that, the constitutional principles of justice and the rule of law imply that, the offenses established by the state must be proportionate to the offense, be in conformity with legitimate and universally important objectives and should not restrict the individual more than it is necessary, to achieve these objectives (CCRL resolution of 2012, 25 September). In a view of the interpretation of the Constitutional Court, it can be stated that in a presence of increased degree of dangerousness, when it is aimed to protect public interests and to achieve the legitimate objectives, sanctions can be proportionate to the size of an offense subject. In case of illegal employment, the degree of danger is high, when a large number of people is employed, which violates the legitimate state`s and workers' interests and rights. Criminal liability can be

applied for offenses of increased dangerousness, because it is the most effective measure for encouraging offenders to abstain from committing an offense in the future. In the Republic of Lithuania criminal liability is not foreseen for illegal citizens` work. As it has already been analyzed in the theoretical part, criminal liability is foreseen in the Criminal Code Article Nr. 292^1, for individuals illegally staying in the country, or five and more third-country nationals, or one illegally staying third-country citizen used in particularly exploitative working conditions, or illegally staying third-country juvenile national, all employed for business purposes. From the article`s disposition it can be seen that criminal liability does not arise because of illegally employed Lithuanian citizen. After reviewing the practice of Lithuanian courts on criminal liability under the Criminal Code Article 229^1, which would result into punishment of a head of the company for illegal work, when are employed third-country nationals without a permission to stay or to live in Lithuania, there is a noticed tendency that the features foreseen at the disposition of this article, when third country national illegally staying in the country is employed in the company, there is applied administrative liability according to CAO Art 41^3 part 1 (CAO Art. 95). There is no practice in Lithuania to punish a head of the company according to the Criminal Code Article 229^1, as the number of such employees is not big enough, so in the disposition of the mentioned Article there is a lack of proof of the feature, which covers the degree of dangerousness. The analysis of cases, where the establishment of the act of illegally staying third-country nationals is regarded in accordance with the CAO Art 41^3 part 1, by determining the infringement of LC 98 Art 3, which foresees responsibility for employment of foreign nationals, without complying with the regulatory legislation procedures established for recruitment, just confirms ineffectiveness of the Article in Criminal Code regarding illegal employment. The examination of he decision of Lithuania Vilnius City District Court on the case of Chinese national employment, working without a permit to carry out work functions in the Republic of Lithuania, again confirmed the application of the administrative liability under CAO Art 41^3 part 1 (VAC Nr. A2.1.-11782-865/ 2014). Considering the qualifying factors of the act, specified at the disposition of the Article 229^1 of the Criminal and the fact that Chinese national is a third country citizen, who was not provided with a permit to work in Lithuania, with a larger number of such workers, business managers should face criminal liability. In some cases administrative liability is imposed for illegal third-country nationals without a permission to work in the enterprise. In the present case, when an employed Belarusian national who did not possess a permit to work in the company, there was imposed an administrative responsibility, although the constituent feature of the offense (a third-country national working without a work permit) could impose upon the company`s manager a criminal liability (Klaipeda City Administrative Court Nr. A2.1.-2856-718/2014). In this case, having determined additional features, such as the number of such individuals or exploitative Belarusian citizen`s working conditions, could lead to criminal liability. After the analysis of Vilnius and Klaipeda district court proceedings, it should be concluded that in court practice there are cases when offenders for illegal work, in all cases, are brought to administrative justice. As a result an Article, foreseeing criminal liability, loses its purpose and in a legal sense becomes irrelevant, because possibilities of its application are very limited and only in case of determination of the features (illegal work of third-country national- without a permit to live or work in Lithuania, without having determined the number of individuals, or exploitative working conditions or nonage) foreseen for emergence of such a liability, Lithuanian courts may impose criminal liability. After the examined circumstances, it can be stated that in case of illegal employment, law norms foreseeing administrative or criminal responsibility are not sufficiently effective, because the number of these offenses is increasing, while practically it is difficult to impose criminal liability, as it is relatively difficult to prove the features, specified at the disposition of the Article.

By summarizing the analyzed Lithuanian judicial practice cases on illegal employment, it can be stated that illegal labor violations damage workers' rights in terms of legal and social guarantees, distort competition between companies in the labor market, violate state`s and society`s legal interests. Thus mentioned Articles, that foresee responsibility for illegal work, are a subject to improvement. Penalties imposed by the court are ineffective because the benefit of infringement is greater than the sanctions indicated at the disposition of the ANC Art 95 part 1. After reviewing the court practice and essential aspects of the application of administrative responsibility as well as their purpose, there should be drawn a conclusion that one of the possible solutions, aiming at reduction of illegal employment cases in Lithuania, would be a tougher stance on company managers` liability in regards to illegal employment. In order to strengthen the prevention of undeclared work, to increase the transparency of labor markets and return a part of shadow economy revenues to the state budget, it can be proposed to adjust the CC Article 292^1 , by adding an additional part, where at the disposition would be indicated that - an employer or his authorized individual, at a time for business purposes illegally employing five or more individuals, may be punished by a fine, arrest or imprisonment for up to two years. A responsibility for this offense should also apply for a legal entity as well. It should be emphasized that, the offense must be clearly defined in the law. The European Court of Human Rights advocates that, penal legality principle states that offense must be clearly defined in the law. So that a person after looking at the regulated provision and through its interpretation in the court practice, could understand what offense does criminal liability arise from, and based on this formed opportunity, accordingly regulate one`s behavior and refrain from certain actions (ECHR no. 59552/08). Illegal employment of five or more individuals specified at the disposition, corresponds to an

activity character of increased danger, because illegal employment of more people creates more harm to the state`s and public interests. An entrepreneurship feature, based on the interpretation of the LAC, it is a concept that covers „not only activity`s stability and permanent nature, but also other features, separating it from a pursuit of commercial or other activity concepts. Such features – is execution of preparatory activities for illegal commercial or other activities, management of these activities and other actions showing a higher activities` degree of dangerousness" (LAC Nr. 2K-574/2011). From the provided interpretation, it could be stated that in the Criminal Code Article 292 [1], which can be a subject of supplement, foreseen violation features of the activity are clear enough to define the behavior, which may result in criminal liability. An entrepreneurship concept should be interpreted as a feature of infringement continuity, constant repetition, when the offense brings income. Having imposed criminal liability on the company`s executive, who for business purposes illegally employed five or more individuals, would discourage managers to employ illegal workers. It is likely that the risk of criminal liability by obtaining a fact of conviction is one of the factors restraining law subjects from commitment of offenses. Given the fact that the dangerousness of the act reveals itself through the damage to national economy and business, the restriction of responsibility for extreme extent of illegal work and its repetition, aims at reducing the spread of this phenomenon and tends to discourage employers and business leaders to employ people illegally. It should be emphasized that despite of a possible increase in the general criminogenic situation, due to widespread range of activity, it is likely that improvement of the law would positively influence business development and fair competition.

Conclusions

The fundamental differences that eliminate arise limits of administrative and criminal liabilities is the determination of different features. Legal defines that, the administrative liability arises, having determined the existence of at least one of the illegal employment characteristics, while criminal responsibility applies to the situation of discovery of illegally staying third-country nationals, when the work is performed by third-country nationals. Examination of the composition of the analyzed articles pointed out that, the subjects of administrative and criminal liability for illegal work are identical, a head of the company can be punished by both administrative and criminal prosecution for illegal labor law violations. The mentioned liabilities possess different objects, in case of administrative offense it is being encroached upon the constitutional rights as well as appropriate working conditions, in case of a criminal liability, it is being encroached upon state governance regime, which protects the stored goods and public interests. Having assessed the importance of objects on a values level, respectively there is formed a different sanctioning system, when the strictness of the applied penalties defines the severity level of possible consequences of the infringement and a degree of dangerousness.

Analysis of judicial practice showed that from the circumstances specified in the case, due to the fact that two features of illegal employment are not enough for determination of illegal work. However in the theoretical part, it is stated that administrative responsibility should arise in a presence of at least one of the constituent elements of illegal employment (this provision is reglamented in the disposition of the DK Article Nr. 98). So it should be stated, that the Lithuanian courts do not always rely on the rule of law in classifying the offense and deviate from the norms of laws. It is likely that this happens due to blanket-type law norms, when it is not properly got deep into the content of the legislation. It is noted, that Courts, after considering all the circumstances of the case, once again reclassified the Article and applied CAO Art. 95, illegal work and imposed administrative penalty on the head of the company, instead of applying penalty on the violation of labor law or accounting irregularities. So the rule of law indicated in the ANC, is not clearly regulated. A clarification of offense commitment features at the disposition of the article would help to avoid confusion in characterizing the acts, thereby saving time and money costs of courts and public citizens.

It should be concluded that in court practice there are cases when offenders for illegal work, in all cases, are brought to administrative justice. As a result, an Article foreseeing criminal liability, loses its purpose and in a legal sense becomes irrelevant, because possibilities of its application are very limited and only in case of determination of the features (five or more illegal work of third-country nationals) foreseen for emergence of such a liability, Lithuanian courts may impose criminal liability.

After the examined circumstances, it can be stated that in case of illegal employment, law norms foreseeing administrative or criminal responsibility are not sufficiently effective, because the number of these offenses is increasing, while practically it is difficult to impose criminal liability, as it is relatively difficult to prove the features, specified at the disposition of the Article. The penalties imposed by the court are ineffective, because the benefit of infringement is greater than the sanctions indicated at the disposition. One of the possible solutions, aiming at reduction of illegal employment cases in Lithuania, would be a tougher stance on company managers` liability, in regards to illegal employment. It is likely that improvement of the law would positively influence business development, manage the increasing in the general criminogenic situation and will lead to a fair competition.

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