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Criminal liability of an executive under Turkish law

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During his/her professional life, a company executive operating in Turkey can face various types of criminal liability. This article aims to provide a general overview of the possible risks in relation to criminal law that an executive can come across.

The picture is clear when an executive intentionally commits a crime to the detriment of the company that he/she is working for in order to obtain personal financial benefit. In such cases, the situation is more straightforward. The perpetrator is the executive who committed the criminal act, he/she is individually liable, and the company can be involved in the criminal proceedings as the complainant.

The first example that comes to mind is abuse of trust, which is one of the most common white-collar crimes in Turkey. If an executive obtains a personal benefit by abusing their authority to manage or represent the company, this constitutes abuse of trust, and it is punishable by imprisonment up to seven years. If an executive deliberately deceives other executives or employees while trying to obtain personal benefit, his/her acts can constitute aggravated fraud, which is punishable by imprisonment up to ten years.

It is also common that an executive or employee intentionally commits a crime for the benefit of the company or negligently while performing their duties. In this case, it is not always easy to determine the perpetrator of the offence. Moreover, criminal liability of the company also comes into question.

Criminal liability of companies

Criminal intent is an essential component of a crime, and for companies, it can only be formed through their executives or employees. Therefore companies, being fictional legal entities, cannot be subject to criminal liability like natural persons. However, companies can be subject to significant penalties and fines and can suffer from loss of reputation.

Legal entities may face serious but rarely applied security measures and administrative fines if particular crimes are committed intentionally for the interest of the legal entity. Furthermore, according to Article 60 of the Turkish Criminal Code (TCC) number 5237, if a legal entity who makes business under a license or permission granted by a public body and the executives and/or authorized representatives of this legal entity commit a crime by abusing this license or permission for the interest of the legal entity, the license or permission shall be revoked, and the benefit obtained from the crime shall be confiscated ^[1]

In addition to the above, Law of Misdemeanours number 5326 provides that the private legal entity shall be subject to administrative fine up to ₺3,282,503.42 in case that the organ, representative, or anyone acting within the scope of the legal entity's business commits crimes such as bribery, fraud, money laundering, bid rigging, or smuggling in favour of the legal entity (Article 43/A).^[2]

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