



For a legal person to be criminally liable, prosecution must prove the lack or ineffectiveness of a criminal compliance system

Judgment of the Supreme Court of 29 February 2016 regarding the criminal liability of legal persons

Background

On 29 February 2016, the Supreme Court issued, for the first time, a judgment in which a legal person was deemed criminally liable in Spain. In our opinion, the most relevant part of the judgment is not that it holds a company criminally liable, but the fact that the Supreme Court has outlined its criterion regarding what the prosecution has to prove for said liability to be upheld.

To date, it had been considered that for a legal person to be held criminally liable, it was not necessary for the prosecution to demonstrate that no criminal compliance system was in place at the company or that the one in place was ineffective.

On the other hand, it had been interpreted that it depended on the company itself, if it wished to be exempted from liability, to prove that prior to the offence being committed, an appropriate criminal compliance system was in place, that the offence was committed by fraudulently evading said system and that there was no breach of the controls established thereby.

Criterion of the Supreme Court

The previous interpretations are in line with the opinion of the large part of the doctrine and the Public Prosecutor's Office of Spain. However, concerning the judgment in question, the Supreme Court highlights that, for a legal person

to be held criminally liable, the prosecution must prove that both the offence was committed and that the internal control tools deemed ideal and effective to prevent and try to prevent the criminal conduct in question at the company were either non-existent or ineffective.

This criterion may have a significant impact in practice on the burden of proving that the compliance system was in place and effective.

Thus, although for the large part of the doctrine and the Prosecutor's Office, the accused company (to be exempted from liability) is responsible for demonstrating that the compliance system was in place and effective, in the opinion of the Supreme Court, if the prosecution is unable to demonstrate that the compliance system was non-existent or ineffective, the company cannot be held criminally liable.

In any case, the criminal liability of a legal person is a relatively new matter in Spain, on which the Supreme Court has yet to address this issue on a regular basis. To this end, we must carefully monitor future statements made by the Supreme Court, in addition to the interpretation, in general, of the Courts and the Public Prosecutor's Office in terms of the provisions of the Criminal Code.