

1. Introduction

Preliminary consideration: although in Spain there are two branches of the system to prevent and sanction corruption: administrative law and criminal law the truth is that in Spain absolutely predominates the criminal branch. Administrative mechanisms have been poor and in some cases non-existent. The legislator has always trusted more in Criminal law. This is the reason why in Spain there are many more offences of corruption than, for example, in Germany or in other countries where there is an effective administrative law.

Traditionally in Spain corruption has been considered as a social problem of little relevance for both society and public power. This generalized thinking was high during the period of economic boom generated by the housing bubble, which created a climate of social indifference to the problem. Corruption cases rarely came to light or, if they came out, didn't cause an impact on public opinion.

However, the classic social indifference to corruption has disappeared in the last few years. The opposite effect aroused in the society. Corruption has become a serious social problem according to the Spaniards. This is shown by the CIS surveys the official survey in Spain(graphic). The importance of the corruption is only overcome by unemployment. And only in the October 2017 it is also overcome by the concern of the independence of Catalonia.

The two factors that have helped to this change of opinion are two: the economic crisis and the media. During the economic crisis the Spaniards saw on the front of the page of the two most important newspapers in the country a new corruption scandal. The press has contributed to create an angry public opinion. Especially if we take into account that these corruption scandals affected all territorial scope: local, regional and state, all public institutions, including the Crown and also all parties (right and left wings, nationalists).

The legislator noted this situation and instead of undertaking the necessary preventive reforms in administrative law, went once again to criminal law to solve the problem. The criminal legislator undertook the reforms of 2010 and 2015 where corruption and economic crime played a leading role. After them, there are

more crimes against the public administration in the Spanish Criminal Code, other existing crimes were extended, the penalties were increased, the prescription period increased, the sanction to private corruption was incorporated, etc. However, one of the most important reforms was the introduction of the criminal liability of legal persons.

The criminal liability of legal persons in the Spanish legal system was introduced in 2010 and deeply reformed in 2015. I'm not going to explain very much this topic because my colleague Carmen is going to speak deeply about it this afternoon but I want to point some ideas of the criminal liability of legal persons in the Spanish system:

1. The objective of criminal liability of legal persons is to punish the commission of certain criminal offenses by the natural person who acts in the name or on behalf of the legal entity.
2. Only legal entity is going to be punished when the natural person commits a crime that benefits the entity. For example, when the individual asks for a bribe which benefits the legal person. Therefore, the liability of legal persons is excluded in those cases in which natural persons act completely outside (or even against) the legal person, but taking advantage of its structure.
3. The system implemented in Spain in 2015 excludes criminal responsibility when the legal entity has an organizational and management model to prevent crimes within it. When it has implemented a compliance program. The requirements of this compliance program are expressly provided on the article 31 bis 5 SCC.

Having said that let's explain why the criminal liability of political parties was introduced. In 2010, one of the most commented aspects of the introduction in the code of the criminal responsibility of legal was the one related to the entities expressly excluded from responsibility. Paragraph 5 of article 31 bis of SCC established that "the provisions relating to the liability of legal persons are not be applicable to the State, to the territorial and institutional Public Administrations ... to the political parties and trade unions ...".

The decision to leave out trade unions and political parties was criticized. Many authors stated that it was logical and natural that legal persons under public law could not incur criminal liability. This is due to the idea that the State can not punish itself but there was much discussion about why political parties and trade unions should be left out.

For example, one author said, excluding political parties makes sense when they act towards "outside", satisfying the general interests and their constitutionally assigned functions. On the contrary, no problem should exist to demand responsibility when they act towards "inside", that is say to function and finance themselves. The reason for excluding them was not due to the convenience of granting immunity for realize their duties, but to avoid being persecuted for the commission of certain crimes committed in those entities with relative frequency.

So after the social pressure emerged next the corruption scandals, the legislator included in 2012 the political parties as entities criminally responsible. It has provoked criticism because many authors said that this reform was an excuse for the legislator to avoid carrying out the real preventive reforms in administrative law. But even if it is true, there is an advantage of the reform. The point is that political parties are going to be responsible under the same conditions as other legal entities. It means that if the parties want to benefit themselves from the exemption of liability provided for legal persons they must incorporate measures for the prevention of crimes typical from the business sector (31 bis 5 SCC) (a compliance program).

The objective of my presentation is explaining how could work out the preventive mechanisms from business sector, the compliance programs, in political parties.

2. self-regulatory mechanisms: compliance program

The compliance program is an internal regulation that includes the principles and sanctions to punish the members of the party in case of non-compliance. To exempt criminal liability to the legal person it must have incorporated a compliance program but this must work in practice and also it has to be made specifically for the concrete legal person.

A compliance program to prevent crimes inside the political party is such a big improvement if we compare with the preventive mechanism inside the parties now. In the political parties, compliance programs or other preventive mechanisms have not been developed but we know it should include:

1. Ethical code
2. The figure of compliance officer
3. Whistleblower hotlines
4. And a disciplinary regime

2.1 Ethical codes

The ethical codes constitute the normative structure of the compliance program. It contains norms of ethical character and codes of good practices that collect principles or establish protocols of action for certain situations. For the code to be effective, it must accomplish some things. The rules contained must to be easy to understand, they must be in the same normative body, they must be well known, etc. Also It should be they be drawn up with the participation of the militants

However, the ethical codes typical from the anglo-saxon business world are far from the current internal regulations of political parties in Spain. For example, in some cases the internal normative is even more ambiguous and more lenient than the law. A good ethical code should incorporate a strict and concrete gift policy. For example, prohibiting members to receive a gift for a value greater than 50 euros. However, none of the internal regulations of the Spanish parties is so specific. The internal rules of the PP establishes that its members can not receive benefits that are contrary to the uses and customs. This rule is not more specific than the bribery offense provided on the Criminal Code.

To elaborate the ethical code and, in general, the whole compliance program is necessary to do previously a risk map. It serves to know what criminal offences are commonly committed in the political party for act against it. To date, there is no political party that has carried out a riskassesment.

3.2 Compliance officer

Article 31 bis 5 of the Spanish Criminal Code requires the incorporation of a body inside the legal person but with autonomy in it in charge of monitoring and controlling the compliance program. This is the figure of the compliance officer. This body can be unipersonal but it is advisable to be a collegiate (chief compliance officer) and the independence of this body is the key to make the compliance program work out, otherwise it will become into dead letter. It would be advisable that in this structure there were three subareas: an ethical committee, an internal control committee and the area of economic-financial control". In political parties, which are very hierarchical and with very corporatist dynamics, the externalization of this body is the most appropriated.

Although the political parties have "ethical Codes" or internal rules none has incorporated the figure of compliance officer. Therefore, we can say that today real compliance programs are non-existent and these entities.

3.3. Whistleblower hotlines

Article 31bis section 5 of the Spanish Criminal Code establishes as a requirement that the compliance program will "impose the obligation to report possible risks and non-compliance with the measures established by the model". This implies having an information channel between the members of the party and the compliance officer to report irregular conducts. The person who reports the commission of irregular practices to the compliance officer is the whistle-blower. The person who blows the whistle.

The experience in the business sector shows that the whistleblowing channel has two advantages. On the one hand, the possibilities of detection and visibility of criminal behavior would increase and, on the other hand, the existence of this channel would also work in a preventive way, discouraging the commission of crimes.

The main advantage is that the whistleblower can report irregular behavior with security and anonymity, avoiding possible reprisals. Until now the lack of protection of the whistleblower has been absolute in Spain. There have been numerous cases of corruption in which reprisals have been taken against those who have reported illegal internal practices in political parties.

3.4. Establish a disciplinary regime.

For an ethical code to work is necessary that be endorsed by a system of sanctions and an independent and effective body capable of imposing them. Moral inhibition can not be the only one law that prevents a party member from committing a crime. The sanctioning body should be autonomous and independent. This is one of the great deficits of the parties: the absence of a sanction system capable of imposing credible and independent sanctions.

This problem is not common only in the internal regulations of political parties, but also in all sectors of public administration. Disciplinary law, for example, is not an efficient sanctioning system because it is not provided with independent civil servants able to initiate a disciplinary proceeding. For this reason few disciplinary procedures are initiated.

4. Conclusions

I have explained what the parties should incorporate to adapt their internal rules to the criminal liability of legal person and I have said that to date they haven't done it, so currently all of them could be condemned by a court if a person inside commits a crime which met all the requirements of the criminal liability of legal persons.

The incorporation of the political parties to the criminal liability of legal persons has taken place at a moment of deep social concern on the corruption problem. This has led to numerous symbolic criminal reforms to calm the society. It means that many of them have been made not to solve a real problem, but to show that something is done. However, this inclusion will be positive if the political parties start to incorporate self-regulatory models typical from the business sector (compliance program).

At this point, it is necessary to ask ourselves: Is it worth to export the criminal liability of political parties? Should other countries incorporate the criminal liability of political parties? it is difficult to say because is early to know. No political party has been condemned and still political parties have not incorporated compliance programs. But one thing is clear criminal responsibility of political parties will be a dead letter if after a while these entities do not adapt to it. If political parties do

not incorporate compliance program soon, having as objective the recent reform, it will be difficult that they will do it in the future. In my opinion is better to wait to implement the criminal liability of political parties and implement other preventive mechanisms in administrative law that are more needed.