

General Views on Legal Entities as the Subject of the Criminal Offense

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Abstract

In addition to natural persons whom the law recognizes as subjects of the law, the law also recognizes the subjectivity of other persons as bearers of rights and obligations or legal persons. In contemporary criminal law, the form of criminal liability for legal entities has also been introduced, and depending on the national systems of the states, we come across several models that regulate the **liability** of legal entities. In some legislations, the criminal responsibility of legal persons for the commission of criminal offenses is not foreseen, but only the misdemeanor responsibility is regulated by a special law, in other legislations they are based on the regulation of the responsibility of legal persons for the commission of criminal offenses by special laws (thus, Slovenian, Croatian, Kosovar legislation, etc.), while in Anglo-Saxon criminal law and in most European criminal legislation, it means the responsibility of legal entities for the actions of its bodies and responsible persons, in the framework of general criminal legislation. In the Republic of North Macedonia, with the Amendment of the Criminal Code of Macedonia of 2004, criminal liability is also provided for legal entities and a special system of criminal sanctions. It is about innovation that contains a variety of specifics in relation to the general concept of the criminal offense: criminal responsibility for legal entities, which is collective and presumed in nature, as opposed to the responsibility of natural persons, which is individual and subjective.

Keywords: legal entity, criminal responsibility, legislation.

JEL Classification: K14

1. General views on legal entities as the subject of the criminal offense

In positive law, the subject of the law, in addition to natural persons, are also the legal entities, therefore the subject of the law is not only man but also other creatures of society, whose state (law) recognizes the legal subjectivity of social creatures to whom the quality of legal subjectivity has been recognized and are called legal persons.²

Even though legal entities are artificial creatures in our society, they have the capacity of the subjectivity of law.³ Legal entities are those of a legal-proprietary nature, which means that their authorizations are also of a legal-proprietary nature, as well as the other group of legal entities that are of a legal-state nature, so they have multiple legal authorizations for the implementation of state power.

Regarding the legal-criminal responsibility of legal entities, **two** theories are traditionally encountered; *fiction theory* or *novelistic theory* and *real theory* or *German theory*.⁴ According to the *first theory*, legal persons are a simple legal **fiction**: only natural persons are subjects of the law, but the law gives the quality of a legal person to some groups of persons. The legal entity has no will of its own and cannot be held responsible for the actions of its members or representatives.

With the Amendment of the Criminal Code of Macedonia of 2004, criminal liability is also provided for legal entities and a special system of criminal sanctions. It is about innovation that contains a variety of specifics in relation to the general concept of the criminal offense: criminal responsibility for legal entities, which is collective and presumed in nature, as opposed to the responsibility of natural persons, which is individual and subjective.⁵

With the Amendment of the Criminal Code of Macedonia from 2009, the concept of presumed responsibility of legal persons for two categories of criminal offenses has been developed: for responsible persons and for employees of the legal person (Article 28-a). The legal person is responsible, in the cases provided for in the special part of the Criminal Code of Macedonia, the legal entity shall be liable *for the crime committed by a responsible person within the legal entity, on behalf,*

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² Abdulla Aliu, *E drejta Civile*, Prishtine, 2013, p. 251.

³ Ibid, p. 253.

⁴ See, Petrović, 3; Marina-Kambovski, 145; Kremnitzer/Ghanayim, 539.

⁵ Vlado Kambovski & Ismail Zejneli, *E drejta Penale*, Skopje 2018, p. 84.

for the account and for the benefit of the legal entity. (Article 28-a, paragraph 1). The assumed responsibility of the legal person in this case is based on the theory of identification (*alter ago*): the act of the responsible person is also the act of the legal person.⁶

In the Criminal Code of the Republic of North Macedonia in Article 28, the criminal liability of legal persons is foreseen as well as the conditions for criminal liability for legal persons such as:

1. In the cases determined by law, the legal entity shall be liable for the crime committed by a responsible person within the legal entity, on behalf, for the account and for the benefit of the legal entity.

2. The legal entity shall be liable as well for a crime committed by its employee or by a representative of the legal entity, wherefore a significant property benefit has been acquired or significant damage has been caused to another, if:

- the execution of a conclusion, order or other decision or approval of a governing body, managing body or supervising body is considered commission of a crime or
- the commission of the crime resulted from omitting the obligatory supervision of the governing body, managing body or supervising body or
- the governing body, managing body or supervising body has not prevented the crime, or has concealed it or has not reported it before initiating a criminal procedure against the offender.

3. Under the conditions of paragraphs (1) and (2) of this Article, criminally liable shall be all the legal entities with the exception of the state.

4. The units of the local self-government shall be only liable for crimes committed apart from their public authorizations.

5. Under the conditions of paragraphs (1) and (2) of this Article, foreign legal entity shall be criminally liable if the crime has been committed on the territory of the Republic of Macedonia, regardless whether it has its own head or branch office performing the activity on its territory.

The legal person on the verge of bankruptcy is responsible for the criminal offense committed until the decision to open the bankruptcy procedure is made according to the conditions of Article 28-a of this Code, if the offense has benefited it from a significant financial benefit or caused damage significant other person.⁷

Criminal legislation reforms in countries in transition necessarily include the issue of criminal liability of legal entities and the solution is created within the framework of two models:⁸ the regulation of criminal liability of legal persons by special law (e.g. Croatia, Slovenia, Montenegro) and the establishment of liability provisions in the Criminal Code and the Law on Criminal Procedure (Macedonia and Bosnia and Herzegovina).

Legal entities cannot be held responsible for acts that were not carried out in his name, on his account and for his interests. Therefore, the responsibility of the legal person is excluded, if the responsible person has committed any act in his name and in his own interest.⁹ According to the rule, the legal person will be responsible for the actions of the leading persons committed on his behalf, account or for his benefit.

The responsibility of legal persons for the committed criminal acts, in addition to being foreseen in the national legislations, they were also accepted in numerous international documents.

The requirement for the criminal-legal responsibility of legal persons, today is the raising of the obligation of national legislations for the implementation of international conventions related to "new" forms of crime, such as: organized crime, corruption and money laundering, which include "crime of corporations". Such are, for example, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) of 1990, as well as the recent Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005; the Juridical-Criminal Convention on the Prevention of Corruption of 1999 and the UN Convention on the Prevention of Corruption of 2003;

⁶ Ibid, p. 365.

⁷ Article 29 of Penal Code of RNM.

⁸ Ismail Zejneli & Vlado Kambovski et. all, *Kriminalisteti I Organizuar*, Tetovo, 2009, p. 46.

⁹ Ibid.

and the United Nations Convention against Transnational Organized Crime (Palermo Convention) of 2000.

Changes in the European criminal legislations have also encouraged the latest declarations of the EU, expressed mostly in the Convention for the Protection of Financial Interests of the EU since 1995 and then also in a large number of directives. Statutory criminal liability also includes: the Convention on the Prevention of Corruption of Foreign Officials in International Financial Transactions of the OECD since 1997; and the Framework Decision on the Prevention of Organized Crime of the EU Council of Ministers since 2005 foresees the obligation of member states (and candidates for membership) to foresee (statute) the criminal liability of legal entities.¹⁰

In the contemporary criminal legislation of the Republic of Macedonia, the consistent implementation of the provisions of the Macedonian Criminal Code of 1991, especially those related to the principle of legality, exclusive jurisdiction for all criminal offenses and the uniqueness of the judicial system, as well as the need to simplify system of criminal offences, has resulted in the abandonment of the category of criminal offenses of the category of **economic offences**, (with the Law on misdemeanours from 1997, a number of economic offences, are implemented in this law). The prediction of liability for misdemeanours of legal persons is also of primary importance, which is based on the recognition of the delinquent capacity of the legal person. Its operation is the next step in determining responsibility and criminal offenses. If the legal entity can be held liable for an offense consisting in non-payment of tax, it can also be liable for the criminal offense of tax evasion, falsification of documents and similar offences.¹¹

Our legal system recognizes the status of a legal entity for all forms of commercial companies. Commercial companies acquire the status of a legal entity by registering the founding act in the commercial register, commercial companies possess this status until their cancellation from the commercial register, this means that upon cancellation from the commercial register, the status of the commercial company is terminated of the legal entity¹².

By gaining the status of a legal entity, the commercial company gains *financial autonomy over its assets*. This autonomy means the possibility of free disposal of that wealth by the organs of society. The commercial company as a legal entity can acquire certain rights and obligations, acquire ownership and other real rights, conclude contracts and other legal affairs, sue and be sued before the court, arbitration and other selected court of law and participate in other procedures. With the acquisition of legal entity status, the commercial company acquires its own business name, headquarters, activity, etc.¹³

As far as judicial practice is concerned, there is a weak reaction, since very few legal proceedings have been initiated against legal entities, so that some are still at the stage of accusation or others at the stage of first-degree decisions.¹⁴

If we refer to the judicial practice of the Supreme Court of the Republic of North Macedonia for the last three years, it will be noticed that the judicial decisions pronounced by the courts of the lowest levels dominate for the criminal offense committed - Abuse of official duty and bribery as well as follows:

For years, 2019, 2020, 2021:

Year	Criminal Offence	Cases
2019	Abuse of official duty	20
2020	Abuse of official duty	12
2021	Abuse of official duty	22

¹⁰ Vlado Kambovski & Ismail Zejneli, *E drejta Penale*, Skopje 2018, p. 364.

¹¹ Ibid.

¹² Ibid.

¹³ A. Jashari, *Subjektet e së drejtës afariste*, Tetovo, 2009, p. 132.

¹⁴ Ibid.

Year	Criminal Offence	Cases
2019	Venality	3
2020	Venality	5
2021	Venality	/

The Criminal Code of Kosovo also foresees the criminal responsibility of legal persons in case of committing a criminal offense.¹⁵ According to the article in question, the legal person is responsible for the criminal offense of the responsible person, who has committed a criminal offense acting on behalf of the legal person within his authorization, with the purpose of benefiting or causing harm to that legal person. The responsibility of the legal entity exists even if the actions of the legal entity were in conflict with the business policies or with the orders of the legal entity.

The legal person is also responsible for a criminal offense which has remained in the attempt according to the conditions of the law, if the law provides that the attempt is punishable and the legal person (person responsible) for the attempt will be punished with the punishment provided by this law for criminal offense, while it can be punished even more mildly, while the legal person who has voluntarily prevented the completion of the criminal offense can be released from punishment.¹⁶

2. Conclusion

The pronouncement of the criminal sanction against the legal person never excludes the individual criminal responsibility of the physical persons who participated in the commission of the criminal offense.

For a criminal offense committed by a legal person, the responsibility is twofold, because for the same criminal offense both the legal person and the natural person who committed a criminal offense or participated in the commission of a criminal offense, on behalf of, on behalf of or for the benefit of to the legal entity.

As far as judicial practice is concerned, there is a weak reaction, since very few legal proceedings have been instituted against legal persons, so that some are still in the stage of accusation or others in the stage of first-degree decisions.

In addition to the responsibility of legal persons for committing a criminal offense, the responsibility of legal persons for contravening offenses is also foreseen.

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¹⁵ Article 40 paragraph 1 of Penal Code of Kosovo: the previous criminal legislation of Kosovo did not recognize the legal person as the perpetrator of the criminal offense, based on the principle that the legal person cannot be held responsible for a criminal offense (*societas delinquere non potest*). This concept has also been present in the legislations of European countries, but this concept changed in the last decade, because such forms of criminality were announced that were conditioned by different business corporations.

¹⁶ Article 7 of the Law on Liability of Legal Persons for Criminal Offenses, Law No. 04/L-030, Pristina, 2011.