

THE CONDITIONS OF CRIMINAL LIABILITY OF THE LEGAL PERSON

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Abstract: *In this article I tried to summarize essential aspects regarding the criminal liability of the legal person. People can be involved in criminal legal relations, both individually and organized according to the law in the form of legal entities. One of the subjects of criminal liability according to the Criminal Code in force is the legal person. Since it is an active subject of the crime different from the natural person, naturally the conditions for the existence of his criminal liability are also different. Also, the legal person attracts a distinct form of liability, with specific features, which is subject to its own rules, separate from those applicable to the natural person. However, like the natural person, the legal person is subject to compliance with the fundamental principles of criminal law. The legal person participates as a distinct legal subject in the most varied legal relationships: civil, commercial, financial, administrative, banking and criminal. The introduction into Romanian criminal law of the criminal liability of the legal person took place through Law no. 278/2006, amending the Criminal Code from 1968. Currently, the Criminal Code in force dedicates Title VI to this legal institution entitled "Criminal liability of the legal entity". I chose this theme considering the challenges it entails and the issues it raises. I tried to answer some of them, such as the premises of the criminal liability of the legal person, showing how the criminal sanction was reached from the historical perspective of the legal person, I then explained the necessity that determines the regulation of such liability in criminal law, I explained the notion of a legal person, I have shown the conditions under which the criminal liability of the legal person is engaged and the way in which legal persons are sanctioned from a criminal point of view. I also presented a case in which the criminal prosecution of this subject of criminal law is practically illustrated.*

Keywords: *criminal liability, legal entity, sanction*

1. General considerations regarding criminal liability

The interest shown towards criminal liability in the theory of criminal law is commensurate with its importance.

"None of the entire range of problems that interest this institution is lost outside the sphere of scientific research. In numerous studies and monographs, an intense preoccupation can be observed for defining and highlighting the essential features of criminal liability, fixing the limits and connections it has with other forms of legal liability, specifying the phases and forms of its realization, determining the ways of replacing and extinguishing it" (Mircea, 1987, p. 160).

The most serious of all forms of liability is criminal liability.

When it intervenes, it means that a socially dangerous act has been committed with guilt by a responsible natural person or by a legal person, which violates a criminal norm, a fact that determines the birth of the criminal legal relationship.

According to the Criminal Code, criminal liability has as its objective basis the crime committed. "Nothing else can generate or activate the incidence of the fundamental institution of criminal liability than the pre-existence (verified in each concrete case separately) of the fundamental institution of the crime" (Michinici-Mărculesu, Dunea, 2017, p. 325).

"Representing (theoretically, formally) the most severe form of legal liability existing in a society, involving consequences (direct and indirect, immediate and mediated, current and future) among the strictest on the person to whom it is committed, criminal liability does not can and must not be (potentially) attracted only by the commission of a concrete act that cumulatively meets all the essential features of the crime (in general and by means of the meeting of the feature of typicality and all the specific constitutive elements, in particular, of a certain determined crime)" (Antoniu , Daneș, Popa, 2022, p. 61).

The non-meeting, in the concrete act committed, of at least one of the essential features of the crime leads to the impossibility of generating criminal liability for the person who committed it and, implicitly, the impossibility of sanctioning him through criminal sanctions.

As regulated by the express provisions of the Criminal Code, a crime can be committed by a natural person or a legal person. Thus, the issue of criminal liability for the commission of crimes concerns both the natural person and the legal person.

The regulation of the criminal liability of the legal person, currently, can be found in Title VI of the Romanian Criminal Code in force.

2. The historical perspective on the criminal liability of the legal person

The criminal liability of the legal person is not a new problem.

It finds its origins in ancient law, so that at the end of the 19th century it returned to the attention of European criminal doctrine, and nowadays it is a central subject of scientific and legislative approaches (Streteanu F., Chiriță R., 2002, p . 5).

The origins of the notion of a legal person exist even before the Code of Hammurabi (ca. 1750 BC).

The notion is also found in Roman law.

In Romanian law, the state was the first legal entity.

He was the owner of his own patrimony (*ager publicus*) and where *solidates* and *collegia* were found, which regrouped people for a religious and political purpose, *corpora* (associations of workers) and *societates* (prefigurations of today's societies) (Neagu, 2021, p. 653). In Roman history, numerous situations are recorded in which cities, fortresses and municipalities were punished. Emperor Theodosius of Byzantium punished the city of Antioch by taking away its theater, baths and the title of metropolis for the crime of mocking the statue of his wife (Jurma, 2010, p. 1).

Losing its importance over time, the idea of collective responsibility is reiterated by German law that knew the existence of free associations, the so-called *Genossenschafien* or *Gilden* (Jurma, 2010, p. 2).

Throughout history, this responsibility has been legally regulated.

The French Revolution of 1789 removed the criminal liability of the legal person.

Towards the end of the 19th century and the beginning of the 20th century, legal entities became more and more numerous and stronger from an economic point of view, the risk of committing crimes by them increased considerably, so that the criminal liability of the person started to be regulated in legislation or jurisprudence (Neagu, 2021, p. 655).

The first system that reintroduced this form of legal liability was the common law system, so that it currently exists in most legislative systems.

In Romanian criminal law, the criminal liability of the legal person was introduced for the first time in the Criminal Code of 1936, to be later removed from the Criminal Code of 1968, however it was later introduced by Law 278/2006.

The criminal liability of the legal person was also preserved in the Criminal Code in force, being assigned a special title, Title VI: Criminal liability of the legal person.

3. The need to hold the legal entity criminally liable

The study of the criminal liability of the legal person acquired a new dimension after addressing this issue as the theme of the International Congress of Comparative Law in Athens in 1994 (Mancaş, 1998, p. 67).

It was argued that the legal person is not a fiction but a legal reality that has its own will and its own patrimony, exercises its own rights and fulfills its obligations.

It was thus concluded, in most states, that with the recognition of the civil capacity of the legal person, it is also necessary to regulate the criminal liability of the legal person, especially due to the fact that the economic-financial crimes committed by natural persons cannot be carried out without them using a legal person.

In the overwhelming majority of cases, the subjects of commercial relations are legal entities, and the natural persons who act in their name and interest, through the crimes committed, bring profits to these companies (Mancaş, 1998, p. 69).

The appearance of legal entities in the sphere of economic-financial crime is no longer an exception, but, on the contrary, it is a rule.

In the absence of criminal liability of the legal person, if only the natural persons within the legal persons were sanctioned, they could resume their criminal activity unhindered.

As a result of the alignment of the Romanian criminal legislation with the legislation of the European states, the Romanian legislator also introduced the criminal liability of the legal person (Popiviciu, 2014, p. 376).

4. The notion of a legal person

The existence of the legal person is recognized unconditionally and is statutorily separated in the Civil Code.

Thus, the separate and independent bodies, the result of a process of modernization of Romanian law, as well as of the now unanimously established quality, are the result of harmonization with existing international regulations subject to corporate law, these being legal entities (http://ads/Dima_Monica_Ana_Georgiana.pdf).

Collective legal entities have been defined in various ways.

Therefore, a collective subject of civil law, a group of people who participate independently in legal relations and have their own legal responsibilities and have a well-

defined organizational structure with independence in property law and strive to achieve objectives consistent with the public interest is can name a legal entity (Moldovan, 2010, p. 24). A legal person is a group of people that has its own subjective rights and civil obligations (Beleiu, 1998, p. 377).

5. The conditions of criminal liability of the legal person

The analysis of the conditions of criminal liability of the legal person concerns:

a) Categories of criminally responsible legal persons

According to art. 25 para. 3 Civil Code, "the legal person is a form of organization which, meeting the conditions required by law, is entitled to civil rights and obligations".

Legal entities are of public or private law.

Legal entities under private law can be constituted, freely, in one of the forms provided by law (Neagu, 2021, p. 660).

Legal entities under public law are established by law.

By way of exception, in the specific cases provided by law, legal entities under public law may be established by acts of central or local public administration authorities or by other means provided by law.

The legal person is established for an indefinite period, if the law, the act of incorporation or the statute does not provide otherwise.

From the moment of establishment it will respond until the moment of dissolution.

Art. 135 para. 1 Criminal Code, excludes from the category of legal entities criminally liable:

a) The state, by justifying the fact that the state is a legal entity that cannot be dissolved.

Also, in criminal legal relations, the state has the capacity of an active subject, being the only one that has the right and the obligation to prosecute criminals (Hotca, 2013, p. 164).

So the state cannot hold itself criminally liable.

b) Public authorities: the Parliament, the President of Romania, the Government, the Supreme Council of Defense of the Country, the Public Administration, the Judicial Authority held by the High Court of Cassation and Justice and the other courts, as well as the Superior Council of the Magistracy.

Law no. 187/2012 provides that in addition to public authorities regulated by the Romanian Constitution, the Court of Accounts and the Constitutional Court are no longer criminally liable (Hotca, 2013, p. 119).

For example: the National Institute of the Magistrate, the "Mina Minovici" Institute of Forensic Medicine, the Institute of Forensic Expertise, the National Institute for the Training and Development of Lawyers, the National Bank of Romania, etc.

Unlike legal entities under public law, legal entities are liable regardless of their legal nature, they can be profit-making legal entities and non-profit legal entities.

Most of the crimes recorded in the criminal judicial practice are those committed by legal entities and commercial companies.

I will present an example. In fact, it was held, in essence, that S.C. XXX SRL through the person of A. as an administrator, omitted, in part, to highlight in the company's accounting documents the purchases and sales of wood material made in the period 2016-

2019 at one of the company's work points, namely at the located in town Y. By this, SC XXX SRL created a total loss of yyyy lei, of which xxxxx lei is profit tax and yyyyy lei VAT. In conducting the criminal investigation regarding the defendant commercial company, the criminal investigation bodies showed that in the period 2016–2019, S.C. XXX SRL has repeatedly made several purchases of wood material. The purchases were carried out on the basis of the contracts that the commercial company had concluded with the Forestry Directorate xxx and the Ocolul xxx. The investigations in question started from a routine control carried out by the police officers of the Road Police from the locality x, on a transport from the company SC XXX SRL, which transported wooden material and regarding which the police officers found that no there are documents. In the case, several notifications were submitted, from which it appears that different quantities of wood material were sold by SC XXX SRL, without being entered in the accounting documents. Following the investigations carried out in the case, it emerged that SC XXX SRL did not fully record in the accounting documents the commercial activities carried out and the incomes made with wood material during the mentioned period. Large discrepancies were found between the inputs of wood material that were contracted based on the existing contracts in the case file with state institutions and which were authorized and then transported to the headquarters of the commercial company and the exits of wood material from the headquarters of the commercial company. The management deficits were assessed at the total amount of 5,456 cubic meters. The criminal investigation bodies requested through an address the Forest Guard yyy, to calculate the value of the wood found missing from the accounting of SC XXX SRL. Also, in the case, it was also ordered to carry out technical-scientific findings regarding the activity carried out by S.C. XXX SRL between 2016 and 2019, by an anti-fraud specialist. Thus, according to the research carried out, it turned out that A. as administrator of S.C. XXX SRL, in the period 2016 — 2019, purchased in the name and object of activity of the company whose administrator was a total quantity of 25,514 m². wooden table based on the contract concluded with Ocolul Silvic yyy. From this quantity of wood, according to tax invoices, 11,234 cubic meters were sold in the period 2016-2019, the difference up to 25,514 not being found in any of the accounting documents of the commercial company, nor was it found at the headquarters of the commercial company. It was found to be damage to the general consolidated budget of the state, based on revenues representing the value of the wood mass not registered in the technical-operational and accounting records of the company in question, in the profit tax chapter the amount of xxx lei and yyy lei VAT. In the case, an accounting expertise was carried out by an expert from C.E.C.C.A.R. yyy.

In the report drawn up by the accounting expert, it was stated that the total value of the fiscal obligations related to the wood mass for which no documents related to the exit from the management of the company were identified is aaaaa lei, of which xxxxx lei is profit tax and yyyyy lei VAT. This damage registered by the commercial company XXX was brought to the attention of the County Administration of Public Finances by the criminal investigation bodies of the Judicial Police within the County Police Inspectorate yyy through an address.

The criminal investigation bodies found that during a routine check carried out by the traffic police, the commercial company XXX carried out two shipments of wooden material of about 8 m³.

A transport vehicle belonging to the same company was used to carry out the transport of wood material. The wooden material had a notice to accompany the goods, but it was not drawn up according to the legal provisions in force. In law, SC XXX SRL committed acts of tax evasion. In addition to the two transports discovered by the traffic police, it was found that on other occasions, other transports of wood material were carried out for which the necessary documents were not drawn up according to the law. It is established that the crime of tax evasion has been committed in a continuous form, and the main punishment for its conviction will be applied. A complementary penalty will also be applied (example inspired by a published case <https://www.jurisprudenta.com/jurisprudenta/speta-196z7c9f/>).

The legal person is criminally liable if he commits the act in the pursuit of the object of activity or in the interest or on behalf of the legal person.

6. Criminal sanctioning of the legal entity

The criminal sanctions that apply to legal entities are:

- the main punishment of the fine
- complementary punishments
- safety measures.

a) The main penalty

The only main penalty that applies to the legal person is the fine.

In its absence, no complementary punishment can be applied.

The fine is a patrimonial punishment consisting in the reduction of the patrimony of the legal entity by obliging it to pay a sum of money that is brought to the state budget.

It is established on the basis of the system of fine days.

The amount corresponding to a daily fine between 100 and 5,000 lei is multiplied by the number of fine days, which is between 30 days and 600 days.

b) Complementary punishments

In addition to the main penalty of the fine, one or more complementary penalties from those provided in art. 136 para. 3:

The dissolution of the legal entity is the complementary penalty that leads to the termination of the legal entity, having the effect of its entry into liquidation.

The suspension of the activity of the legal entity is the complementary punishment that consists in prohibiting its activity for a certain period of time from 3 months to 3 years.

The closure of some workplaces is the complementary punishment that consists in the closure of one or more workplaces where the criminal activity was carried out.

It can be arranged for a duration from 3 months to 3 years.

The prohibition to participate in public procurement procedures is the complementary punishment that consists in the prohibition to participate in public procurement contract awarding procedures for a period of one to 3 years.

Placement under judicial supervision is the complementary punishment that consists of carrying out the activity that caused the crime to be committed under the supervision of a trustee. The display or dissemination of the conviction consists in bringing the conviction to the public at the expense of the convicted person.

The security measures applicable to the legal person are special confiscation and extended confiscation.

Conclusions

The criminal liability of the legal person is regulated in the Criminal Code in force, with a special title assigned to it: Criminal liability of the legal person.

According to this regulation, legal persons are criminally liable.

However, the law also establishes some exceptions. Regarding legal entities under public law, art. 135 para. 1 Criminal Code, excludes from the category of legal entities criminally liable:

The legal person is criminally liable if he commits the act in the pursuit of the object of activity or in the interest or on behalf of the legal person.

The guilt of the legal entity can be presented in the form of fault or intention.

The criminal sanctions that apply to legal entities are:

- the main punishment of the fine
- complementary punishments
- safety measures.

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