



## **CRIMINAL LIABILITY OF LEGAL ENTITY: THE CASE OF KOSOVO AND ALBANIA**

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### **Abstract:**

*Although there are still different views on the criminal liability of legal entity, particularly related to the fact if these socio-real creatures have or have no criminal liability for criminal offenses committed within society, the positive law of the Republic of Kosovo does recognize the criminal liability of such persons. In this regard, by noting the importance of Legal entity within our society, their activity, their impact on various social developments, and taking into account also the possibility of non-compliance with positive-legal norms by the respective entities we will gradually tackle the general aspects of the legal framework which is dedicated specifically to the criminal liability of legal entity. Thus, the research will be focused on presenting general data related to: fundamental notions related to the legal entity along with its criminal liability, the historical aspect of dealing with relevant entities in terms of recognizing their subjectivity, while the main focus will be the treatment of criminal liability and criminal sanctions which pursuant to the legal framework of the Republic of Kosovo could be imposed in conjunction with the relevant entities. In addition, apart from treatment of criminal liability of legal entity in accordance with the current legal framework of the Republic of Kosovo, we will also try to address the respective matter in the comparative dimension, with special emphasis on the criminal legislation of the Republic of Albania. Therefore, we will gradually gather the data on how the criminal liability of legal entity is regulated according to the criminal legislation of the neighboring countries, more specifically we will focus our study on the criminal legislation of Albania.*

*The treatment of the chosen topic for study will be based on the application of: historical-legal method, analytical method and comparative method.*

### **Keywords:**

Legal entity, criminal liability, criminal sanctions, Criminal Code of the Republic of Kosovo, Criminal Code of the Republic of Albania

### **1. Introduction**

Legal entities in growing industrialized societies, have a key position as they constitute the main engine not only in the context of economic development but also in social and cultural aspect, and this is due to the fact that corporations, firms, enterprises, companies are today the main protagonists in the economic and financial development of a state. As legal entities, they are a source of rights but also of obligations, which entails them to be liable in all aspects, both in civil, fiscal, administrative and criminal domains (Bozhaku, Elezi, 2012, p. 31). In this regard, although there have been various viewpoints on the criminal liability of legal entities who have committed criminal offenses, it is already apparent that such entities do bear criminal liability as well.

In this context, in order for the chosen topic for study to be even more apparent, our approach will be gradual, in terms of conveying from the basic notions for the relevant subjects of law, the historical aspects, in addressing such an issue in the legal-criminal field as well as criminal sanctions which are defined in the criminal legislation of Kosovo related to the perpetrators of criminal offenses, even in the circumstances when the same are considered to be legal entities. Likewise, in order to conduct a legal comparability and extend the study to wider treatment angles, we will carry out the research specifically on how such a domain is regulated with the legal framework of Albania.

## **2. The Legal Entity as a Subject of Law and as the Perpetrator of the Criminal Offense, Historical Aspects**

Regarding the treatment of legal entity as a subject of law and as a perpetrator of the criminal offense, we can initially stress out that the subject of law is the bearer of rights and obligations. Natural and legal entity could be the subject of law. (Aliu, Abdulla, 2005, p. 132). Such specification is very crucial because it does not only underline the notion subject to the law but also once again it reconfirms the liability of the subjects of law in the capacity of legal entity. Thereupon, the subject of law is not only the human, but it also involves creatures of society. Such creations, whose capacity as the legal entity is recognized, are called legal entities. (Aliu, Abdulla, 2005, p. 135).

However, we should not disregard the fact that legal entities were not always subjects of the criminal offense, as it is indicated in the Roman Law – by recognizing the old rule *societas delinquere non potest* - Legal entity could not be subjects of the criminal offense. In Roman times, legal entities were considered to be bearers of civil liability, and not of criminal liability. However, later on, especially in the criminal law of the Middle Ages, the possibility for legal entities to be considered as subjects of a criminal offense would also be recognized. So, they were punished as well. Punishment of legal entities was expressed through collective responsibility. (Salihu, Ismet, 2015, pp.190-191). Whilst, we should also emphasize that the codes of the first half of the XIX century, pay little attention to legal entities. (Aliu, Abdulla, 2005, p. 135).

However, being the bearer of rights and obligations, as well as taking into account the gradual development of society, especially in the socio-economic sense, the demand for criminal liability for such entities for criminal offenses was gradually expressed. In this sense, although there is still debate about the criminal liability of legal entities, especially with regards to the question of who should specifically be held accountable for antisocial behavior in certain situations, one thing is clear, the legal entity is subject to law and in this sense also a subject who has criminal responsibility. Thus, even in such situations when the perpetrator of the criminal offense turns out to be a legal entity, it is necessary for the society to be organized, so that, through actions taken from its own bodies, to react towards such behaviors. (Shishani, Fitim, 2006, p. 92).

## **3. Legal Entity as a Subject of Law and as a Perpetrator of a Criminal Offense According to the Criminal Legislation of Kosovo**

The former criminal legislation of Kosovo did not recognize the legal entity as the perpetrator of the criminal offense, by relying on the principle that the legal entity cannot be held criminally liable (*societas delinquere non potest*). This concept has also been present in the legislation of European countries. However, this concept has been subject of changes in recent decades, as such forms of crimes that emerged were conditioned by various business corporations. The presence of new forms of criminal offenses, including also the very dangerous crimes resulting in great consequences and dimensions, was conditioned by the strengthening of the role of these corporations not only in the economic sector but also in the public sector, in public enterprises and entities, in public money, tenders, etc. (Salihu, Ismet, Zhitija, Hilmi, Hasani, Fejzullah, 2014, p. 179), which of course was necessary for such subjects to be considered as subjects of law and thus could be considered as perpetrators of criminal offenses.

Thereupon, by referring to the material legal-criminal provisions in the first place of the Criminal Code of the Republic of Kosovo, it is valid to stipulate that the legal entity is responsible for the commission of criminal offense by the responsible person, who has committed the act by acting on behalf of the legal entity and for its benefit or interest or when that criminal offense has inflicted damage. (Criminal Code of the Republic of Kosovo, No. 06 / L-074, 23 November 2018, Article 37, para. 1). Meanwhile, in order to further stipulate such a legal definition, and to further define the subject of legal entity as a bearer of certain rights and obligations, such definition has been established in order to indicate that the legal entity is the legal entity of the country or a foreigner which according to the Kosovo legislation in force is considered a legal entity. (Law on Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 1, para. 1.2). Whereas, apart from the legal entity being as a subject responsible for committing the criminal offense, the legal entity in certain situations is considered to be the natural person within the legal entity, who has the confidence to perform certain duties, or authorization for acting on behalf of the legal entity and there is a high justification that he/she is authorized to act on behalf of the legal entity. (Law on Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 1, para. 1.1).

Thus, we will stress out once again that based on the legal-criminal provisions in force in the Republic of Kosovo, it is apparent that the legal subjectivity of legal entities is not only recognized, but at the same time they, as well as

natural persons as responsible persons within them, who commit acts on their behalf and on their account, also bear criminal responsibility for the criminal offenses committed within society.

#### **4. Criminal Liability of Legal Entities According to the Criminal Legislation of Kosovo**

When referring to the criminal liability of legal entities we ought to clarify that the criminal liability consists of the criminal offense as an objective element and responsibility and guilt as subjective elements. (Salihu, Ismet, 2015, p. 276). Consequently, it is apparent that although the legal entity is essentially a socio-real creature, which is created within society to perform certain functions, on the other hand such a creature clearly lacks the subjective side, but which side is supplemented by the presence of the natural person, as the responsible subject within the legal entity, for which such a subject performs actions. Thus, in this context, the criminal liability of legal entity in Kosovo derives only in relation to criminal offenses committed on their behalf by natural persons, in the framework of the implementation of the given authorizations in order for the legal entity to generate any benefit, or if the offense has inflicted damages. The liability of the legal entity exists even when the action of the natural person has been contrary to the business policy or orders of the legal entity. (Bozhoku, Elezi, 2012, p. 295).

In addition, apart from the defined basic definitions of criminal liability of legal entities under the criminal legislation of Kosovo, legal concretization is ongoing, emphasizing that the liability of a legal entity exists if the criminal offense of the responsible person comes as the result of: a competence to represent the legal entity, an authority to make decisions on behalf of the legal entity or an authority to exercise control within the legal entity or lack of supervision or control by the designated person who has made it possible to commit the criminal offense in benefit of the legal entity from a responsible person under his authority. According to the foreseen conditions, the legal entity is also responsible for the criminal offense when the responsible person who has committed a criminal offense is not punished for that criminal offense. Criminal liability of a legal entity does not exclude from criminal liability a responsible person who has committed, organized, incited or assisted in the commission of the same criminal offense. (Criminal Code of the Republic of Kosovo, No. 06 / L-074, 23 November 2018, Article 37, para. 2, sub-para. 2.1 and 2.2, para. 3 and para. 4). In addition, the legal definition is defined by the special law according to which, the legal entity is responsible for a criminal offense even if the responsible person who has committed the criminal offense has not been convicted of that criminal offense. The liability of the legal entity is based on the fault of the responsible person. Where as, the subjective elements of the criminal offense which exist only within the responsible person will be correlated in relation to the Legal entity. (Law on the Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 5, para. 2, para. 3 and para. 4).

#### **5. Criminal Sanctions Against Legal Entities According to the Criminal Legislation of Kosovo**

Criminal sanctions are violent criminal-legal measures imposed by the court through procedures prescribed by law against the perpetrator of a criminal offense, in order to protect society and the individual from crime, while consisting in obtaining or restricting certain freedoms and rights or warning the perpetrator that his/her liberties or rights will be taken away or restricted if he/she again commits a criminal offense. (Salihu, Ismet, 2015, p. 417). When referring to the matter of criminal sanctions against legal entities, we must emphasize that the main purpose of setting and imposing criminal sanctions is focused on the fight against dangerous social actions, which violate or endanger social values protected by criminal legislation. (Latifi, Vesel, 2003, p. 154). Based on this general purpose of all criminal sanctions, the criminal law foresees special goals for each type of criminal sanction. All of these specific goals come together in the overall goal towards crime prevention and re-education of convicts, as forms of recidivism prevention. (Latifi, Vesel, Elezi, Ismet, Hysi, Vasilika, 2012, p. 259). Even in situations when legal entities appear as perpetrators of criminal offenses, criminal sanctions can be imposed according to the legal-criminal provisions of the criminal legislation of our country, which are predetermined in a genuine manner according to the current criminal legislation.

In this regard, according to the already defined provisions, it is apparent that the following sanctions can be imposed against the legal entities who have committed criminal offenses within society: penalties, conditional sentences and security measures. Whereas, the types of sentences that can be imposed for criminal offenses of a legal entity are: fine and suspension of the legal entity. (Law on Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 8, para. 1 and para. 2). According to the relevant law, which very well defines the

criminal liability of Legal entity, it also apparent with a conditional sentence, that the court can impose a sentence of up to fifty thousand (50,000) Euros for the legal entity, but that the same shall not be executed if the legal entity convicted for the time specified by the court, which cannot be shorter than one (1) year or longer than two (2) years (verification time), does not commit any new criminal offense that has the elements of a criminal offense within the meaning of Article 5 of this law. In a conditional sentence, the court may determine that the sentence will be applied even if the legal entity convicted within the set deadline does not return the property benefit obtained by committing the criminal offense, and does not compensate the damage caused by the criminal offense or does not fulfill the other obligations provided in the criminal-legal provisions. The deadline for fulfilling these obligations is set by the court within the set deadline for verification. (Law on the Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 12, para. 2 and para. 3).

On the other hand, always according to the legal provisions, it is determined that for the criminal offenses for which the legal entities are responsible, the following security measures can be imposed: prohibition of performing certain activities and works; item confiscation; confiscation of property benefit as well as public announcement of the judgment. (Law on the Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 13, paragraph 1, subparagraphs 1.1, 1.2, 1.3 and 1.4).

However, even in terms of imposing the fine against the legal entity as the perpetrator of the criminal offense, among other things it is emphasized that for the criminal offenses of legal entity the penalty provided by the fine can not be less than one thousand (1,000) euros and no higher than one hundred thousand (100,000) euros. (Law on the Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 9, para. 1).

Likewise, one of the most severe punishments that can be imposed on a legal entity is the termination of their activities. Consequently, a conditional sentence for the activity of a legal entity may be imposed if the legal entity was established for the purpose of committing criminal offenses or has used the activity mainly for the commission of criminal offenses. (Law on Liability of Legal Entities for Criminal Offenses, No. 04 / L-030, 31 August 2011, Article 11, para. 1).

Based on the above, we can emphasize that this punitive policy is foreseen and is expressly defined by the Kosovar legislator, aimed to prevent and combat illegal phenomena, in which legal entities may be involved or are involved. Thus, in the circumstances of the commission of a criminal offense, the punitive policy, ie the sanctions set out above may strike the legal entity as a subject of law and as the perpetrator of the criminal offense.

## **6. Legal Entity as a Perpetrator of a Criminal Offense, Criminal Liability and Criminal Sanctions Under the Criminal Legislation of Albania**

Even the criminal legislation of the Republic of Albania has explicitly foreseen and defined the criminal responsibility of legal entity. Thus, a criminal liability of the subjects in question is defined in the Criminal Code of the Republic of Albania, which requires to be further concretized by the Law on Criminal Liability of Legal Entities. Consequently, legal entities, with the exception of state institutions, are criminally liable for criminal offenses committed on their behalf or for their benefit by their bodies and representatives. Local government units are criminally liable only for actions taken during the exercise of their activity, which can be exercised through the delegation of public services. Criminal liability of legal entities does not exclude the natural persons who have committed or are accomplices in the commission of the same criminal offenses. The criminal offenses and the relevant punitive measures, which are applied to legal entities, as well as the procedure for their establishment and execution are regulated by a special law. (Criminal Code of the Republic of Albania, approved by Law no. 7895, dated 27.01.1995, Amended by Law no. 144/2013, dated 02.05.2013, Article 45, repealed by law no. 8733, dated 24.1.2001, article 4; added by law no. 9275, dated 16.9.2004, article 7).

According to the Law on Criminal Liability of Legal Entities, it is specified that the legal entity is responsible for commission of criminal offenses: on its behalf or for its benefit, by its bodies and representatives; on his behalf or for his benefit, by a person who is under the authority of the representing person, directing and administering the legal entity as well as on his/her behalf or for his/her benefit, due to lack of control or supervision by the person directing, representing and administering the legal entity. (Law on Criminal Liability of Legal Entities, No. 9754, dated: 14.06.2007, Article 3, para. a, b and c).

Pursuant to the criminal legislation of Albania, we can emphasize that depending on the created situation, the main and additional sentences can be imposed towards legal entity. Thus, it has been specified that legal entities who have

legal liability for commission of the criminal act, the following punishments will be imposed: a. fine; b. termination of the legal entity. Whilst, the main sentences do not apply to local government units, public legal entities as well as political parties and trade unions. (Law on Criminal Liability of Legal Entities, No. 9754, dated: 14.06.2007, Article 9, para. 1, sub-para. a and b as well as para. 2). Regarding the additional sentences that could be imposed on a legal entity as a perpetrator of a criminal offense, along with the main sentence, it is determined that the following additional sentences that may be imposed are: a) closing one or more activities or structures of the legal entity; b) placing the legal entity in controlled administration; c) prohibition to participate in the procurement procedures of public funds; d) deprivation of the right to obtain or use licenses, authorizations, concessions or subsidies; e) prohibition to publicly request funds and financial resources; f) deprivation of the right to exercise one or more activities or operations; g) the obligation to publish the court decision. Additional penalties provided for in letters "a", "b" "d" and "e" do not apply to local government units, public legal entities, political parties and trade unions. (Law on Criminal Liability of Legal Entities, No. 9754, dated: 14.06.2007, Article 10, para. 1, subparagraphs a, b, c, d, e, f, g, as well as para. 2).

## 7. Prevention and Fight Against Criminal Offenses of Legal Entities

Prevention and combating the criminal offenses of legal entities, represents a special segment in the field of dealing with incriminated behavior as illegal behavior, in which with their activities the legal entity may be involved. When we talk about the prevention of criminal offenses of legal entity, we must underline that by preventing crime in practice through contemporary anti-criminal policy, many state bodies, societies and institutions are taken as special preventive forces, which are considered as carriers of this activity. In the process of combating and preventing crime, it is very important to clearly and concretely determine the roles, tasks and goals of certain subjects of preventive activity. (Latifi, Vesel, Elezi, Ismet, Hysi Vasilika, 2012, p. 268). Although, we are dealing with subjects of law in the capacity of legal entities who may have committed or have committed criminal offenses, a care must be taken and all state mechanisms must be implemented in order to implement prevention policies, respectively to combat their prohibited activities. Throughout this process, the judiciary, with special emphasis the prosecution, the courts and the bodies for the execution of criminal sanctions, with their repressive functions have the duty to follow and analyze the phenomena, (Muratbegovic, Elmedin, 2007, p. 126) so that in case of any eventual reactions towards a potential situation of existence of dangerous and illegal behaviors, these subjects to be as effective as possible.

When adding the fact that criminal liability is already regulated in a specific manner with legal provisions, including also the criminal sanctions which are already defined, there is no doubt that the process of preventing and combating illegal behavior of these entities is even more efficient. Above all, we consider that the readiness of law enforcement entities, mutual cooperation between justice institutions, application of a reasonable punitive policies, similarly as it would provide success in preventing and combating illegal behavior of natural persons, would affect and will be successful also in preventing and combating illegal behavior of legal entities. In this way, it would be possible to protect and preserve the most important social goods and values from violations or dangers that threaten them as a result of commission of criminal offenses. (Petrovic, Borislav, 2006, p.10).

However, it should be noted that the prevention and combating of criminal offenses of legal entity is currently being supplemented by the process of general awareness, indicating that the relevant entities are also responsible and must be held accountable for criminal offenses committed within the society. Thus, apart from the criminal legislation of Kosovo and Albania, now a large number of European countries in their legislation have adopted the concept that legal entities should be considered perpetrators of certain criminal offenses which also provide such types of sentences which differ from the sentences provided for natural persons. Such a concept, for example, has been adopted by England, Ireland, Norway, Cyprus, France, Belgium, Finland, Slovenia, Croatia, etc. Based on the current trends it can be noted that an international trend for accepting the concept not only in European countries but also beyond the legal entity should be considered as subject of the criminal offense. (Salihu, Ismet, Zhitija, Hilmi, Hasani, Fejzullah, 2014, p. 180). Such awareness and having the same stance of states in determining such criminal liability of legal entities is a very important factor in throughout the whole process of prevention and combating of criminal offenses of the respective entities.

## 8. Conclusions

With regards to the treatment of fundamental issues on the criminal liability of legal entities, we can reiterate that legal entities have been recognized under the positive criminal legislation of Kosovo but also under the criminal legislation of Albania. Consequently, the issue of criminal liability of legal entities is expressly defined by the Kosovar legislator with legal-criminal provisions of the Criminal Code of the Republic of Kosovo and the relevant field is defined specifically by a special law, ie the Law on Liability of Legal Entities for Criminal offenses, no. 04 / L-030, which made it clear that the relevant entities can not only appear as subjects of law but at the same time can also appear as perpetrators of criminal offenses. Likewise, the criminal liability of legal entities has been determined by the legislator of the Republic of Albania with the Criminal Code of the Republic of Albania, approved by Law no. 7895, dated 27.01.1995, amended by Law no. 144/2013, dated 02.05.2013 and further concretized with the Law on Criminal Liability of Legal Entities, no. 9754, dated: 14.06.2007. Thus, both the Republic of Kosovo and the neighboring country, the Republic of Albania, have joined a large number of states which in their legislation have explicitly defined the criminal liability of legal entities. We consider that such a step is extremely necessary in the field of interstate cooperation, and in certain situations it can strongly contribute towards the prevention an efficient and effective fight against criminal offenses committed by legal entities.

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