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A theoretical observation on the liability of legal entities for criminal offences: an European perspective

SUMMARY: 1. Introduction. – 2. Transition of the European Countries from the principle "*societas delinquere non potest*" to the principle "*societas delinquere e potest*". – 2.1. Reluctance to accept criminal liability for legal entities in the European system-trends of maintaining legal traditions. – 3. Parallel criminal liability and autonomy of criminal liability of legal entity in relation to natural person. – 4. The nature of the sanctions that can be applied to legal entities for criminal offenses. – 5. Conclusions.

1. Introduction

Current regulation of liability of legal entities for criminal offenses results from the growing influence of legal entities, in particular of corporations in all areas of economic and social life, thus enabling the potential for committing many criminal acts on their behalf and benefit. This reality has made legal entities subject of treatment of criminal law.

The issue of criminal liability of legal entities is currently a concept that has been raised worldwide, including in the countries of the European continent. In this regard, most European countries have accepted the criminal liability for legal entities (Netherlands, Norway, France, Finland, Denmark, Slovenia, Switzerland, Belgium) or have foreseen measures with similar effects, as it is the case with Italy. The exception is Germany, where legal entities that are responsible for criminal acts, are faced only with administrative responsibility.

In the last decade, the trend of determining criminal liability of legal entities has been seen in the Balkan countries where the provisions of the criminal codes (Macedonia, Bosnia and Herzegovina) or in special laws (Albania, Kosovo, Croatia, Montenegro and Serbia) have foreseen the terms of the liability for the legal entities for criminal offenses, procedural aspects and sanctions that can be applied to them.

In this paper we will do a theoretical observation about the transition of the European countries from the principle "*socitas delinquere non potest*" to the principle "*societas delinquere e potest*", together with uncertainties and limitations of this responsibility in some countries, and the concept of the parallel criminal responsibility of legal person in relation to a natural person and the challenges of sanctions that can be applied to legal entities.

2. Transition of the European countries from the principle "*societas delinquere non potest*" to the principle "*societas delinquere e potest*"

It is widely known that the doctrine of criminal law in European countries has not recognized and accepted for a long time the possibility that a legal person is criminally liable for acts committed by members or their representatives, relying on the principle that criminal responsibility is individual and not collective (*societas delinquere non potest*). As a result, the legislation of these countries for a long time has been based on this principle and criminal liability has been limited only to natural persons.

Furthermore, the notion of guilt has been considered only as a concept of personal nature, which presumes criminal liability to be depended on psychological factors that can be proved just for natural persons. According to this concept for criminal liability as a psychological connection is required to find one guilty, as "personal" liability, and as an obligation that derives exclusively from subjective conscience[1].

Societas delinquere non potest principle has its origins in the context of the church, in fact, it derives from a dogma of Pope Innocent IV, which had the purpose to ban the de-Christianizing of corporations or civil entities for the sins committed by their members. This dogma was preserved even in the context of the development of criminal law, and was present until the XX century[2]. Later this concept in criminal law doctrine in the system of "Civil law" is supported in the theory of the German jurist and historian Friedrich Carl von Savigny: that rights may possess only a natural person, whereas the legal entity to conduct its activity needs representatives, therefore legal entities cannot be perpetrators of criminal acts, being simply a legal fiction[3]. This theory has represented traditional approach of fiction or roman theory.

The theory of fiction, today, is replaced with reality (technical) theory. This theory is also known as organic theory, which considers legal entities as serious participants in socio-economic life. This has consequences on criminal law, which cannot rely on fictions, while on the other hand, faced with the phenomenon of collective crime; criminal law may not remain in the sphere of individual criminal liability[4]. The theory of reality, justifies the criminal lia-

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[1] DE MAGLIE, *Societas Delinquere Potes? The Italian Solution,* Ed. by Pieth, M. & Ivory, R. – Corporate Criminal Liability, *Ius Gentium: Comparative Perspectives on Law and Justice 9*, Basel, 2011, 256.

[2] See: ZAPATERO, *Sun strafrechtliche Verantwortlichkeit Personen der juristischen in Spanien*, in: *Schulz et al. (Eds) Festschrift für imme Roxie*, Muller, Heidelberg, 2012, 711.

[3] See SAVIGNY, *Sistema del diritto romano attuale*, II, Bologna, 1900.

[4] KAMBOVSKI, V., *Criminal and legal framework of prevention of organized crime, organized criminalità – legal aspects*, Tetovo, 2009, 40-41.

bility of legal entities and taking measures against entities that cause serious severe consequences for society, and this is justified with the fact that a legal entity has the capacity to act, carry civil and administrative responsibility for actions of its representatives, thus it is logical to hold criminal liability for offenses committed in the name and its benefit. In this way is created the foundation of transition from traditional concepts that only natural persons may bear criminal responsibility.

While a natural person is required to respect the values of society protected by legal–criminal norms within his mental capacity, his conscience for his importance, and behavior contrary to these norms makes him guilty. It is clear that on the same criteria the guilt of the legal person may not be based. For the latter, is required the existence of a culture of the organization ("corporate culture") to have an environment to exercise an activity in a legal manner, respecting the legal benefits to society. Furthermore, on determining the guilt or innocence of the legal entity, for the acts performed by its representatives, the existence of a model of organization and control ("Compliance program") is required in order to prevent criminal acts. On the contrary, the absence of such a model should represent the basis of the suspicion about the guilt of the legal entity for the offense committed by its representatives.

Here there can be no question of a willingness or gross negligence of legal entity, neither for psychic relation with the offense, as it is defined in the case with a physical person, and there could not be a psychological conception of guilt for legal entities. This problem can be solved by doctrine only, through a normative conception of guilt, by criteria of accommodating the nature of legal entities and their operation.

Thus, "*mens rea*" that once was thought to represent the overwhelming problem for the application of a scheme of criminal liability for legal entities, is now surpassed by based on the actions of agents[5], who have delegated powers from governing bodies of the legal entity, and their actions are identified with the will of the legal entity itself. This principle is now recognized from global doctrine, identifying the criminal liability of legal entities as delegated liability to his agents, known as the principle of identification[6]. The conception of guilt for legal entities, could be said to be the result of what Professor Ramacci calls as global doctrine orientation in finding most favorable aspects for the formulation of ideological principle "*nullum crimen, nulla poena sine culpa*" for the fact that there are different scientific concepts on the notion

[5] MOHOJAN K., *Corporate Criminal Liability: Why corporations are preferred and not the employees?*, 1, See*: http:ssrn.com/abstract=1608905.*

[6] MOLAN M., LANSER D., BLOY D., *Principles of Criminal Law*, 4th ed. London, 2000, 138 and onwards.

of guilt[7], and as a result of a continuous dynamic on adapting the principles and rules of criminal law to the needs of social reality.
As it is known beginnings of normative conception of guilt, where present since XX the century, with the penetration of "Neo-Kantianism" and with return to the values and ethical criteria in formulating criminal–legal institutes, recognizing the ethical notion of guilt as a rebuke[8], for the acts or omissions in violation of legal criminal norms in force.
In this way through transition from the traditional conception of guilt into a normative conception, becomes possible to rebuke any entity, if it does not follow the social values accepted by society. In this line of thoughts, guilt is not about psychic relation (personal) individual–criminal offense, but a reprimand to all entities, including legal entities as careless in respecting the law[9].
As such, normative conception of guilt is considered "key" of the affirmation of criminal liability for legal entities, that as criterion of proving guilt takes if the criminal offense is committed on its name, and in the interest for the legal entity (directly or indirectly)[10] of such offense or offenses is a result o negligence of a legal entity to take necessary measures to prevent damage, respectively the criminal offense[11]. On this basis, the criminal liability of legal entity is determined in most of European countries, which have accepted this institute in their respective legal systems.

2.1. Reluctance to accept criminal liability for legal entities in the European system - trends of maintaining legal traditions

Despite wide acceptance of criminal liability for legal entities in all legal systems in the world, yet we cannot say that the principle "*societas delinquere non potest*" in the field of criminal law is eliminated, in particular the European system, which is still followed by questions and uncertainties in this as-

[7] RAMACCI, *Corso di diritto penale*, Torino, 2003, 107.
[8] KAMBOVSKI, *Criminal Law – General Part*, Skopje, 2004, 248 and onwards.
[9] BOZHEKU, ELEZI, *Criminal Liability of the Legal Persons*, Tirana, 2012, 44.
[10] The legal entity directly benefits from the commission of the offense, if the governing bodies of the legal entity provide a favoritism in committing criminal offenses by natural persons, for the purpose of obtaining on their interest illegally, for example, promote corruption actions in order to obtain public tenders, etc. While indirect benefit, a legal entity could have when it does not invest in the necessary measures to prevent criminal acts, in order to save its budget, for example, a construction company does not invest in security measures, not to expend and therefore causes damage, or a company for the production of food products does not invest in the equipment required by the standards and thereby endangers the lives and health of people, etc.
[11] An example committing criminal offences (causing damage) due to the negligence of a legal entity (not necessarily means that legal entity has economic benefit) may be environmental pollution by a company that has purchased all the equipment under standards for the elimination of pollution, but they do not function or are not maintained properly and for this negligence environmental pollution is caused.

pect.
From the assessment of doctrinal and jurisprudence approach in many countries, in relation to reluctance to accept criminal liability for legal entities under their own legislation, there are mainly two barriers or excuses. First, the approach of the traditional criminal law theorists associated with the principle "*societas delinquere non potest*", and the second barrier is consideration of legislative reforms that should be made in many areas (environment, business, etc.) that are affected by accepting responsibility of legal entities under criminal law.
These aspects have led some countries to discover specific normative solutions, with the purpose of preserving constitutional principles and their legal tradition. As typical representatives among countries that have been reluctant to accept criminal liability for legal entities, are solutions preferred by German and Italian legislators.
It is well known within the "Civil law system", historically (in contrary to "Common law") there was a continuing objection to accept criminal liability, even against a legal entity, based on the tradition of preserving the principle of personal criminal liability, thus causing delays in accepting pure penal concepts for legal entities[12] even in European countries. On the other hand, current legal framework of the EU requires responsibility of legal entities for criminal offenses; nevertheless it does not set a mandatory criminal liability. Even this has influenced countries as Germany and Italy, to utilize this option within the EU normative framework, to circumvent from the criminal liability that would directly apply to legal entities.
In this regard Italian legislators have made a great turnaround within a legal system, by enacting Law no. 231, on 08.06.2001, that creates a *sui generis* solution, determining administrative liability for legal entities responsible for the crimes that have been committed in their interest or advantage. This vigilant choice of Italian lawmakers is made in order to avoid the violation of article 27, paragraph 1 of the Italian Constitution, which enshrines the principle of guilt and personal criminal liability. The sui generis aspect of the law in question, is made obvious from the fact that despite avoiding the notion of "*criminal liability*" and criminal sanctions, a method of maintaining compliance among legal acts, nevertheless, proceedings that take place against a legal entity, is typical criminal procedure and it is based on the provisions of the Italian criminal procedure and takes place before a criminal court.
The trend to accept the criminal liability for legal entities in European countries has not been followed by Germany, because dogmatic problems have no

[12] MANDUCHI, *The introduction of corporate "criminal" liability in Italy*, in *www.diritto.it.*

solution within the existing system in order to accept this kind of responsibility [13]. The German legislator has foreseen a solution furthermore restrictive, specifying only an administrative liability for legal entities for criminal offenses committed by the entities they represent. Thus, adhering to art. 19 of the German Criminal Code which provides that «...only natural persons can commit crimes...». In the German legal system, development of legal proceedings against legal entities is within the competence of the administrative court (unlike Italian system).

Obviously, countries that have been influenced by German and Italian legal system, have hesitated for a long time to accept criminal responsibility for legal entities such as: Hungary[14] and other countries. Nevertheless, so far, almost all European countries have established within their legislation criminal liability for legal entities, for criminal acts committed in their name and for their benefit (Netherlands, France, Belgium, Finland, Norway, Switzerland, Denmark, etc.).

In the last decade, foreseeing criminal liability for legal entities was recorded in the Balkan countries, with provisions in criminal code (Macedonia, Bosnia and Herzegovina) or by special laws (Albania, Kosovo, Croatia, Montenegro, Serbia) have determined the terms of the liability of legal entities for criminal offenses, procedural aspects and sanctions that can be applied to them. In the Balkan countries, one of the current problems is seen to be the practical application of laws in this area.

3. Parallel criminal liability and autonomy of criminal liability of legal entity in relation to natural person

The conception of liability of legal entities for criminal acts committed in their name and benefit has set up a parallel criminal liability scheme under different legal systems. This model is foreseen in all legislations that have regulated the liability of legal entities for criminal offenses, where fact that legal entity has a legal liability does not exclude criminal liability of the natural person who has committed the offense[15], but rather all systems foresee the possibility of a dual penalty for these offenses.

While the criminal liability of legal entity is based on the actions of the natural

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[13] BOHLANDER M., *Principles of German Criminal Law, Studies in International & Comparative Criminal Law*, Oxford, 2009, 23 and onwards; BÖSE M., *Corporate Criminal Liability in Germany – Corporate Criminal Liability*, Ed. Rodha I. & Pieth M., Basel, 2011, 227-228; WEIGENT TH., *Societas delinquere non potest? – A German Perspective*, Oxford University Press, 2008, ICJ 65 (927).

[14] SANTHA FERENC, *Criminal responsibility of legal persons in Hungary – Theory an (a lck of) practice*, 198 and onwards, (*http://www.upm.ro/proiecte/EEE/Conferences/papers/S1A38.pdf*) {02.03.2014}.

[15] RONE D., *Legal Scientific Research on Institute of Criminal Liability of Legal Entities in Eight Countries – Ministry of Justice of the Republic of Latvia,* 2006, 33.

person who represents it (the so–called theory of liability for the actions of others "vicarious liability"[16]) or on the basis of the theory of identification ("identification theory"[17]) of legal entity with actions its representatives (leaders), nevertheless, it remains the fundamental task of the doctrine to analyze the relation between the legal entity and the natural persons. On the other hand, it is the responsibility of legislators to accurately foresee the circle of persons that can trigger criminal liability of legal entity, the volume of this responsibility and the autonomy of criminal liability of legal entity in relation to the liability of a natural person.

In this aspect, there are differences within European countries, depending on the type of criminal offenses for which legal entity could eventually be found liable and the category of legal natural persons (their status) that can cause this liability. As regards to the type criminal offences, the liability of legal entities in several countries is limited to some specific criminal offenses ("list–based approach), mainly of economic nature, as such are Italy (which foresees administrative criminal liability for legal entities) [18] Spain[19], Estonia[20], etc. A restrictive definition of criminal liability of legal entities, by listing the criminal offenses, means that a legal entity cannot be responsible for other offenses that may be committed by its representatives, thus, limiting the application of parallel criminal liability scheme. Contrasting this solution, other countries do not make such a restriction, but determine that a legal entity may be responsible for all criminal offenses foreseen in criminal legislation (the model– "all crimes approach"), provided that the legal conditions for such liability are met (Netherlands[21], Croatia[22], Kosovo[23], etc.). For example: in the legislation of the Netherlands, the country with the earliest history in Europe for sanctioning the criminal liability for legal entities, the latter are criminally liable same as natural persons, and any sanction prescribed for a natural person can also be applied to legal entities, except those which by their nature cannot be

[16] For more on the theory "*Vicarious liability*" see PIETH M., IVORY R., *Emergence: An Introduction to Corporate Criminal Liability Principles*, cit. 6 and onwards.
[17] *Id.*
[18] MANDUCI C., cit., 2.
[19] About the criminal liability of the legal persons in the Spanish system, particularly see: DE LA QUESTA J.L., *Criminal Responsibility of Legal Persons in Spanish Law*, in *International Review of Penal Law*, AIDP/IAPL, 84,1/2, 2013, 143-179.
[20] GINTER J., *Criminal Liability of Legal Persons in Estonia*, *Juridica International*, XVI/2009, 151.
[21] See Dutch Penal Code (*Wetboek van Strafrecht*) (DPC), 1976, Article 51.
[22] See Act on the Responsibility of Legal Persons for the Criminal Offences, in *Official Gazette of Croatia no. 151/2003*, Article 2.
[23] See Kosovo Law nr. 04/L-030, on the liability of legal entities for criminal offences, in *Official Gazette of the Republic of Kosova* No.16/ 14 September 2011, Article 2, paragraph 2.

forced to a legal entity (prison sentence)[24].

For the criminal liability of legal entities, is fundamental to define natural persons who may commit criminal offense on their behalf and benefit. According to the criminal legislation in this area, the circle of entities that can trigger criminal liability for legal entities, usually consists of two levels: 1) subjects placed in the top hierarchy of legal entities, which includes the category of persons with representative administration or management functions, and 2)the level of persons who are under the authority of the person who represents, manages and administers the legal entity, the executive level employees[25].

From this it appears that parallel criminal liability, except legal entity includes the possibility of imposing criminal sanctions on two levels of subjects (natural persons) that are part of the structure or have formal connection with the legal person. The first group includes persons who are at the top of the structure of the legal entity, who manage, exercise decision–making and policy of legal entity. While in the other group are included natural persons acting under the orders and supervision of persons from the prior group, executing works on behalf and benefit of the legal entity. In this category, are included the regular workers who are in working relation, as well as those who have a formal authorization to perform certain duties for the legal entity [26], as may be those who are engaged based on a commission contract.

Is the duty of the prosecution to prove in every case the relation of natural person with the legal entity, at the time when the criminal offense was committed, based on the legal criteria for criminal liability of legal entities. Because, the fact that the criminal offense is committed by employees of a legal person, that does not automatically imply the guilt of the legal entity. In those cases it required to prove the guilt, for prosecuting the legal entity for the criminal offense: to prove that the natural person has acted on behalf and benefit (cumulative conditions) of the legal entity or that damage is caused due to negligence of the legal entity, respectively due to not taking any measures to prevent such acts[27].

For a fair trial, the legal entity should have the possibility to prove the innocence, and when it achieves to testify that its name is abused for personal in-

[24] See BURUMA H., *Criminal Liability of Companies in Netherlands*, *Lex Mundi*, 2008, 1.
[25] BALA E., *Criminal punishment of legal entity*, "*Jeta Juridike"*, 4/2008, 147 and onwards.
[26] *Id.*
[27] See, e.g., Kosovo Law nr. 04/L-030, paragraph 1, Article 5, foresees that: «A legal person is liable for the criminal offence of the responsible person, who has committed a criminal offence, acting on behalf of the legal person within his or her authorizations, with purpose to gain benefit or has caused damages...»

terests of natural person or other persons, this should be considered as basis for innocence of the legal entity.

The possibility to misuse of the name of the legal entity, is one of the circumstances that especially affected to European countries to have a restrictive approach to the criminal liability of legal entities for acts of employees[28] in relation to the criteria of the conception of criminal liability for legal entities, thus limiting the sectors where the legal entity may be liable for the physical person[29] and limiting the types of offenses for which legal entity may be held responsible. On this basis, the judicial practice is directed towards the position that legal person's liability for actions f its representatives cannot be unlimited[30]. On the other hand, it should be noted that there is also another group of theorists who oppose this approach of restricting criminal liability of legal entitles, considering that it does not provide the possibility to prove the real "cooperation" with employees[31] who commit crimes.

Avoidance of responsibility for criminal acts or at least a reduction of the sanction is possible only if the legal person has adopted an adequate model of organization and internal appropriate control bodies, and it is proved that in the particular case the model is implemented, with the aim of avoiding any benefit that may be derived from the criminal offense that was committed by an employee of the legal entity, regardless of its hierarchy level[32]. A "compliance program", that would be able to avoid the criminal liability of legal entities is complex, and must fulfill certain criteria, that can be the bases for the legal entity to prove its innocence in a court proceeding, held for the criminal offence, committed in its name and benefit. This "compliance program", firstly, should describe in detail the behavior that managing bodies within the legal entity, as well as subordinates and other subjects shall have when conducting an activity for legal entity. These actions must be determined in the relations within the legal entity, as well as with third subjects with whom activities performed on behalf of the legal person[33].

In this regard, the absence of legal criteria for proving innocence of a legal

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[28] KHANNA V.S., *Corporate Criminal Liability – What purpose does it serve*?, in *Harvard Law Review*, Vol. 109, No. 7, 1996, 1491.

[29] See AVGERINOPOULON D-TH., *Legislative Developments: Approximation of European environmental criminal laws: within or beyond the European community competence?, 13, Colum. J. Eur. L. 747*, 2.

[30] See BRICKEY K.F., *Perspectives on Corporate Criminal Liability*, in *Legal Studies Research Paper Series,* No. 12-01:02, 2012, 7.

[31] BEALE S.S., SAFWAT, A., *What Developments in Western Europe Tell Us about American Critiques of Corporate Criminal Liability*, Buff.Crim.L.R.89, 1 and onwards.

[32] MANDUCHI C., cit., 3.

[33] BOZHEKU E., ELEZI I., cit., 124.

person, which would force the latter to adopt a "*compliance program*" for this purpose (in accordance with the law) is the main gap of laws adopted in many countries on liability of legal entities for criminal offenses[34], with the exception of some countries, such as. Italy, where the law explicitly[35] stipulates that a person shall not be responsible for the criminal offense if it manages to prove that enforced the "compliance program" in accordance with the law.

I consider that legislation of all countries should provide a "compliance program", which contains the necessary elements to enable to prove before a court that the program was appropriate for the prevention of criminal acts, and should have effects to the legal person in name and whose benefit the offense is committed: to exempt the criminal liability or to mitigate the punishment, or the effect of imposing lighter security measures against a legal entity.

Acceptance of parallel criminal liability, which provides for the possibility of twofold punishment and normative definition of criminal liability of legal entities arises from the actions of natural persons, in the legislation of all countries is recognized the principle of independence of the criminal liability of legal entities in relation to a physical person who has committed the offense [36]. According to this principle the criminal liability of legal entity is autonomous, and exists even in cases where for various reasons it is unable to be punish a natural person who has committed the offense (because of loss of mental ability after committing the crime, death, escape, etc.). In cases where conditions exist for conducting criminal proceedings against the legal entity and natural person, this procedure must be unique.

4. The nature of the sanctions that can be applied to legal entities for criminal offences

Besides to problems of conception of the guilt for legal entities, theoreticians who have adhered to the theory of fiction (based on the principle "*societas delinquere non potest*"), as an obstacle to implementation of this liability to legal entities have considered the application criminal sanctions against them. One of the basic arguments of these theorists against criminal liability for legal entities, is that against them an imprisonment sentence could

[34] A gap found also in the Kosovo Law No. 04/L-030.

[35] The Italian law no. 231/2001 on administrative liability of legal persons for criminal acts. For a deep acquaintance with Italian law see: MANDUCHI C., cit., LATTANZI G., *Reati e responsabilità degli enti*, Milano, 2005; FIORELLA A., LANCELLOTI G., *La responsabilià dell'impresa per i fatti da reato*, Torino, 2004, VINCIGUERRA S., GASTAODO C. M., ROSSI A., *La responsabilià dell'ente per il reato commesso in suo interesse*, Padova, 2004, etc.

[36] See Kosovo Law, 04/L-030 Article 5, paragraph. 1 and 2; Liability of Legal Persons for Criminal Offences Act of the Republic of Slovenia, Article 6, paragraphs 1 and 2, etc.

not be applied (as typical criminal sanctions) and some other measures of criminal nature, and generally it is difficult to find adequate criminal measures to punish legal entities[37]. This position is held today even from the countries that have not accepted the institute of criminal liability for legal entities, and in those which have state-controlled economy[38].

However, today the liability of legal entities for criminal offenses by most global legislation is regulated as such that the system of criminal sanctions is not problem, even criminal sanctions are justified as subsidiary measures in relation to civil sanctions[39], the latter were not enough to prevent the crime by legal entities. The system of sanctions for legal entities is adopted to nature of the legal entity, and contains different types of sanctions: like those with which the reputation, property, activities and the existence of the legal entity is damaged and jeopardized[40], and mainly have property character, a seizure, limiting the ability to participate in public tenders or to perform public works, etc. [41]. In legal systems that foresee liability of legal entities for criminal offenses (including European countries), sanctioning them is based on the principles of delegated liability (vicarious liability) and on the theory of identification (identification theory)[42]. In general, models and principles for sanctioning the legal entities are similar at an extent in "Civil law" system, as well as with those that are part of the "Common law" system, foreseeing fines as most common sanction and other measures affecting the confiscation of property and limiting income of legal entities[43]. Sanctions and measures with property character, which are contemplated for legal entities, are based on the nature of the criminal acts committed by legal entities, which are mostly committed for economic-pecuniary motives (benefit gained from the criminal offense, is also one of the fundamental criteria for criminal liability of the legal entity). However, the system of sanctions against legal entities also include sanctions

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[37] WAGNER M., *Corporate Criminal Liability – National and International Responses*, in *International Society for the Reform of Criminal Law 13th International Conference Commercial and Financial Fraud: A Comparative Perspective,* Malta, 8-12 July 1999, 2.

[38] See: CHENG YANG V., *Developments in Criminal Law and Criminal Justice: Corporate Crime-State-Owned Enterprises in China,* Crim. L.F. 14, 1 and onwards. While strengthening of corporations in capitalist system imposes the criminal liability of legal entities, it is inherent that in controlled economies this institute is not applied. We believe that this fact is also one of the factors why the former socialist bloc countries (Albania, the former Yugoslavia, etc.), hesitated for a long time to accept the criminal responsibility of legal entities.

[39] NEUMANN VU S., *Corporate Criminal Liability: Patchwork verdicts and the problem of locating a guilty agent,* (104 Colum.L.Rew. 459) 2004, 11.

[40] KAMBOVSKI V., *Criminal Liability of Legal Persons*, cit., 41.

[41] BOZHEKU E., ELEZI I., cit., 39.

[42] WAGNER M., cit., 2 and onwards.

[43] PIETH M., IVORY R., cit., 46.

that are not only with property character, as it is sentence to termination the legal entity, or the termination of its activity, which is foreseen in most legislations that have regulated criminal liability for legal entities[44]. This sanctions, in legal doctrine compared to the death penalty, which is applied to natural persons, and it is most severe sanction within the system of sanctions against a legal person, that may be imposed in cases where an entity was established for criminal intention or its activity has been largely criminal[45]. As such, this sanction could be compulsory in cases of serious criminal offenses, such as those relating to terrorism, various forms of organized crime, and in all cases where fines and other measures are considered insufficient to prevent crime from legal entity. Depending on the model of regulating the liability of legal entities, for which European countries have decided, we can separate the system of sanctions against legal entities in: a) *Sanctions with an administrative nature* (e.g. Germany, which has not acceded to the model of foreseeing criminal liability for legal entities, as did most European countries, that have accepted a model according to the tradition of "Common law"[46]countries system); b) *Semi-criminal sanction or administrative-criminal sanctions* (e.g. Italy); and c) *Criminal sanctions* (countries that have accepted the criminal liability of legal entities.

This diversity of the system of sanctions against legal entities in European countries is based on the normative framework of the EU in this area, which provides that states should determine appropriate measures to legal entities, which are liable for criminal acts in accordance to principles of their national legal system, without specifying binding measures about the nature of such sanctions[47]. Fines are most common sanctions against legal entities and more convenient to influence the prevention crime from legal entities[48], that is foreseen as a substitute for imprisonment that applies to natural persons for certain criminal offenses and it is equivalent with the latter. As an illustration, for example, in Croatia for a sentence over 15 years imprisonment, prescribed

[44] Kosovo Law no. 04/L-030, the punishment with termination of activity of the legal entity, as foreseen in Article 11.

[45] *Id.*, paragraph 1.

[46] For a deep comparative study between administrative sanctions that apply to a German system for legal persons liability for criminal offenses and sanctions in the American system see: DISKANT E.B., *Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine Through Comparative Procedure*, in *The Yale Law Journal*, 2008, 128-172.

[47] See *Framework Decision of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment, (2001/413/JHA), article 7; Framework Decision of 22 July 2003 on combating corruption in the private sector,(2003/568/JHA) article 6; Framework Decision of 24 October 2008 on the fight against organized crime, (2008/841/JHA), article 5, etc.*

[48] JEFFERSON M., *Corporate Criminal Liability: The problem of sanctions*, in *Journal of Criminal Law* (JCL65(235)), 2001, 2 and onwards.

for a natural person, for the same offense a legal entity could be punished by a fine from 2,800.00 to 685,000.00 Euros (approximately, because a fine in Croatian law is determined by the local currency) [49], or as provided in Article 9 Paragraph. 2, point 2.1, of Kosovo Law no. 04/L-030, that: «for criminal offenses which are punishable with imprisonment of fifteen (15) days to three (3) years, the court may impose a fine, from one thousand (1,000.00) up to five thousand (5,.000.00) Euro;, etc.».

5. Conclusions

Under current legal framework, it appears that most European countries have regulated the criminal liability of legal entities, by adhering to the principle *societas delinquere e potest.* However, there is still reluctance in accepting criminal liability for legal entities (Germany, Italy), on the other hand, even countries which have anticipated criminal liability for legal entities have determined different models regulating it, in relation to some aspects like: type of criminal offenses for which a legal person could be held liable, the volume of this liability, the nature of the sanctions, etc. In general at the European level, it is challenging to practically implement laws on liability of legal entities, in former socialist countries problem of implementation in practice of criminal liability is related to the process of stabilization and organization of their economic systems, particularly the transition from state controlled economy to free market economy. In the end a complex task in this area remains the determination of the legal criteria for the existence of "compliance programs" to be applied by legal entities in order to avoid their criminal liability.

[49] KUČIĆ V., CRNKOVIĆ A., *Criminal Liability of Companies in Croatia,* in *Lex Mundi*, 2008, 1-2.