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CRIMINAL RESPONSIBILITY AND CORPORATE SECURITY

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Abstract: This paper shows the relationship between criminal responsibility and corporate security by analyzing the responsibilities of physical, licensed and legal persons in corporations. These two institutes are interesting and challenging area of research, given the changes in the criminal legislation of Bosnia and Herzegovina and normative framework in which business entities exist today. Corporate Security is one of the core strategic functions of any serious legal entity, and therefore the question can be asked whether the performance of these functions make certain acts or omissions that could lead to criminal responsibility of both individuals and legal entities. With the entry into force of the new criminal codes in Bosnia and Herzegovina, was introduced in our legislation for the first time and the responsibility of legal persons for criminal offenses, so it is important to determine which criminal provisions are applicable to legal persons and for which crimes. The development of new scientific and practical technology leads to such forms of crime in the context of a corporation in which, in addition to the individual or individuals as responsible persons, and more important and criminal liability of legal persons. Also, very important concern is the responsibility of the responsible person within legal persons and other individuals in the legal entity, all with respect to their assigned duties and responsibilities set forth by law and other regulations.

Keywords: Criminal responsibility, corporate security

1. Criminal liability

1.1. In general, responsibility

Criminal liability is one of the most important criminal justice institutes and has been differently defined throughout history. The notion of liability in the linguistic sense indicates that a person is responsible or should be responsible for certain actions he makes, and even for some actions he has failed to do. In this paper we are talking about the criminal responsibility⁴² of the reconstructed social norms in a certain social organization (or corporation) or, more precisely, of the criminal responsibility: an individual, responsible persons, a group of persons and a legal person as perpetrators of criminal offenses in a particular social organization. There are several theories on criminal responsibility about criminal responsibility in the criminal law science, the most important of which are psychological, theories of vigilance, normative and psychological normative. Psychological theories have arisen in Germany and according to them the guilt is in a psychic relationship, which encompasses the work as an event in the outside world, and does not include awareness of the unlawfulness of the work. According to these theories, virtue and guilt are reduced to the purely psychological attitude of the perpetrator towards the act as a factual event, to his presentation of the act as such. The basic objection to these theories is that the notion of "guilt is difficult to reduce to a bare psychic attitude towards the work done

without involving any normative content in it."⁴³

Normative theories of vigilance see the substance of the guilt in the narrative that the perpetrator is sent for the perpetrated criminal offense. "The cause of the emergence was some extreme cases in which the exclusion of the unlawfulness, but also the conviction of the perpetrator, could not be justified."⁴⁴

According to these theories, virtue or guilt is not reduced to a psychological relationship, but to a value-logical evaluation given by an impartial evaluator, which is purely of a normative character. Psychological - normative theories or normative - psychological theories include two types of guilt elements: psychological and normative. These theories are based on the view that guilt includes awareness of the committed crime and awareness of the unlawfulness of the offense committed.⁴⁵ "According to these theories, guilt involves accountability, intent and neglect, and awareness or the possibility of having awareness of the unlawfulness of the act." Criminal responsibility is a set of subjective assumptions that need to be fulfilled to impute an unlawful and unlawful act to the perpetrator or to it could be burdened. This in criminal law means the application of the principle of subjective responsibility and objectively-subjective concept of the criminal offense, and because of its importance, it has become one of the basic criminal principles that is expressed in a way that does not have a punishment without guilt (*nulla poena sine culpa*). The

⁴² The last changes and amendments of the CC of BiH instead of the term criminal responsibility adopted the term of fault ("Official Gazette of BiH", No. 8/10). With the amendments of the CC of F BiH, this term was replaced by the term of guilt ("Official Gazette of F BiH", No. 42/10). The same was done

in the CC of the RS in 2010, while in the BD of BD the remainder of the criminal responsibility.

⁴³ Babich M and Markovich I., op.cit. p.27

⁴⁴ Novoselac P., op.cit. p.236

⁴⁵ Kambovski V., op.cit. p.387

notion of criminal responsibility in BiH criminal law is determined by law, in the manner that the perpetrator is accountable and responsible for the committed criminal offense.⁴⁶

Analyzing these provisions it can be concluded that the criminal responsibility in our law consists of two components or two subjective elements: his mental state and his mental attitude towards the crime, i.e. accountability and guilt or vindictiveness. Since the founding of the social community, man has been responsible for violating set social norms, but with this responsibility different from the responsibility that is now set in contemporary social order. The development of the social community developed and changed the perception of the basics, the limits and rules of human responsibility, but they also tried to establish certain principles and rules of responsibility as a significant condition for the application of the criminal sanction. The generally accepted principle of punishment in older times was the principle of objective responsibility with certain and small exceptions. Modern crimes are based on the principle of subjective responsibility, which implies that, in addition to the unlawfulness of the offense, the punishment of a perpetrator also requires the existence of his guilt for the offense committed. Unlike the subjective concept, in the case of objective responsibility for punishment, it is not important what the

subjective attitude of the perpetrator towards prohibited behavior and the resulting consequence is, because for his responsibility it is sufficient for his actions to cause the given effect. Objective responsibility in the old legislation was the rule, and some cases of subjective liability were an exception.⁴⁷ Today, the situation with regard to subjective responsibility is completely different. Exceptionally, the principle of objective responsibility is still present in some countries, with minor offenses (England, USA). Our criminal legislation, like most modern legislation, stands in the classical positions regarding the establishment of criminal responsibility,⁴⁸ i.e. accepts the principle of subjective responsibility. This means that criminal responsibility exists only when the perpetrator at the time of the commission of the criminal offense had such a psychological property and such a psychological attitude towards the work that he could be charged. The guilty is therefore an individual category and it is a set of conditions under which the perpetrator can be declared responsible for a particular criminal offense, but without which his work can not be attributed or charged.⁴⁹

This expresses the view that guilt is a personal category and is based on individual abilities and abilities of a particular perpetrator, which is one of the essential features of today's modern criminal law. The crime is a very complex

⁴⁶ Čl.33.KZ BiH

⁴⁷ Ćirić J., op.cit. p. 68-69. In one chapter of the book, the author deals with accountability and objective responsibility, and raises the question of whether, through the objectification of psychological phenomena of normality and accountability, an objectification of responsibility comes into play. It further states that the relationship of rights on the one hand, psychology and psychiatry

on the other hand, in practice, is often reduced to the relation of pure formalism, which indirectly introduces objective responsibility in law.

⁴⁸ Szrentić N. et al., Op.cit, p.67.

⁴⁹ More guilty see Jovasevic D and Petrovic B., The New Concept of Crimes in Criminal Law of Serbia, Proceedings of the Law Faculty in Nis, No. XLVII / 2006str.36-40.

subjective category in which the evaluation in criminal proceedings must take into account several elements such as: the personality of the perpetrator, the way in which he decided to commit a particular act, his motivation, internal reasons, and so on.⁵⁰ Criminal liability is a necessary precondition for the application of an appropriate penalty for the perpetrator of a criminal offense or criminal offense, and it is the subject of various theoretical attitudes and debates. According to the generally accepted attitude, criminal responsibility (guilt) exists when the perpetrator had such psychic characteristics at the time of the commission of the criminal offense and such a psychological attitude towards the work that he could be charged. Criminal liability presupposes, therefore, accountability and virtue, as a set of subjective conditions without which there is no criminal liability. In addition to this definition of criminal responsibility, which consists of psychic elements, there is a wider understanding of criminal liability according to which the content of responsibility is determined objectively-subjectively and consists of two components. Objective component constitutes a criminal offense, and subjective accountability and virtue.⁵¹ The law negatively determined the issue of the existence of imprudence, and the same applies to the notion and the existence of significantly reduced accountability.⁵² Accountability and wineiness are subject to scaling (greater or lesser computability and greater or lesser vinicity), and depending on

this, criminal responsibility is susceptible to scaling. In the criminal law of the Anglo-Saxon countries it is necessary that the perpetrator be guilty and bear responsibility for the consequences of his deed, to satisfy two criteria: that he committed the criminal act (*actus reus*) and that he possesses the necessary intent to do this work (*mens rea*).⁵³

Mens rea is usually defined as a psychological relationship to the work, but also as a mental state of the perpetrator in function according to the act. The perpetrator of a criminal offense may be released from liability in situations where the law prescribes it. The reasons for the release may be different, but today most often prescribe the situations when the offender committed the act in the utmost urgency, the necessary defense, imprudence, and the like. According to the Criminal Code of BiH, there is a guilty if the perpetrator at the time of the perpetration of the criminal offense was countable and acted with intent. The criminal guilt for a criminal offense exists even if the perpetrator has acted out of negligence, if this is explicitly provided for by law.⁵⁴

The personality of the delinquent and his criminal responsibility are exposed by the different actions of the social, personal and biological factors that condition his behavior. By responding to various external factors, individual manifestation of personality and its action in the social environment arises. From the reaction that a person expresses on the influence of

⁵⁰ Loc.cit.

⁵¹ NešićLj., Criminal Law: opštideo, VŠUP, Belgrade, 1999, p.147.

⁵² Buturović J., The Importance of Affects of Criminal Responsibility, JRKK, No. 8, Belgrade, 1980, p. 30

⁵³ See more: Peau J., MentalyDisorderedOffenders, in: TheOxfordhandbookofCriminology, ClaredonPress, Oxford, 1997, pp. 661-701

⁵⁴ Criminal Code of BiH, "Sl. Glasnik BiH ", number 03/2003, Article 33, paragraph. 1st and 2nd.

objective and subjective factors, the responsibility for such a reaction arises, which, depending on the reaction, can be moral, political, criminal, and so on. When it comes to responsibility for the commission of criminal offenses, only the criminal offense and its perpetrator are the two sides of the same issue. Both sides are linked in an objective process and must be treated in a related way. Namely, the responsibility for the commission of a criminal offense must be based on the study of the offense and on the dismissal of the personality of his perpetrator, that is, on the study of the psychic structure and all other personal elements that can be judged in connection with the committed act.⁵⁵

If this is a normal person, i.e. about a person with sound psychic functions, a crime is a conscious act, but an act that has certain causes for which it is committed. Accountability is one of the most important institutes of criminal law and is most closely related to guilt and criminal responsibility. A high degree of legal theoretical concordance has been reached on this criminal law institute, as evidenced by the approximate definition of this institute in the BiH legislation and the countries from the immediate environment. Thus today, accountability in criminal law is defined as the capacity for guilt, and in order for a particular person to be responsible, she must have the ability to understand the significance of her deed and to be governed according to that ability.

The function of accountability is precisely to determine the constitutional abilities of the perpetrator for guilt, bearing in mind, in this respect, that guilt is the responsibility of the offense committed, and not a set of some of the negative personality traits, or *down et culpaecapacitas*.⁵⁶

Accountability is such a state that is not of a lasting character and in criminal law it represents an individual's relationship to one of the prohibited acts. Criminal behavior varies in different groups of perpetrators of crimes and the causes can be sought between the individual and the community. Multidisciplinary efforts and integrated research into psychiatry, law, forensics, criminology would lead to better discoveries about the causes of delinquent behavior.⁵⁷

Criminal Laws in Bosnia and Herzegovina foresee that a criminal offense can be committed only by an incriminated and guilty offender. The condition for the pronouncement of a criminal sanction is wine, but as an unbearable person can not be a wine, it can not be punished either.⁵⁸ Due to this model, the dual concept of punishment and security measures has been abandoned: a punishment for a faulty and vindictive offender, and a security measure for an incurable perpetrator.⁵⁹

Since accountability in criminal law is presumed, it is proven in each specific case where there is a suspicion that it is excluded, reduced or significantly reduced. In order for a person to be guilty and

⁵⁵ Janković N .; Jovanović A., op.cit., P. 406 and further.

⁵⁶ Bačić F., Criminal law, general part, Informator, Zagreb, 1995, p. 194.

⁵⁷ Dahlin K et al., Mentally disordered criminal offenders: Legal and Criminological Perspectives, Volume 32, Issue 6, November-December 2009., Pages 377-382, International Journal of Law and Psychiatry, Canada

⁵⁸ Simović, M., Simović, V .: Basic problems in criminal proceedings in Bosnia and Herzegovina with persons with mental disorders, Pravni život, no. 9, Belgrade, 2007, p. 677.

⁵⁹ Compare: Simović, M., Simović, V .: op. cit., p. 677; Zadić M., Protection of the rights of persons with mental disorders, Pravna misao, iss. 11-12, Sarajevo, 2006, p. 100

punished, he must possess first, certain intellectual and willing ability, capacity. More precisely, he must possess a normal mental or willful disposition that allows him to understand the compulsory norm and follow its command.⁶⁰

Starting from this, it is considered that the institute of criminal responsibility is expanding from the institute of accountability, and it can be said that accountability is only one of its elements. On the other hand, guilt is at the same time narrower than accountability, because accountability is a capacity for guilt, while the very fault is the realization of this ability.

2. Corporate Security

2.1. Conceptual definition

Corporate security is a relatively young science discipline. In the historical discourse, she was already known in the first human communities. Protection of personal property, tribal organization of the community, etc. examples are that it is as old as society itself. Although this institute has been present for a long time in Europe and the world, the same in our environment and in BiH, from a scientific and practical point of view, has only existed since two decades ago. Corporate security is a small part of the national security of each country, but it has not yet found its place in full capacity, both in theory and in the practice of most of the countries in the region. Corporate security is one area of security that has a significant place in any community with less or lesser knowledge about it. From the earliest times to the formation of the first organized communities - the state, security was an

expression of the state of social relations and a question that is constantly being sought for answers. In conditions of high progress and globalization in international markets, as well as increasing technological challenges, especially in some social processes or branches, such as IT and telecommunications, corporate security is a logical step in the development of each company in order to protect all forms of corporation business and smooth development and promotion. The threats that every company faces today, such as organized economic crime and various financial malversations, but also "traditional" problems such as theft or negligence of workers, require that they face them by establishing a separate sector within the firm or by engaging external associates with the rich experience in solving such situations. The terminological name itself tells us that it is a region composed of two terms or concepts and two areas that denote a group of individuals organized in economic terms as a corporation that can have a social or private type of ownership.

The other term or area we are talking about is security that is also composed of multiple security systems and can be and is organized as public or social and private. Today, there are many definitions of corporate security from different authors with different content. In this paper we will distinguish several of them from the authors from our environment. What they all include is that corporate security is a set of measures and actions to protect property and persons in a particular corporation, whether it is owned by a state or a private entity. Each of the definitions will help us

⁶⁰ Drakić D., op.cit., P. 49, 50.

better understand both the term of corporate security and the relationship between corporate security and criminal liability. These are two institutes that have a mutual relationship and a mutual consequence, standardized both at the international and national level. Corporate security, by definition, is an integral security in which various content, activities and activities and numerous entities within the business system are combined, using different procedures, tactical authorization procedures, etc., perform a number of necessary security measures and activities in achieving a single goal.⁶¹

According to some authors, "corporate security is a strategic function of the company, which aims to achieve the security of the business success of the corporation, which means: eliminating all risks and threats that can affect business activities and achieve business success; minimizing the harmful effects; business operation in crisis management (crisis management), crisis overcoming and normal business operations."⁶²

Milan Milosevic points out that corporate security is, by its very definition, integrated because it involves performing several different functions that need to be synchronized. As such, it represents the function of a corporation that controls and manages the coordination of all activities within a business entity concerning security, continuity and security. The existence of an efficient corporate security system protects the company against all

threats, establishes the basis for making management decisions, provides top-management access to confidential information and forms processes and procedures that prevent the outflow of protected data from the corporation.⁶³

Every social problem has its own area in which both the entities associated with it and the corporate security work. Such areas are a challenge for various groups of scientists and researchers with the goal of detecting problems and finding a quality response. The research that is being done can have its broader and narrower social significance with regard to social interest. Consequently, corporate security has the object of its research that can be broader and narrower. The subject of research in the broader sense encompasses all the works and activities planned and organized by the employees, internal organizational units, services of the sector, etc., managers of the company or business system, as well as the activities of external entities (state bodies and agencies) in order to create the more favorable conditions for the normal operation and business of that undertaking, including the identification of possible risks, threats and risks, their pre-emption or the elimination of their consequences. In the narrower sense, the subject of the research is the system or model of organization of security and protection of persons, property and business within the economic system, where this system is regarded exclusively as self-protection activity. After determining the subject of

⁶¹ Komarčević M et al., Corporate Security, Belgrade, 2011.p. 16

⁶² Ivandic Vidovic Darija, Karlovic Lidija, Ostojic Alen, op. cit., p.

⁶³ See: Milan Milosevic, "Concept and Content of Corporate Security", in: Scientific Meeting

"Security Days" on the topic "Corporate Security - Risks, Threats and Measures of Protection" (Proceedings), Faculty of Security and Security of Sinergija University, Banja Luka 2010, p. 59-60

the research itself, it is necessary to determine exactly and in this connection precisely define the boundaries, that is, to accurately dimension its coordinates and the subject framework. Accordingly, the subject of corporate safety research includes the following elements: design and planning of corporate security systems, risk assessment, risk assessment, development of plans and elaborates for the implementation of security procedures and procedures, development of security policy and strategy, organization of specific organizational units, services (or formation of special reports or designation of responsible persons) for performing various security and safety tasks, for example, security service, occupational safety, fire service, environmental protection, classified information, etc.⁶⁴

Today, corporations in BiH are exposed to various types of threats and threats that can be catastrophic in some segments. Sources and forms of endangering the security of corporations can be: technical and technological accidents; natural disasters; criminal acts that inflict damage on a business entity (diversion, terrorism, sabotage, destruction or damage to products for the production and destruction of products); criminal acts of classical crime; crimes of economic crime committed by employees, most often in conjunction with business partners (abuse, corruption, bribery, embezzlement, robbery, contracting or doing business at the expense of the company); criminal acts of causing general danger and crimes against human health and the environment; criminal offenses using information technology;

traffic accidents and accidents; casting confidential data; violations (violation of working discipline, deviation from the prescribed organization of work, overstepping or usurping of competences and authorities, non-implementation or partial implementation of prescribed procedures, unsafe business); social and other unrest within the corporation.⁶⁵

3. Criminal liability and corporate security

By performing certain actions entrusted to them by the laws of the authorized person, individuals and legal persons in the corporation, as prescribed by the new criminal codes in BiH in the performance of regular tasks, they may commit certain criminal offenses. For such forms of illegal activities, the Criminal Code prescribes criminal responsibility and penalties for unlawful acts. More specifically, such forms of illicit treatment in literature are referred to as corporal crime. Although there is no precise definition of this form of crime, it can be defined as property crime or "white collar crime".

Zlata Đurđević estimates that the areas where criminal activities are carried out by corporations are heterogeneous, and that this type of crime is most often manifested in the field of economic business (tax evasion, embezzlement, forgery of money, abuse of bankruptcy, credit and accounting fraud, forgery of business books for the purpose of fraud shareholders, violation of competition rights, money laundering, insider trading, trade corruption, etc.). It also indicates the so-called organized

⁶⁴ Komarčević M et al., Pp. 18 and 19

⁶⁵ Trivan D., Corporate Security, Belgrade, 2012str., 42 and 43

crime, that is, to the situation in which more business subjects, who otherwise legally do business, when they are given a suitable opportunity, jointly and plannedly perform a certain kind of organized criminal activity.⁶⁶ The organizational structure established within the corporation is based on the breakdown of its overall tasks into individual tasks, on the establishment of organizational units as holders of certain joint tasks, and on the establishment of such coordination mechanisms that enable the performance of tasks at all levels of business process linkage.⁶⁷

In such an organizational structure, companies are responsible for corporate security: top-managers (management) and managers at all levels of decision-making; Supervisory Committee, ie. expert, whose task is to monitor and improve the security aspects of the business; security managers (CSO - Chief Security Officer), operating teams, designers and implementers of security business principles components, and all employees of the company. In some companies in Serbia and Bosnia and Herzegovina, mainly those who do not have a separate organizational unit of corporate security, there is also the function of the Director of Security.⁶⁸

This position in a particular corporation carries the highest responsibility in the processes of corporate security, including criminal responsibility for the acts prescribed by the Laws of BiH. In addition to the responsibility of natural persons,

lately, the issue of criminal and other responsibilities of legal persons, which is not based on subjective guilt, is more and more important than the gravity of the consequences observed in connection with the act or omission of a legal entity. In contemporary criminal law, a theory of fiction has long been abandoned, according to which legal persons can not be held criminally liable because they are not able to realize the essential elements of the notion of a criminal offense - action and guilt.⁶⁹

According to some authors, the consistent implementation of the guilt principle of a legal person is only possible if the liability of a legal person is justified by the guilt of the responsible person. Practically this means that a legal person could be convicted of a transgression or a violation only if all the ingredients of guilt are proved to the responsible person, and that means pliability, intent or failure and awareness of the unlawfulness.⁷⁰

The basis for the responsibility of a legal person is the guilt of the responsible person for a criminal offense (criminal offense, offense). The liability of a legal person for offenses must not be a substitute for the liability of a natural person. Given that these are two completely different legal entities, criminal repression in the broader sense must be maximally adapted to the specificities of each of these entities. The criminal liability of a legal entity, unlike the same to individuals, will not be based on the degree of subjective guilt, but on the

⁶⁶ Đurđević Zlata, "Criminal liability and criminal proceedings against legal entities in the Republic of Croatia", *Croatian Journal of Criminal Law and Practice*, Vol. 10, no. 2, Faculty of Law, Zagreb 2003, p. 722-725.

⁶⁷ Ivandić Vidović Darija, Karlović Lidija, Ostojčić Alen, *op. cit.*, p. 67.

⁶⁸ Trivan. D., *Corporate Security*, Belgrade, 2012, str. 125

⁶⁹ Derenčinović. D., *Responsibility of Legal Persons in Croatian Criminal Law*, *Croatian Legal Review*, 2012. p. 20

⁷⁰ Novoselac. P., *Crimes in penal and misdemeanor law*, *Croatian Yearbook on Criminal Law and Practice*, Vol. 8., no. 1/2001, p. 52. 35

severity of the consequences observed in relation to the act or criminal offense of the legal person.⁷¹

Conclusion

Criminal liability and corporate security are two legal concepts and institutes that often appear in criminal law. As we have seen in this paper, these are two institutes that comprise two areas, causally and consequently, in a legal and security sense, interconnected in the theory and practice of criminal law. The management of corporations is unthinkable without the responsibility regulated by several normative acts in the corporation itself, as well as in the criminal legislation of each community. Sources and forms of corporation endangerment may be different that we have talked about in the work, as responsibility can vary with the weight of the violated social norm and the consequences arising out of unlawful action. Criminal liability for corporate security of companies has primarily: managers (management) and managers at all levels of decision making, supervisory or administrative bodies in the corporation, security managers, operating teams, designers and implementers of security components and all employees in the company. In addition to the responsibility of natural persons, the issue of criminal and other responsibilities of legal entities, which is not based on subjective guilt, is more recent than the weight of the consequences observed in connection with the act or omission of a legal entity. The provisions on criminal responsibility of a

legal entity were introduced into our legislation in 2003, but in practice it has not yet been brought to full capacity.

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