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CONCEPT OF LIABILITY OF LEGAL PERSONS IN CRIMINAL LEGISLATION OF BOSNIA AND HERZEGOVINA

Selma Otuzbir, MA, email: otuzbir.selma@gmail.com

Abstract: *With the introduction of corporate liability in criminal law, the same rank in a significant number of countries in which the law provides for liability of legal persons in accordance with a number of documents of the Council of Europe, European Union, United Nations. Since the state is possible to introduce liability for legal persons, the requirements are based on the increase of crimes committed with activities of legal persons, as well as the difficulties that are based on the complexity of the organizational structure of the legal entity of the identification responsible for the criminal. To consider and that only punishment individuals to such a perpetrator can be easily compensated by a legal person, in whose name and whose behalf the offense. The criminal legislation of Bosnia and Herzegovina accepted the accessory liability legal persons for criminal offenses, according to which the liability of legal persons is based on the responsibility of physical person, acting in the name and for the account or benefit of a legal person. In the following work will be presented base and limits of liability of legal persons.*

Keywords: *Legal person, criminal law, the liability of legal persons*

INTRODUCTION

BiH Criminal Legislation regulated the application of criminal legislation of BiH under the responsibility of legal persons by Article 11 of the CC BiH and Article 13, paragraph 3 of the CC BiH.

Criminal legislation of BiH applies to legal entities in accordance with chapter XIV (refers to liability of legal persons) of criminal legislation as well as other laws of Bosnia and Herzegovina. Also, Article 13, Paragraph 3 regulates that the provisions of the general part of the law apply to legal entities, unless otherwise provided by law.

Article 13, paragraph 3, of the CC of BiH sets out the subsidiary application of the general part of the criminal law to legal persons in relation to the special provisions on the liability of legal persons contained in Chapter XIV of the CC of BiH. This means that the provisions of the general part of the law can be applied only if the provisions of chapter XIV of the CC of BiH do not specify otherwise. With subsidiarity only applies to the application of the general part of the law, but not to the criminal law provisions contained in other laws.

The application of BiH criminal legislation on the liability of legal persons for criminal offenses with regard to the place of perpetration of a criminal offense is of particular importance, especially when determining in which cases domestic criminal legislation is applied at the same time, it is determined when domestic courts have jurisdiction. This means that in cases where the application of domestic criminal law has been determined, the jurisdiction of

domestic courts for the conduct of criminal proceedings is also determined.

It follows from the legal provisions that the basic principle of the validity of BiH criminal legislation on the liability of legal persons is the territorial principle, and that in cases where the offense is committed outside the territory of BiH, the principles of passive and active personality are applied. The question arises about who constitutes a circle of legal persons who may be responsible for criminal offenses, the answer to this is in Chapter XIV of the CC of BiH which, with the exclusions specified in Article 122, paragraph (1), apply only to social structures considered to be legal entities in accordance with the meaning of the term defined in Article 1, paragraph (13) of the CC BiH. According to the provision of Article 1, paragraph 13 of the CC BiH, a legal entity, within the meaning of this law, is:

- Bosnia and Herzegovina
- Federation of Bosnia and Herzegovina
- Republic Srpska
- Brcko District of Bosnia and Herzegovina
- Canton;
- City;
- Municipality;
- Local community;
- Every organizational form of a company;
- All forms of business association;
- Institution;
- institutions for performing credit and other banking activities;
- Institutions for insurance of property and persons;
- Other financial institutions;
- Fund;
- Political organizations;

- Citizen Associations;
- Other forms of association that can acquire assets and use them in the same way as a second institution or authority that exercises and uses assets and is legally recognized as a legal entity.

The provisions of Article 122 paragraph (1) exclude certain legal persons from liability for criminal offenses, which are:

- Bosnia and Herzegovina;
- Federation of Bosnia and Herzegovina;
- Serbian republic;
- Canton;
- City;
- Municipality;
- Local community.

The above mentioned legal entities are legal entities of public character and their responsibility for the offenses is excluded irrespective of whether the *ius imperii* or *ius gestionis* acted.¹⁰⁷ Accordingly, the following legal persons may be responsible for the criminal offenses:

- Every organizational form of a company;
- All forms of business association; - Institutions;
- Institutions for performing credit and other banking activities;
- Institutions for insurance of property and persons;
- Other financial institutions;
- Funds;
- Political organizations;
- Citizen Associations;
- Other forms of association that can acquire assets and use them in the same way as any other institution or body that realizes

and uses assets and which is recognized by the Law as a legal person.

The question arises as to how the status change of the legal person affects its liability for criminal offenses. Chapter XIV of the CC of BiH contains provisions on responsibility for changing the status of a legal person. These provisions relate to the responsibility of a person for the criminal offenses of a legal person in bankruptcy and at the responsibility of a legal entity that has ceased to exist.

Pursuant to the provision of Article 126 paragraph (1) of the CC of BiH, it is evident that a legal person who is in bankruptcy may be responsible for a criminal offense regardless of whether it was committed before the bankruptcy or during the bankruptcy proceedings. This means that the legal person will be responsible for the committed criminal offense. However, a legal person in bankruptcy can not be sentenced, so as not to reduce its bankruptcy estate, but a measure of the security of confiscation of objects and measures of confiscation of property gain obtained by the criminal offense can be imposed.¹⁰⁸

The provision of Article 126 paragraph (2) of the CC of BiH regulates that if the legal entity ceased to exist before the final conclusion of the criminal procedure, the criminal liability of the legal person, the penalty or the criminal sanction is imposed on the legal successor of the legal person to whom the liability was established, if the managing body of the legal successor before the termination of the legal person

¹⁰⁷ Lj. Filipović, V.Ikanović: Educational Model "Criminal Procedure Against Legal Persons" High Judicial Prosecutorial Council, p.18.

¹⁰⁸ Ibidem., P.22.

knew about the committed criminal offense.

The provision of Article 126 paragraph (2) of the CC of BiH regulates that if the legal entity ceased to exist before the final conclusion of the criminal procedure, the criminal liability of the legal person, the penalty or the criminal sanction is imposed on the legal successor of the legal person to whom the liability was established, if the managing body of the legal successor before the termination of the legal person knew about the committed criminal offense.

The condition for the application of this provision is that the managing or supervisory authority knew about the committed criminal offense. According to the provisions of Article 126 paragraph (3) of paragraph (4), the criminal sanction shall be executed according to the legal successor of a legal person, but if the managing body knew about that sanction before the termination of the legal person, which implies the conduct of a special procedure for determining this circumstance.

However, the law does not regulate the manner in which the measure of confiscation of property gain obtained by the criminal offense is executed in the event of the termination of a legal entity after the final conclusion of the criminal proceedings.

There is also another dilemma when it comes to the termination of a legal entity before the end of the criminal proceedings related to the content and form of the indictment and judgment. With the fact that there was an unresolved issue with legal

entities that ceased to exist before the end of the criminal proceedings and have no legal successor. Because if there is no legal successor, who is to be pronounced a criminal sanction, there are no conditions for prosecution or criminal procedure, and the procedure is terminated. Legal persons may be liable for criminal offenses under the Criminal Code of BiH as well as for other criminal offenses ascribed by the law of Bosnia and Herzegovina. This does not limit the liability of a legal person for certain criminal offenses, legal persons may also be responsible for the criminal offenses prescribed by the criminal legislation in force in the territory of Bosnia and Herzegovina.

1. Basis of liability of legal persons for criminal offenses

Article 124 of the CC of BiH regulates the bases of the responsibility of the legal entity, in the manner that the responsible legal person is responsible for the criminal offense committed by the perpetrator in the name, for the account or for the benefit of a legal person in the following situations:

- When the meaning of the criminal offense arises from the conclusion, order or approval of the managerial inspectorates of a legal person;
- Or when the managing or supervisory body of the legal person influenced the perpetrator or allowed him to commit a criminal offense;
- Or when a legal person disposes of unlawfully realized property benefits or uses the objects created by a criminal offense;
- Or when the managerial or supervisory bodies of the legal entity fail to observe the

supervisory work by the legality of the workers.

In order for a legal person to be responsible for a criminal offense, it is necessary to determine: Existence of a criminal offense - a physical person, the commission of a criminal offense by the perpetrator in the name, for the account or for the benefit of a legal person and the existence of some contribution to the commission of a criminal offense.

1.1. Limits of liability of a legal person for a criminal offense

Although Article 124 of the CC of BiH states that the commission of the criminal offense is related to the perpetrator of the criminal offense, the legal person is also responsible and when the perpetrator is not guilty of the criminal offense committed. Also, Article 375, paragraph (2) of the Criminal Procedure Act prescribes that criminal proceedings may be instituted against a legal person, and its liability for a criminal offense may be established, and when criminal proceedings can not be initiated against the perpetrator.¹⁰⁹

These reasons are, for example, the death of the perpetrator, the mental illness after the act of which he is not able to participate in the procedure. Since the precondition for the responsibility of a legal person for a criminal offense is the criminal offense of being committed on behalf of, for the account or for the benefit of a legal person, the factual basis of the indictment by which the legal person is accused, as well as the factual basis of the judgment by which the legal person is declared responsible for the

criminal the act in such a case must contain the facts and circumstances from which the characteristics of the criminal offense and the circumstances that confirm that the perpetrator committed the act in the name, for the account or benefit of a legal person, as well as one of the legal contributions of the legal person to the perpetration of the criminal offense from the perpetrator.

The actual impediment to instituting criminal proceedings may also be considered as the absence of evidence for a reasonable suspicion that a person who is a perpetrator of a criminal offense for whom there is sufficient evidence is capable of lodging an indictment against a legal person for a criminal offense for an unspecified (unrecognized) person and after carrying out the procedure the judgment by which the legal person is declared responsible for the criminal offense.¹¹⁰

The provision of Article 125 paragraph (2) of the CC of BiH stipulates that the liability of a legal person for a criminal offense does not exclude the guilt of physical or responsible persons for the committed criminal offense.

The liability of a legal person for a criminal offense therefore does not exclude:¹¹¹

- the guilt of a physical person who is the perpetrator of a criminal offense for which the legal person is also responsible,
- on the guilt of a responsible person in the management or supervisory bodies of a legal person who, through his actions, undertaken within the framework of the activity of a managerial or supervisory

¹⁰⁹ Ibidem., P.42.

¹¹⁰ Ibidem., P.43.

¹¹¹ Ibid.

body of a legal person who contributed these bodies to a criminal offense committed by a legal entity, have achieved the characteristics of a committed criminal offense.

Pursuant to Article 125 (3) of the CC BiH, a legal person may be responsible for offenses committed by negligence under the conditions referred to in Article 124, point d) of the Law, and in this case a legal person may be punished less severely (optional basis for mitigation punish the legal person). On the basis of these provisions, it can be concluded that other forms of contributions of the managerial or supervisory bodies of a legal entity, as prescribed in subparagraphs a) - c) of Article 124 of the Law, in view of their content, presuppose the intentional activity of the perpetrator.

By the provision of Article 125, paragraph 4 of the CC BiH, it is prescribed that, in the case of a legal entity other than the perpetrator, there is no other person or body that could direct or control the perpetrator, the legal person shall be responsible for the committed criminal offense within the limits of the responsibility of the perpetrator. The provision therefore relates to the responsibility of two types of legal entities:

- legal entities that do not have other persons in their membership other than perpetrators and
- legal persons who in their membership have other persons other than the perpetrators, but do not have organs personally different from the perpetrator who could direct or control the perpetrator.

In the case of one of these two types of legal entities, a legal person shall be responsible

for the criminal offense committed in the name, for the account or benefit of the legal person within the limits of the perpetrator's responsibility. If for some reason, the perpetrator's guilt is excluded, the responsibility of the legal entity for the perpetrator's criminal offense is also excluded. Here, there are two types of legal entities: there is a complete personal overlap between the perpetrator and the legal person, ie the perpetrators and the managerial or supervisory bodies of the legal entity, so that the responsibility of the legal person can not be considered separately from the teacher's responsibility.

Criminal proceedings against legal entities in the criminal legislation of Bosnia and Herzegovina

The liability of a legal person for a committed criminal offense in our law must be determined in the law prescribed by the procedure under the provisions of the criminal procedural law. The course of the criminal procedure is regulated by the BiH criminal legislation, and many of its species can be noticed.

The law knows:

- General or regular criminal proceedings;
- Special procedures (procedure for issuing a criminal order, procedure against juveniles, procedure against legal persons, procedure for pronouncing court reminder, procedure for applying security measures, procedure for seizing property gain and for revoking suspended sentence) and
- Special non-criminal proceedings (procedure for issuing a decision to remove convictions, or termination of security measures and legal consequences of conviction, procedure for providing international legal assistance and execution

of international treaties in criminal matters, procedure for compensation of damages, rehabilitation and realization of other rights of persons without grounds both unfoundedly deprived of liberty and the procedure for issuing a warrant and publication).¹¹²

2.1. Legal nature of the proceedings

The position of legal science is that in BiH a criminal procedure is used which is not a pure mixed procedure, nor an accusatory but compromise, because it takes forms and elements from both criminal procedural systems and tries to merge them into one whole.¹¹³

The BiH legislation accepts the solution of the "middle path" consisting of:

- Changing the criminal procedure only to the extent necessary for its attachment to a legal entity as an accused;
- All Criminal Laws indicate that proceedings against legal persons are conducted according to the provisions of the Criminal Procedure Code (Article 122, paragraph 4 of the CC BiH, Article 125, paragraph 4 of the CC RS, Article 126, paragraph 4 of the CC FBiH and Article 122 4. BC BDBiH);
- In the Criminal Procedure Code, special chapters have been implemented that make special procedures against legal persons;
- These provisions prescribe that, if not otherwise decided, against the legal entities, the appropriate provisions of the CPC are applied accordingly, even if the procedure is only conducted against the

legal entity (Article 387 of the CPC of BiH, Article 393 of the CPC RS, Article 408 of the FBiH CPC, Article 387. ZKP BDBiH).

- The party's legal capacity of the legal entity was introduced on the side of the accused;
- Legal entities have the ability of the participants in the procedure, since they can appear in the capacity and with the rights of the injured party.

2.2. Phases of the procedure

The procedure against a legal entity has its own outcome. The legislator did not consider it necessary to omit, introduce or modify certain stages of the procedure, especially for legal entities. Given the unity of the proceedings, he has the same stages as the proceedings against a natural person. Regardless of the differences in relation to the previous procedural legislation and in the valid one, we can distinguish two stages of the first instance procedure:¹¹⁴

- The first stage: the process of detection, investigation and accusation;
- The second stage: the main procedure.

The main proceedings are: preparation of the main trial, main trial and rendering the verdict.

2.3. Objectives of the procedure

The purpose of conducting criminal proceedings against legal persons is:

¹¹² M. Simović, *Criminal Proceedings*, Third and Revised Edition, Banja Luka, 2009 p.438.

¹¹³ M. Simović, *Criminal Proceedings*, Introduction and General Part, Bihać, 2009. Year, p. 78.

¹¹⁴ Lj. Filipović, V. Ikanović: *Educational Model "Criminal Procedure Against Legal Persons"* High Judicial Prosecutorial Council, p.81.

- To take the decision of the competent court about the criminal offense, the responsibility of the perpetrator and the sanction by undertaking, legally prescribed acts of process entities; - This goal is achieved by following its general and special rules; - Criminal offenses and sanctions are prescribed by the Criminal Code; - The legal entity is subject to its general but also specially prescribed rules.

2.4. Entities of the proceedings

In criminal proceedings, it is necessary that certain procedural entities take more criminal procedural actions. These entities individually dispose of a set of rights and duties that practically determine their process position. On the basis of the characteristics they have, it can be said that the subject of the procedure or the criminal procedural entity is a process-able natural or legal person who, according to the legally prescribed rights and duties, performs a certain function in the criminal procedure with the aim of accomplishing a criminal procedure task - lighting and solving the criminal matter.

Criminal processors can be divided into two groups: a. main and b. secondary.

Main Subjects:¹¹⁵

The holders of the main criminal procedural functions that have a direct interest in the implementation of a criminal procedural task are the main subjects. These include: a) an authorized prosecutor (function of the charge); b) Accused physical and legal person (defense function); and c) Court (tanning function).

The prosecutor and the accused natural and legal person are criminal parties.

Supporting or auxiliary entities: Supportive or auxiliary criminal processors have only a side-by-side or indirect interest in illuminating a criminal matter. They are responsible for supporting or auxiliary criminal procedural functions, and they are still called criminal process participants.

Criminal procedure participants: a) Defendants, b) Representatives of legal persons, c) Legal representatives, d) Witnesses, e) Experts, experts, interpreters, f) Corrupted and proxies.

The Prosecutor is an authorized body to whom the right and duty to initiate criminal proceedings belongs, if there are grounds for suspicion that a criminal offense has been committed. It is its duty to immediately take into account the existence of the basis for suspicion that the committed criminal offense has taken the necessary measures for its detection and conduct of the investigation, finding the suspect, to supervise the investigation, proposing the issuance of a criminal order, raising the indictment and issuing a remedy (Article 35. CPC BiH, Article 43 of the CPC RS, Article 45 of the FBiH CPC, Article 35 of the CPC BDBiH).

Principle of legality

- Criminal prosecution of legal entities is based on the principle of legality of prosecution;

- The Prosecutor is obliged to prosecute if there is evidence that a criminal offense has been committed, unless otherwise provided by the Criminal Procedure Code (Article 17

¹¹⁵ Ibidem., str.83.

of the CPC of BiH, Article 17 of the CPC RS, Article 18 of the CPC of BiH, Article 17 of the CPC BDBiH) ;

- As a rule, the prosecutor is obliged to initiate criminal proceedings whenever there is a reasonable suspicion that the criminal offense of a natural person has been committed on behalf of, for the account and for the benefit of a legal entity, and that one of the four mentioned conditions has been fulfilled;

- This means that the prosecutor is obliged, if the above assumptions are fulfilled, according to this principle to prosecute all criminal offenses because the law did not prescribe special criminal offenses that can be committed by legal persons.

Principle of opportuneness In the prosecution of legal entities, the principle of legality is more limited in relation to the prosecution of natural persons, and the limits of the application of the principles of opportunity are considerably wider than those of legal entities;¹¹⁶

- From the principle of legality, the law of legal persons nevertheless permits exceptionally the departure and application of the principle of opportunity;

- The Prosecutor's authority to assess the integrity of the prosecution of a legal entity, although all legal requirements for its prosecution have been met.

3. Conclusion

Criminal legal liability of legal persons is one of the key topics of European criminal justice in the recent period and has been faced with the criminal justice theory and legislation of all European countries. The disturbance was twofold: criminal-political

needs and the development of international and European law. Criminalization of legal persons often has extremely serious consequences for the life and health of people, has taken the lead in front of individual perpetrators in the economic area, has been linked to criminal associations, and in recent times, the danger posed by the criminal activity of companies is growing. Although the domestic criminal justice system has regulated the criminal responsibility of legal persons, it is necessary to constantly contribute to the improvement of the same and incorporate into the national legislation of the European Union guidelines and directives. Namely, legal acts adopted within the Council of Europe and the European Union, as well as the activities of the European expert bodies and authorities, showed that the need was at the European level and a strong will for the criminal sanctioning of legal persons was formed. Numerous theorists agree, and the current dynamic legislative changes in European countries confirm this, that the initiators of the introduction of criminal responsibility of legal persons into national criminal justice orders were precisely the obligations imposed in this respect by international and European regulations. Of particular importance are the Second Protocol of the Convention on the Protection of Financial Interests of the European Union. The result is that today in Europe the principle *societas delinquere non potest* has been replaced by the principle *societas delinquere potest* because the vast majority of European countries have introduced the criminal liability of legal persons, all of which prescribe a certain form of liability of legal persons for criminal offenses as well as

¹¹⁶ Ibidem., str.85.

sanctions for legal persons. By analyzing the existing theoretical and legislative models of criminal liability of legal persons, it has been concluded that there are three fundamental distinctive material-legal features that depend on their content. The main question is whether the criminal responsibility of a legal entity is performed or autonomous, whether it is subjective or objective and is ultimately subsidiary or cumulative. In most of the criminal law regulations, a model of realized responsibility of legal persons was accepted in which the liability of a natural person is accounted for by a legal person. However, it is increasingly penetrating, both in theory and in legislation, a model of autonomous accountability. In order to make the liability of a legal person independent of the guilt of a natural person, it was necessary to create new criminal law institutes that correspond to the delinquent behavior of a legal entity, among which the most well-known responsibility is due to defects in the organization and misdiagnosis.

LITERATURE

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SAFETY PROTOCOLS IN E-BANKING

Almedina Hatarić, MA, email: almedina_tr@hotmail.com,

Imran Kasumović-student, email: imran.kasumovic@gmail.com

Abstract: *Safety Information System includes actions, measures and procedures in order to protect data and information system from unforeseen events with undesirable consequences. In this direction is the increasing need for disabling any accidental or deliberate distortions and prevent the functions of computer systems. We should also create the necessary conditions for the proper use of predefined functions of information systems. As a basis for finding a satisfactory answer to the question of protection of information systems, we start from the classification of threats that can jeopardize the same accident, crime and error. On the basis of this classification, there are given four answers to questions where a partial response is received, and by their synthesis received a fuller response: the value of hardware and software; versatility of computer systems; characteristics of computer systems.*

First, it is necessary to define the purpose of the protection system, that any system of protection has meaning only if something, somewhere, and for some reason needs to be protected, and in order to achieve the goal, we need to execute something in some way on the function. The solution of these set goals is that question is possible with logical units, and according to the "golden questions" of criminology, the corresponding "golden questions" of information protection and which require full answers.

Keywords: *Protocol, security, information systems, banking, technologies*