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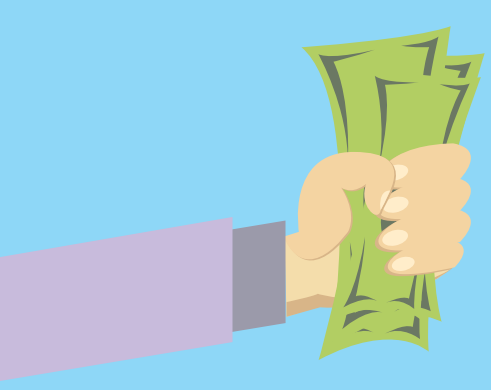

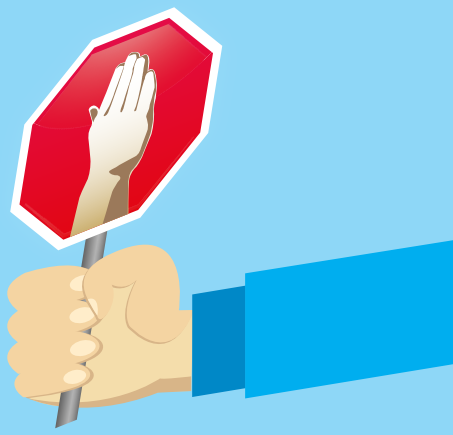

CHALLENGES, PROSPECTS AND TRANSFER OF EXPERIENCES

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COMPARATIVE LEGAL ASPECT OF CORPORATE CRIME

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Abstract

The purpose of this paper is to, theoretically and practically, study the concept of "corporate crime" in the context of comparative legal solutions, theoretical concepts, and practical implications. For this purpose, the key method of analysis will be the method of comparative legal analysis, which basically should allow us to analyze comparative legal solutions that regulate this issue and their practical implications.

There are numerous theoretical and practical research papers on this topic that involve economic, legal, sociological, criminological dimension. However, the specifics of this research can be seen throughout the mutual analysis of corporate and criminal aspects of this issue and placing them in service of a systematic study of the most modern and frequent models of "corporate crime," and at the same time we'll make an effort to illustrate the potential threats of committing corporate crime in the process of corporate management, and finally we'll make an effort to observe if the type and length of the potential punishment can suppress or reduce these crimes.

The main scientific incentive to consider this issue is the due to the rise of "corporate crime," especially through the expansion in creating transnational companies, the daily takeovers, and mergers of companies (banks, insurance companies), deals between interested parties, friendly and nonfriendly transfers of capital, abuse of procedures for public procurement, the award of public contracts etc. In addition to this, the challenge to study this issue stems from the complexity in locating torts of corporate management, their distinction as misdemeanor conduct alongside from corporative crimes, the determination of liability for restitution in case of a crime, and finally, the determination of the essence of these types of crimes.

Introduction

The study of the concept of "corporate crime" in a comparative legal sense imposes the need to analyze multiple heterogeneous issues from different legal nature: criminological, sociological, economic, legal, political, etc. Within this research, we will try to focus on the legal dimension of this issue, and for the purpose of the research in certain segments, we will use results from other research projects that have an altered character.

Barring in mind the subject and purpose of the research, the use of the analytical descriptive and comparative method is prevailing. This is a result of the main targeted goal that we want to achieve with this paper and that is analysis of the concept of "corporate crime" in a broader context, focusing on the ‘economic” crimes and the criminal responsibility of legal entities.

The main idea of the research is to analyze the comparative legal regime of "corporate criminality" and to study the legislation in the Republic of Macedonia that regulates the issues of criminal responsibility of legal entities, with an emphasis on the criminal responsibility of trade companies. The study of these two questions is based on the indispensable causality that exists between these two questions in theoretical and practical sense. Namely, the issue of criminal liability of legal entities is closely related to the issue of criminal liability of trade companies, especially for crimes that fall under the category of criminal offenses of economic crime (Nanev, 2008, p.13).

In the legal literature, as well as in judicial and business practice, for a long time the issue of criminal liability of legal entities was not on the agenda. From a historical perspective, the importance of the maxim: *societas delinquere non potest* (Weigend, 2008, p. 934) dominated for a long period. Nevertheless, the concept of corporate criminal responsibility developed as an Anglo-American concept of responsibility (Bernard, 1984, p. 9). In the legal literature, it seems to us that the beginnings and development of the concept of corporate criminal responsibility were best illustrated by Mueller, by comparing the development of this concept with the growth of wildflowers, saying "no one planted it, nobody cultivated it, it simply grows" (Mueller, 1957, p. 27).

The origin of the development of the concept of corporate criminal responsibility is related with the civil legal liability of legal entities. This in general means existence of legal entities as separate legal entity that can be sued, that can litigate, have ownership, enter into a bond of legal relations, and that is, in the legal sense, to exist as separate entity. Legal entities become subjects of law starting in the 12th century within Europe. For the creation of the

concept of the existence of legal entities as a subject of law, in the theoretical and practical sense, there were numerous disagreements. Namely, according to certain points of view, the legal entity represents an "artificial creation" that enables concealment of the acts of management behind the veil of the legal entity, which are often contrary to the law. On the other hand, it was more than clear that there was a need for “unravelling” legal entities as a separate legal entity, for the plain requirement to motivate entrepreneurs in undertaking business ventures with far-reaching positive effects for the whole society (Smith 2012, p. 84).

This was the case until the moment when there was an undeniable compromise in the theory that the existence of legal entities as separate entities in law constitutes unavoidable evil in society (Arcelia Quintana Adriano, 2015, p. 384). This concept, in the field of business law, was widely accepted. This is especially due to the positive effects of the work of traders in almost all spheres of social life. Together with the appearance of legal entities as separate legal entities, the question of their criminal responsibility as separate entities, was raised. The initial type of liability that burdened the legal entities was the civil legal duty. Then, step by step, gradually, was introduced the necessity of anticipating and developing the concept of criminal liability of legal entities also known as corporate criminal responsibility.

The expansion of the concept of criminal liability of legal persons, in theoretical and practical sense, is a consequence of numerous and diverse factors. In the last decades of the 20th and the beginning of the 21st century, globalization and the liberalization of the market for goods and services have had an additional impact on the development of this concept and its implementation in the legislation into many legal systems. These two global impact phenomena have resulted in the creation of multinational companies and companies with representative offices and subsidiaries that have contributed to increasing the volume and dynamics of transactions in the daily supply of goods and services. Parallel to this, research that was conducted in the field of corporate crime theory, showed a tendency to increase the number and dynamics of criminal offenses, which were influenced by the increase in the number of multinational companies, the development of computer technology and cybercrime, fraud in stock market, insurance fraud, money laundering, crimes in public procurement contracts, etc.[7]

Worldwide, many multinational corporations have gained huge capital and grown such power through which they have influenced almost all spheres of society. Particularly worrying and alarming is the influence in political elections and the dictation of working conditions in a wider social context. The experience in politics has shown that numerous governmental and political decisions are determined by the will of certain powerful corporations with offices

[7] https://www.bjs.gov/index.cfm?ty=tp&tid=33, [accessed on 1 August, 2017].

around the world. Numerous articles and research projects manifest the role of "black money" in the conduct of political campaigns during political elections around the world (Freed, Currinder, 2016).

In the Republic of Macedonia and in the region, the process of privatization of the social capital into a private property had major influence on the overall situation. During the privatization period, a number of criminal incriminations were introduced gradually, that were in the area of corporate crime. Before the introduction and implementation of these incriminations, these acts of crime have contributed to the enormous and prompt enrichment of certain persons in a dubious way. However, for a small part of them, the court detected improper privatization and criminal responsibility for several criminal offenses.

The constant rise of the number of such crimes and the dynamics of the corporate crime was followed with serious debate from the professional and scientific public in a global context. These debates introduced theoretical and practical, professional and academic delimitation, which more or less advocated or opposed the view that legal entities should be held criminally responsible for the acts prescribed as crimes with the relevant laws. After a while, the criminal responsibility for legal entities was accepted by many theorists, that resulted with implementation of the criminal liability of legal entities in the criminal legislation of numerous legal systems of the Anglo-Saxon and Continental systems. With the entry into force of the Lisbon Treaty (1 December 2009), the EU has taken concrete measures in the field of criminal law, creating minimum rules for defining criminal offenses (euro-crimes) involving money laundering, corruption, cybercrime, organized crime, fraud and abuse on the market. The latter is in direct relation to the issue of corporate criminality, and the responsibility of trade companies for acts committed in the scope of economic criminality.

The concept of corporate criminal liability is a relatively new concept of responsibility. An exception in this regard is the legal regime in the United Kingdom and the Netherlands (Wetboek van Strafrecht).[8] Outside these two countries, France is the cradle of the concept of corporate criminal responsibility, which was implemented in 1994. Following the example of France, this concept of criminal liability was implemented in Belgium in 1999, Italy in 2001, Poland in 2003, Romania in 2006, and Luxembourg and Spain in 2010. Curiosity regarding this issue is the solution in the Netherlands, where until 1976 the only criminal responsibility of legal entities was for tax crimes (Keulen, Gritter, 2012, p. 9). According to the review by *Cliford Change in 2016, "corporate criminal responsibility*" was introduced into Slovakia in November 2015, with the intervention into the national legal regime. According to the same review, a draft version of a corporate criminal law was drafted

[8] Види: http://www.legislationline.org/documents/section/criminal-codes, [accessed on 15 July 2017].

in June 2014, but it was rejected by the Russian Federation Council. According to the *Cliford Change in 2016*, globally, the origin of the concept of "corporate criminal responsibility" is in India, and for Australia, Hong Kong, Singapore and the United States, the criminal responsibility of companies is more thorough and more precisely implemented.

The concept of corporate criminality

The study of "criminality of corporations" or "corporate criminality" imposes the need for systematically explore the emergence, significance and distinction of this concept of criminal law from other classical criminal law institutes. The study of this phenomenon is under the influence of the precise terminological distinction of this completely new concept.

In scientific and professional literature, there are several different definitions regarding this conception, which more or less criticize, or change elements in the new conceptions of this phenomenon (Braithwaite, 2012, p. 178); (Simpson, 1992); (Gruner, 1994, p. 302). To this end, in one of his works in this field, Nanev will point out: "There is no single definition of economic criminality. In order to point out this type of crime, the following terms are used: economic criminality, corporate crime, the crime of white collar, criminality of corruption, and criminality of the gray zones. Nanev also is emphasizing the complexity in comparing these different terms (Nanev, 2008). The utmost theoretical disagreements in terms of the terminological determination of this conception are in terms of the scope of criminal offenses that are the product of corporate criminality. Namely, according to certain authors, corporate criminality includes every kind of criminal behavior of legal trading companies that is ccarried out within the regular trade activity, and consists of violation of criminal, civil and administrative norms (O' Brienand, Yar, 2008, p. in Keković, Milošević, 2011). Contrary to this, the literature also finds a point of view that seriously criticizes this (according to them) the broad concept of "corporate criminality" (Schlegel, 1990, p. 74).

According to most criminologists, "corporate crime" refers exclusively to crimes that are punishable under criminal law. According to Australian criminologist John Braithwaite, "corporate crime" is the behavior of a corporation or employee in the corporation on its own behalf, which is prescribed and sanctioned by law (Braithwaite, 2012). Furthermore, Keković, Milošević, for the purpose of understanding corporate crime, will point out that "corporate criminality does not refer only to criminal offenses against trading that are committed by trade companies, but they can also include crimes of misuse the official power or position, crime against the environment, crimes of violation of the legal regime for the protection of employees, etc. This is because it is possible the criminal activity in the field of trading to be related to other crimes, other than the ones that we have mentioned. In their articles, the same

authors point out that the term criminality of corporations can be used as a synonym for the term criminality of legal entities.

As we have pointed out, the precise understanding of "corporate crime" is essential for the determination of the criminal responsibility of the companies, as well as for lo of the responsibility of the members of the management bodies, the determination of the type and duration of the sentence etc. It is indisputable that many of the terms used to indicate this phenomenon are synonymous, but it is also extremely important to point out the differences between certain concepts that in certain situations are studied as synonyms. In this context is the delineation of the concept of "crime of white collar" versus "corporate crime" or "economic criminality."

In the academic literature we find that the concept of "crime of white collar" is the fruit of the creativity of criminologist Edward Alsworth Ross (Cullen, Wilcox, 2010). This concept, also known as "high class crime", poses a serious danger to society and is a generator of numerous and heterogeneous negative consequences in a wider social context. However, in today's theoretical sense there is a distinction between "crime of corporations" and "crime of white collar" (Benson, Simpson, 2014, p.203).

It seems that such a distinction is logical and necessary. This is especially due to the fact that the criminal liability of corporations can be attributed to situations where members of the governing bodies or members of the supervisory have taken certain unlawful actions on behalf of and at the cost of the company. More precisely, "corporate crime" exists in cases where unlawful actions are undertaken solely in an interest of increasing the company's assets, tax evasion, violation of the rules of fair competition, acts of insurance fraud, fraud of customers, market abuse, etc.

All listed actions are crimes in the area of economic crime, and their main goal is the increasing of the property of the legal entity. This is especially the case when the companies operate at a loss, or show indications for starting a bankruptcy procedure. In these situations, management often undertakes unlawful actions on behalf of the company, with the intention of preventing the bankruptcy and liquidation of the legal entity. On the contrary, "crime of white collar" is behavior typical of members of management bodies who take illegal actions solely in their own interest. More precisely, the "crime of white collar" contributes to damage the company's property, damages to shareholders, employees, creditors, the environment, etc.

This seems to be the most serious type of criminality, given the fact that the consequences of these actions are far-reaching and are reflected in the broadest circle of stakeholders including the state as a damaged entity. In this direction, the literature and practice show the consequences of the collapse of Enron, WorldCom, Energy Transfer Partners, Correction

Corporation of America (CCA), DESA (Desarrollos Energèticos S.A.), Exxon Mobil, McDonald's Corporation, PepsiCo.[9] This criminal behavior of the management can by no means qualify only as corporate criminality. In the segment of these criminal activities, there are elements of two types of criminality, sometimes typical for the interests of management, and somewhat typical of the interests of the corporation. However, in determining the occurrence and determining of the responsibility for the consequences, it is extremely important not to equate the crime of white collar with corporate crime, and to create conditions (the example with Enron) for punishing the legal entity in cases when the state of the company is a consequence of the criminal activity of the management.

In the legal literature and in the legislation of certain legal systems, different concepts of criminal responsibility are accepted such as: responsibility prescribed only for natural persons i.e. executive directors acting as legal representatives, (with the introduction of the criminal liability of legal entities this concept is almost abandoned), criminal liability prescribed for both natural and legal entities. The latest conception is most widely accepted in the legislation of individual countries. This seems to be the best model of legal protection in the function of prevention and reduction of the harmful consequences of the criminal actions of the management and the legal entity.

In a theoretical sense, there are also standpoints that oppose this distinction (Schlegel, Weisburd, 1994, p.31). Finally, for us, their argumentation is indisputable, especially because the corporations' crime often overlaps with the crime of white collar, i.e., the illegal money acquired in the name and at the expense of the companies often ends up in the hands of the management or shareholders who at the same time have one of the management positions in the company. The point of the need for delimitation is in the fact that the legal entities are being used as a panel behind which all criminal activities are carried out, while at the same time this is negatively affecting and damaging the entire economy, creating unfair competition. Tolerating the existence and operation of these companies would mean favoring one against the other, and direct discrimination in the business sector.

Finally, on the basis of the stated theoretical views, we emphasize that the determination of the criminal liability of legal entities in practice is posed as a complex issue, from several aspects (Deanoska-Trendafilova, Bozhinovski, 2014, p. 114). The complexity of this issue is often reflected to the question: whether the particular behavior of the trader or the responsible person (a member of a management body or manager) in the legal entity (commercial company) entails criminal liability, or constitutes an admissible conduct in accordance with the accepted legal business regime? Considering the fact that this behavior in most cases is a

[9] https://globalexchange.org/campaigns/corporate-human-rights-violators/, [accessed on 15 June, 2017].

violation of provisions of business or financial character, it is clear that there is a need for extensive knowledge of the regulations of the criminal justice and business regime, and the need for necessary intervention of the state regarding the creation and implementation of criminal policies for prevention and reduction of criminal behavior in the corporate world. A good question in the context of this is set by Keković, Milošević. The question is: Is that the only measure from the aspect of the criminal policy that the state can implement in order to reduce corporate crime?!

Corporate criminal responsibility of companies under the European legal regime

Within the framework of the European Union, since the Maastricht Treaty of 1992, the obligation for mutual recognition of court decisions adopted in EU member states was formally noted, in the interests of prevention and reduction of crime within the EU. In addition to this, in 2000 the Convention on mutual assistance in criminal matters was adopted in order to strengthen the cooperation and assistance between the judicial, police and customs authorities. In 2004 the concept of a European arrest warrant was adopted.[10]

As part of a strategy to prevent and reduce the criminal activities of legal entities, the EU has created a legal framework with minimum rules that reflects the binding policy of protecting against criminal activities of market abuse in member states. To this end, in 2014, specific measures were taken to incriminate abuses in the market. The Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 (the market abuse regulation) was adopted. According to the data from Clifford Change, 2017, in 2017, the results of the regulation are expected to be implemented in the legal systems of the Member States.

The basic idea of strengthening the European legal framework in this field is to create a minimum harmonized legal regime in member states in order to reduce market abuse. Most important of all is that this directive provides provisions for expansion of the criminal liability of legal entities. In this manner, in 2009, the Directive of the European Parliament and a Ship pollution advice Council, was adopted, Directive 2009/123 / EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35 / EC on ship-source pollution and on the introduction of penalties for infringements (Text with EEA relevance).[11]

Worldwide, the intention to reduce the criminal activities of legal entities is also in expansion. Recognizing the danger and seriousness of the increased volume and dynamics of criminal activities of corporations, in 2009, the Economic Cooperation and Development

[10] hhttp://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/030, [accessed on 16 June, 2017].
[11] Достапна на: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0057, [accessed on 20 July, 2017].

Organization adopted a convention for preventing / combating bribery of public officials in international business transactions (OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions). Basically, all European and international legal regimes have created a minimum legal framework for implementing the concept of corporate criminal responsibility. Although most of the states have prescribed the concept of "corporate criminal responsibility," the conditions under which corporations, as legal entities, are charged with criminal liability, are different. To this end, corporate accountability in certain legal systems is conditioned by the fact that criminal activity has been taken by one of the members of the management, within the scope of the company's activity, in the exclusive interest of the corporation. There are differences also, based on whether separate responsibility is foreseen for legal entities, or the responsibility for legal entities does not exclude liability of natural persons. Systemic differences exist concerning the control system and the rejection of the liability of legal entities implemented in separate legal systems. In essence, the discharge of criminal liability is based on: proving that there was no intention to commit a crime by the corporation; To provide evidence in the defense; Be a deceptive factor when making a decision; To influence the decisions on prosecution and punishment (Clifford Change report, 2016). As part of the EU's tough criminal policy, is the draft directive COM / 2016/0826 final - 2016/0414 COD (Proposal for a directive of the European Parliament and of the Council on the Prevention of Money Laundering by Criminal Law).[12]

In June 2017, entered into force the Directive (EU) 2015/849 of The European Parliament and the Council of 20 May 2015 on the prevention of the use of a financial system for the purpose of piracy or financing of terrorism, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC) as part of a package of measures against money laundering, terrorism and accountability of corporations.[13]

[12] Available from: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0826, [accessed on 10 June 2017].
[13] Available from: http://europa.eu/rapid/press-release_IP-17-1732_en.htm, [accessed on 20 June, 2017].

The legal regime of corporate criminal liability in comparative systems of the Anglo-Saxon and Continental law

3.1. The concept of corporate criminal responsibility in the Republic of France

In France in 1994, the Criminal Code foresees the concept of corporate criminal liability in art. 121,122,131,137of the French Code Penal also known as French Criminal Law. In Article 121-2 it is provided that legal entities (except for the State), are criminally responsible for acts committed on their behalf by their managing authorities or agents, in accordance with the decisions laid down in provisions of the law. Furthermore, the criminal liability of legal entities does not exclude the liability of natural persons who commit or participate in the crime. This is subject to the decisions provided in paragraph 4 of Article 121-3 (Nouel, 2008, p. 5). According to the French Penal Code, companies can be prosecuted for almost the same acts as natural persons. The penalties imposed on legal entities are five times higher than the penalties of individuals. Finally, companies may oppose the imposition of criminal responsibility, noting that the employees were not acting within the scope of their assigned tasks in the course of taking criminal actions in the sense of the French Criminal Code, that they were not advocates by law of the company.

The concept of corporate criminal responsibility in Belgium

According to the Belgian concept of liability of legal entities, for a long time, the assumption was that corporations could not be held criminally accountable because they did not form a will, and consequently their intention to commit a crime could not be determined (Gutermann, De Winter, Houben, 2016). According to the established concept of responsibility of legal entities, companies can be burdened with civil and administrative responsibility, even when it comes to criminal activities.

However, in 1999 the concept of criminal liability of legal entities has been implemented in Belgian law. According to the legal formulation of Article 5 of the Criminal Code, *"a legal person is criminally responsible for crimes that are or are essentially related to the accomplishment of the corporation's corruptive purpose or the interests of the corporation, or which according to the circumstances were committed on behalf of the joint-stock company."* In accordance with Belgian law, the public prosecutor is official that can initiate proceedings against criminal liability of legal persons. Regarding the procedure, the legal regime established in the Belgian Code of Criminal Procedure" applies. According to Belgian law, criminal liability of corporations can be provided in cases where criminal actions

are taken on behalf of the company, or when the crime is essentially tied to the activities of the corporation (Clifford Change report, 2016).

The concept of corporate criminal responsibility in Germany

The implementation of the concept of corporate criminal liability, that is, the criminal liability of legal entities in Germany, is one of the longer-lasting implementation processes within the EU. Under the influence of legislative interventions in European legislation and the reformed EU policy in September 2013, Germany drafted a draft law on criminal liability of corporations. According to the solutions outlined in the draft law, the acts committed by the executive directors or any advocate by law of the company should not be provided only for them as natural persons, but also to the legal entity for whose account the actions are being undertaken. Although this draft is still under review by the competent authorities, as well as the fact that several authorities consider that in essence there is no place for implementation of this concept in the Criminal Code (Maglie, 2005, p.555), according to the existing legislation of corporations, competent authorities can impose a ban of performing duties.

The concept of corporate criminal responsibility in Italy

According to the data taken from the report (Clifford Change, 2016), in 2014 and 2015, the Italian Parliament intervened with amendments to Regulation No. 231/2001, extending the list of criminal acts by including the criminal act money laundering as one of the principal crimes for creating illegal capital and destruction of the economy. (Levi, Reuter, 2006). With the same amendment, an intervention has been made in the application of Decree No. 231/2001 including crimes against the environment, criminal acts against public administration, organized crime, the provision of false statements regarding the financial performance of the company and accounting.

Pursuant to Decree 231, legal entities based in Italy may be charged with criminal responsibility for offenses established in the decree. According to its legal regime, legal entities in Italy are charged with criminal liability in cases where management or employees in the company have committed criminal acts in the interest of the legal entity. Under Italian law, directors and management members can be relieved of criminal responsibility in cases when they prove that they have implemented an effective managerial and organizational protocol system of control, training, adequate internal communication, adequate system of sanctions. Although state authorities in Italy implemented exclusively listed crimes, we are of the opinion that with the changes of the regulation from 2015, Italy manifested the will to implement the EU regulations in this field.

The Anglo-Saxon concept of responsibility of companies as separate legal entities

4.1. The concept of corporate criminal responsibility in the United Kingdom of Britain

The beginnings of the concept of full corporate criminal responsibility can be found in the legislation of United States, Canada, England, and the Netherlands (Leigh, 1982). According to the understanding of the Anglo-Saxon conception of liability of legal entities, the concept of corporate responsibility, that is, the responsibility of legal entities existed even in the ancient era. Although this was not the case with Ancient Rome, where the long-standing concept was that the legal entities couldn't form a will, that they do not took actions for themselves, hence, they can not be criminally responsible (Bernard, 1984, p. 11).

In England, as early as 1917 in the case of Mollsell Brothers v. London and Northwestern Railway has been confirmed the concept of corporate criminal liability. In today's situation, the situation in this field is more complex. This is the result of many different factors, among which the Kingdom's comparisons with the US situation in this field, as well as the impact of Brexit on the overall legal, economic and political relations (Delahunty, 2016). Regarding the applicable legal regime, UK is based on the corporate criminal responsibility of the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) and the Bribery Act 2010 (the Bribery Act). According to the current legislation, legal entities are subject to criminal liability. Depending on the nature of the offense committed by the legal entity, the competent authorities are also competent to initiate a determination procedure for criminal liability (Clifford Change, 2016). In the UK, in determining corporate criminal responsibility, the role of "identification principle" and the concept of "vicarious liability" is essential (Grimes, Niblock, Madden, Napley, 2013/2014). The tendency to intensify the legal regime and the criminal liability policies of legal entities is undeniable. However, in the near future, Brexit's influence on this issue must not be ignored in this field.

Corporate Criminal Responsibility in the United States

The United States is the cradle of Doctrine of Responsible Corporate Officer (RCO). In this doctrine, the concept of responsibility of representatives by company law is implemented, for acts for which they are not familiar, for actions undertaken by the company for which they are not aware of or for acts they do not intend to perform (Lane, 2011). Regarding the concept of corporate criminal responsibility, until the 20th century the concept of "strict liability crimes" was in force in the United States, after which the Sherman Antitrust Act was adopted by the Congress in 1890, which is the base for determining Corporate criminal responsibility (Scura, 2013).

In the United States, the concept of "respondeat superior" is fully implemented, according to which legal entities are charged with the criminal activities of members of the management and employees if they are undertaken within the company's business activities, and at least partly in the interest of legal entity. Regarding the sanctions that can be imposed against legal entities, the courts may impose a ban on performing the activity, fine, establish a special program for consolidation in the company, engage in the performance of matters of general interest, restitution, establishment of special monitoring in the company's business activities from where the work came from, etc. Of course, this refers to the solutions contained in federal law.

Criminal liability of legal entities in the Republic of Macedonia

According to the current legislation in the Republic of Macedonia, "the legal entity is criminally responsible, in cases determined by law, for criminal acts committed by the responsible persons in the legal entities, in the name, for the account, or for the benefit of the legal entity." (Vitlarov, 2014). According to the legal formulation of Article 28-a of the Criminal Code,[14] *in the cases stipulated by law, the legal entity is responsible for the criminal act committed by a responsible person in the legal entity, in the name, for the account or for the benefit of the legal entity*. The legal regime regarding the criminal liability of legal entities also includes the companies for which separate criminal acts are provided in the special Chapters of the Criminal Code, which refer to the protection of the environment, legal traffic, public finances, payment operations, economy, etc. Therefore, when it comes to the responsibility of the company for the offense of the responsible person in the legal entity, art 3 paragraph 33 from the Law on Trade Companies is to be considered.[15] In this article it is provided that " *"responsible person" in a general partnership is the partner, authorized to manage and represent the company, provided that the management is not entrusted to a third party (manager); in a limited partnership and a limited partnership with stocks it is the limited member, provided that the management is not entrusted to a third party (manager); in a limited liability company - a manager, that is, managers, a member of the supervisory board, that is, the controller, and in a joint-stock company - a member of the management*

[14] Criminal Code of the Republic of Macedonia („Official Gazette RM" No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015 и 97/2017, *hereinafter CC*).

[15] The Law on Trade Companies ("Official Gazette of the Republic of Macedonia" nos. / 2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014 , 41/2014, 138/2014, 88/2015, 192/2015, 6/2016, 30/2016 and 61/2016, hereinafter LTC),

body, that is, a member of the supervisory board and the managerial persons in the trade companies.

In the Republic of Macedonia, with the legal intervention in the criminal code from 2004 (Official Gazette 19/2004, terms for criminal responsibility of a legal entity), the maxim of "societas delinquere non potest" has been abandoned, and with Article 28-a the concept of Criminal liability for legal entities, which, in the sense of Article 122, paragraph 6 of the Criminal Code, includes companies has been adopted. According to the 2004 Decisions, "the legal entity is criminally responsible if it did come into action or by failing to perform the due supervision by the management body or the responsible person in the legal entity or to another person who was authorized to act on the name of the legal entity within its powers, or when it exceeded its authorizations in order to benefit the legal entity.

With the intervention in the 2009 legislation (Official Gazette 114/2009), "a fully reformed concept of criminal liability of the legal entity has been accepted, not only for the criminal acts of the responsible persons in the legal entities, but it is also provided that "the legal entity shall be liable as well for a crime committed by its employee or by a representative of the legal entity, wherefore a significant property benefit has been acquired or significant damage has been caused to another, if: 1) the execution of a conclusion, order or other decision or approval of a governing body, managing body or supervising body is considered commission of a crime or, 2) the commission of the crime resulted from omitting the obligatory supervision of the governing body, managing body or supervising body or, 3) the governing body, managing body or supervising body has not prevented the crime, or has concealed it or has not reported it before initiating a criminal procedure against the offender. Under these conditions, criminally liable shall be all the legal entities with the exception of the state (CC, art. 28-a 3). Finally, foreign legal entity shall be criminally liable if the crime has been committed on the territory of the Republic of Macedonia, regardless whether it has its own head or branch office performing the activity on its territory (CC, art. 28-a 5).

In addition to this, the CC provides solutions in Article 28-b, which relates to the limits of the liability of the legal entity. To this end, the liability of the legal entity does not exclude criminal liability of a natural person as an offender of the crime. The liability of the legal entity does not exclude the criminal liability of the natural person as offender of the crime. the legal entity shall be liable for a crime even when there are factual or legal obstacles for determining the criminal liability of the natural person as offender of the crime. If the crime is committed out of negligence, the legal entity shall be liable under the conditions of Article 28-a of this Code, unless a law anticipated sentencing for a crime committed out of negligence.

According to the existing solutions in the Republic of Macedonia, the concept of assumed responsibility of the legal entity was adopted (Deanoska-Trendafilova, Bozhinovski, 2014, 123). With the 2009 amendments, a strict regime of liability is provided, which includes the responsibility of the legal entity and the criminal actions of employees, of course, under strictly determined legal conditions. In other words, the concept of indirect liability of legal entities is accepted, which implies the implementation of the organic theory of responsibility of legal entities (Kambovski, 2011). Despite the acceptance of (according to us) the best legal solutions in a comparative sense, the establishment of criminal liability of legal entities in practical terms entails numerous problems. Judicial practice in the Republic of Macedonia still manifests uncertainty, especially in the area of determining the elements of the crime in the business operations of companies, both of status law and in the field of trade in goods and services. Toward this, with the appealed verdict in Case No. K-81/12 from 11.05.2012, the court acquitted defendant V.D. from Stip, emphasizing "the change of the legal entity's headquarters, made in a legal and lawful manner, is not a fraudulent act by which the defendant evaded payment of a claim to his legal entity.

According to the position of the Second Instance Court, the first instance court correctly applied the Criminal Code when he released the defendant from criminal charge of committing criminal act "Damage to someone else's rights" from Article 244 paragraph 2 of the Criminal Code. "(Court of Appeal in Shtip, Bulletin No. 8, 2014). Furthermore, the decisions of the Basic and Appellate Courts in the case Kz.br.361 / 13, where the first instance and second instance court, with their decisions, found defendant B.S of S.N guilty of committing a criminal act "Illegal exploitation of mineral raw materials" of Art. 225-a paragraph 1 from the Criminal Code and the accused legal entity AGP DOOEL CH for the criminal act "Illegal exploitation of mineral raw materials" from Art. 225-a paragraphs 3 and 1 in relation with art.28 paragraph 1 from CC in relation with the Law for amendment of the Criminal Code, published in the Official Gazette of the Republic of Macedonia no. 114/09.

In this case, the Supreme Court of the Republic of Macedonia, acting upon the request for protection of the legality, pursuant to Article 342, paragraph 1, item 1 of the Law on Criminal Procedure, found a violation of the Criminal Code in the first instance and second instance verdict, and therefore changed them and released the defendants from charges because of lack of elements of the criminal act "Illegal exploitation of mineral resources" from Article 225-a paragraph 1 and paragraph 3 of the Criminal Code. According to the verdict of the Supreme Court of the Republic of Macedonia in this particular case, *in the actions of the defendants there are no elements of the criminal act "illegal exploitation of*

mineral resources" because the important element for the existence of the criminal act - the exploitation of mineral resources has not been realized.

The aforementioned acts represent, in a theoretical sense, corporate criminality, and besides the responsibility of natural persons, criminal liability is foreseen for legal entities as well. Comparatively with the region, the Republic of Macedonia has adopted identical solutions. In the direction of this (Keković, Milošević, 2011, p. 28), based on the applicable positive law in the Repubica Serbia will point out that: "The criminal act of the corporation is the criminal offense committed within the scope of its activity or authorization of the responsible person, for the purpose to benefit for the legal entity, as well as those acts done for the benefit of the legal entity by persons acting under the supervision and control of the responsible persons, if the crime is committed because of lack of supervision or control that the responsible person is obliged to implement.

Aside from the legal solutions and state criminal policies, in order to prevent and reduce crime, state authorities must consider implementing measures, programs and strategies for increasing the business ethics of management, to increase responsibility of the members of the supervisory board (although from the aspect of the legal Standard in the Republic of Macedonia all members are liable according to the equal concept), to increase the awareness of corporate crime and social responsibility of companies. On the other hand, aside from companies like trade firms, other legal entities also contribute to the increase of criminality in the field of finances, taxes, environment, employees, etc. Consequently, the measures should be applied to all legal entities.

The behavior of corporations, that is, the implementation of managerial decisions by law representatives in trade companies, directly or indirectly reflects upon numerous and heterogeneous entities in a wider social context. In this sense, business policies and the behavior of the corporations are reflected on consumers, shareholders, employees and numerous other stakeholders including the state. In our opinion, from a point of view of statute commercial law there should be positive criticism of the implementation of this concept. The Republic of Macedonia, in terms of legislation, is in line with the best solutions in the world. The 2009 interventions are a confirmation of this conclusion. In procedural legal terms, the goal is also confirmed by the decisions contained in Chapter XXXIII of the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 150/2010, 100/2012 and 142/2016), which refers to legal entities.

Conclusion

Guided by the analysis of comparative solutions in the field of "criminal liability of legal persons", as well as the concept of "corporate criminal responsibility", it is more than clear that in the last decades of the 20th and 21st century globally, concrete interventions in the legislatures of the countries of the continental system, have been made. In the other hand, in the Anglo-Saxon system, this concept is not a novelty which we can conclude form the analysis made in a historical perspective in the US, UK, Australia, etc.

In the present, the greatest danger of corporate crime is not only reflected in the unlawful enrichment of managers, directors, members of top management, but also in the direct damage of the environment, in the unfair competition, consumer abuse, company discrimination, evasion of tax and damage to the state property, etc. From the statistics of numerous research projects cited in this paper, this kind of crime has long been the greatest danger to society. From recent research in this field, it is clear that this type of crime is closely linked to political processes, democracy and in general the highest (world) social policies. This conclusion is in the context of the notion that reputable judgments from authoritative judicial bodies have identified crime of companies, which companies, on the other hand have been declared financially supportive of certain political parties. Hence, the implementation of the concept of criminal liability of legal entities, that is, corporate criminal responsibility, is a necessity in the direction of building a society under democratic and reasonable standards.

In addition to legal interventions, it is necessary to emphasize the influence of criminal policies of state and EU-level organizations, the United States, the OECD, etc. In our opinion, the model of prescribing responsibility for committed criminal acts of legal entities, not excluding natural persons from responsibility, from the aspect of legislation, is a fitting solution in this field. This in two respects, firstly, often, individuals did not have financial opportunities to reparate claims, and the legal entity behind whose veil hides the interests of shareholders (usually members of the board of directors as shareholders) continue to realize their interests. We believe that this model implemented in our law is compatible with the actual trends on this field. It is problematic and complicated in proving the crimes, especially because the managers who commit the crime, at the same time are the only ones that have access to the overall documentation regarding the transactions carried out. In addition to the main penalties provided for in the criminal codes, particularly important are the secondary sanctions, among other things, in the function of distorting the reputation of the companies. This is especially because through their criminal activities they influence the creation of unfair competition, both in terms of fixing prices, limitations and violation of industrial property rights, cybercrime, etc.

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