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## **ACCEPTANCE OF CRIMINAL LIABILITY OF LEGAL PERSONS IN THE “CIVIL LAW”- AN OVERVIEW OF LEGISLATION IN KOSOVO**

### **ABSTRACT**

Nowadays, the role and impact of legal persons in the soci-economic life is very large and in the continuous increase, in the state and international level. This certainly brings legal persons in situations to realize with their actions (inactions) and harmful facts for the society, including criminal acts. This reality impacted legal persons to be subject of treatment in terms of criminal law.

In this paper we will do a theoretical survey of criminal proceeding for legal persons, respectively, acceptance of european countries of principle "*societas delinquere e potest*". This theoretical treatment aims to elaborate some essential arguments of the doctrine for accepting this insitution, as bases for interpretation of legal provisions from this field. With particular emphases some of the key aspects of Kosovo's legislation on liability of legal persons for the offence will be treated.

**Key words:** criminal responsibility, legal person, a natural person, Compliance program.

### **1. Introduction**

Increase of impact of legal persons in socio-economic life in the global level and increase of their criminality, has impacted that legal persons are subject of treatment in terms of criminal law.<sup>1</sup>

In criminal law, regulation of responsibility of legal persons is becoming one of the most interesting topics, or as the world doctrine considers it as "*strategic research site*".<sup>2</sup>

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<sup>1</sup> Puka, A.: A theoretical observation on the liability of legal entities for criminal offences - an European perspective, *Riv. Archivio Penale*, 2015/2, fq.1

Legal persons now cover a great part of industrial, commercial and sociological sectors, therefore their discipline in the frame of criminal law is considered as necessary to have a safe society with sustainable economy.<sup>3</sup> In this reality, criminal responsibility of legal persons, now is a concept which is raised in the whole world, including European countries.

Despite the denial for a long time, in recent years in most jurisdictions of the European countries (following a long tradition of applying penal measures against legal persons in the framework of Common Law system) has accepted the possibility of applying for the criminal responsibility for legal person besides natural person, passing in this way from the principle "*societas delinqueri non potest*" in principle "*societas delinqueri potest*".

In this paper we will provide a theoretical survey of criminal responsibility for legal persons, respectively switching of European countries in principle "*societas delinquere e potest*". This theoretical treatment aims to elaborate some essential arguments of the doctrine for acceptance of this institution, as basis for interpretation of legal provisions from this field. Also, some of main aspects of Kosovo legislation for responsibility of legal persons for criminal acts will be considered.

## ***2. Acceptance of criminal responsibility for legal persons in the countries of "Civil Law" system***

The doctrine of criminal law in European countries did not recognise for a long time the possibility for the legal persons to be criminally liable for actions performed by his members or by his representatives, based on the principle that criminal responsibility is individual and not collective (*societas delinquere non potest*). Consequently, legislations of these states were created on these bases and criminal responsibility has been limited only for natural persons.<sup>4</sup>

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<sup>2</sup> Rodriguez, L.Z.: Corporate Criminal Liability: Responsibility of legal persons for offenses in the European context, *ISISC, Siracusa, 2008*, fq.315 and continual.

<sup>3</sup> Mahajan, K.: Corporate Criminal Liability: Why Corporations are preferred and not the employees?, *Company Law Journal, Vol. 4, 2008*, fq.1

<sup>4</sup> Puka, A.: *Ibidem*, fq.2.

Furthermore, the notion of guilt is considered only as concept of personal nature that implies the existence of criminal responsibility depending on psychological factors, which can be tested only at natural persons. According to this conception for criminal responsibility a psychological relation is requested with purpose of impeachment, as “personal” responsibility that derives exclusively from subjective consciousness.<sup>5</sup>

Principle *societas delinquere non potest* has its origine in the context of church, in fact by a dogma of Pope Inocenti IV, which had the purpose of abbey for corporations or civil entities for the sins performed by members of these corporations. This dogma was preserved even in the context of development of criminal law, acting until the twentieth century.<sup>6</sup> This concept under the system “*Civil Law*” is based on the theory of German jurist and historian Friedrich Carl Von Savigny: that only natural person may possess rights, while legal persons for development of his activity needs representatives, therefore he can not be perpetrator of criminal act, being simply a legal fiction.<sup>7</sup> This attitude has represented traditional approach according to theory of fiction or romanistic.

Theory of fiction is now replaced with theory of reality (technical). This theory, which is known as organic theory, supports the idea that while legal persons are important participants in the socio-economic life, this should have repercussions in the criminal law as well. Therefore, this discipline being faced with phenomenon of collective crime can not be supported infictions and to remain in the sphere of individual criminal responsibility.<sup>8</sup> Theory of reality justifies criminal responsibility of legal persons with criminal measures against all entities that cause serious consequences for the society, and on the other side, until the legal person has the capacity to act, bear civil and administrative responsibility for actions of his representatives, than accoeding to a logical interpretation, it should keep criminal responsibility for criminal acts committed on his behalf and benefit.

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<sup>5</sup> De Maglie, C.: *Societas Delinquere Potest? The Italian Solution*. Ed.by Pieth, M. & Ivory, R. – *Corporate Criminal Liability, Ius Gentium: Comparative Perspectives on Law and Justice* 9, Basel, 2011, fq.256

<sup>6</sup> Shih Zapatero, A. L. : *Die strafrechtliche Verantwortlichkeit der juristischen Personen in Spanien*. In: *Schulz et al. (eds) Festschrift für Imme Roxin. Muller, Heidelberg, 2012*, fq. 711.

<sup>7</sup> Shih Savigny, C.v.F.: *Sistema del diritto romano attuale, Volume II, Bologna, 1900*.

<sup>8</sup> Kambovski, V.: *Legal-criminal framework of prevention of organized crime, Organized crime – legal aspects, Tetovo, 2009*, pg.40-41.

Then starting from a definition of the meaning of legal norms themselves and to the general principle that if the rules or violating legal norms stipulated by the penal provisions, the legal consequences for its offender is a criminal sentence<sup>9</sup>, should also apply in cases where the offender is a legal person. In this way also it creates a foundation for the passage of traditional concepts that only natural persons can bear criminal responsibility.<sup>10</sup>

Unlike natural person, who is required to respect values of society protected by legal and criminal norms within his mental capacity, awareness of their importance and behaviour contrary to these rules presents basis of his conviction, it can not be applied by legal persons, for which (*corporate culture*) to provide an environment for application of the action legally, respecting legal goods of the society. Furthermore, for determination of guilt or innocence of the legal person for actions committed by his representative, requires existence of an organizational model and control (*compliance program*<sup>11</sup>) in order to prevent criminal actions. On the contrary, lack of such a model presents basis of doubt for legal persons.

There can be no question of a person intentionally or negligently or psychological report with criminal action, as defined at natural persons, and we can not have a psychological conception of guilt for legal person. This problem can be overcome in terms of doctrine through a normative conception of guilt, by adjusting its criteria with the nature of legal persons and their functioning. Subjective aspect of criminal responsibility of legal persons, it is based on evaluation of existence or no of a program (measures) for prevention of criminal acts that might be performed on their behalf and benefit. Application or nonapplication of a program or measures for prevention of criminal actions, is an indicator of orientation (will) of legal person in regard with respect of values of society protected by laws.

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<sup>9</sup> More on this topic see Ramacci, F.: Corso di diritto penale, Torino, 2005, pg.30 and continual.

<sup>10</sup> Puka, A.: *Ibidem*.

<sup>11</sup> “*Compliance program*” means domestic programs (measures) applied by a legal person for the purpose of compliance with applicable laws and other regulations, as well as a control body for the formulation and effective implementation of these programs. To avoid a legal person guilty of criminal acts, this program must include clear measures to prevent such acts that could potentially be carried out by its representatives.

Thus “*mens rea*” that once was thought to represent the overwhelming problem for the application of a scheme of criminal liability for legal persons is now exceeded by basing the actions of agents<sup>12</sup> who have delegated powers by the governing bodies of the legal person, and their actions will be identified with the legal entity itself. This principal is now accepted in the world doctrine, identifying personal responsibility with actions of its agents, known as principle of identification.<sup>13</sup> The conception of guilt of legal persons can be said is result of what Professor Ramacci names orientation of world doctrine in finding most favourable aspects for formulation of ideological principle “*nullum crimen, nulla poena sine culpa*” because there are various scientific concepts relating to the notion of guilt,<sup>14</sup> and as a result of a continuous dynamics to match the principles and rules of criminal law with the needs of social reality.

As it is known, beginnings of normative conception appeared in the XX century, with penetration of “neocantism” and with return of values and ethic criteria in formulation of criminal- legal institutions, recognizing the ethical notion of guilt as reproach<sup>15</sup> for actions or omissions in violation of criminal and legal norms in force.

In this way, through transition from traditional conception of guilt to normative conception, it becomes possible warning of any subject if it does not fit in social values accepted by the society. In this line of thoughts, guilt is not about psychic (personal) and the individual criminal act, but a sign that is made to all subjects, and to legal persons as careless in respecting the law.<sup>16</sup> As such, normative conception of guilt is considered as “key” of affirmation of criminal responsibility for legal person, that as criteria of guilt is taken the prove whether the action committed on his behalf is consequence of interest of the legal person to benefit (directly or indirectly) from such an action is consequence of negligence of legal person to take necessary measures for prevention of damage, respectively criminal act. Criminal responsibility of legal persons is determined on that basis, in majority of european countries that have accepted this institution.

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<sup>12</sup> Mohojan, K.: *Ibidem*.

<sup>13</sup> Molan, M., Lanser, D.; Bloy, D.: Principles of Criminal Law, 4<sup>th</sup> ed. London, 2000, pg.138 and continuation.

<sup>14</sup> Ramacci, F.: Corso di diritto penale, cit., fq.107.

<sup>15</sup> Kambovski, V.: Criminal law- general part, *Skopje 2004*, pg.248 and continuation.

<sup>16</sup> Bozheku, E., Elezi, I.: Criminal responsibility of legal persons, *Tirana, 2012*, pg.44.

## ***2.1 Hesitations about accepting criminal responsibility for legal persons in european system- trends of presertving legal traditions***

Despite broad acceptance of criminal responsibility for legal persons in all legal systems in the world, still we can not say that the principle “*societas delinquere non potest*” is fully eliminated in the field of criminal law, in particular in the european system which has been constantly followed by doubts in this aspect.

From different approaches in doctrine and evaluation of judiciary in european countries in relation to hesitations to accept criminal responsibility for legal persons in the frame of their legislations, mainly two obstacles or justifications are noticed. First, traditional approach of theoreticians of criminal law is connected to principle “*societas delinquere non potest*”, while as second obstacle, it s considered that legislative reforms that need to be performed in many fields (environment, business, etc.) which are impaced by acceptance of responsibility of legal persons in the frame of criminal legislation.<sup>17</sup>

These aspects have led some countries to find specific normative solutions, aiming at preserving constitutional principles and their legal tradition. As typical representatives of these countries that hesitated to accept criminal responsibility for legal persons there are solutions determined by German and Italian legislator.

In the system *Civil Law* (unlike *Common Law*) there has been a continuous objection to accept criminal responsibility even against legal persons, based on the tradition of preserving the principle of criminal personal responsibility, causing delays in accepting pure criminal conceptions for legal persons<sup>18</sup> in european countries as well. On the other side, current legal framework of EU that requires regulation of responsibility of legal persons for criminal acts, does not necessarily determine criminal responsibility. This impacted countries like Germany and Italy to use this opportunity within the legal framework of EU. to avoid a determination of legal responsibility that would be applied directly towards legal persons.

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<sup>17</sup> Puka, A.: *Ibidem*.

<sup>18</sup> Manduchi, C.: The introduction of corporate “criminal” liability in Italy, *Riv.Diritto&Diritti*, 2010, [www.diritto.it/docs/30795](http://www.diritto.it/docs/30795)

In this regard, the Italian legislator did one of the biggest movements with legal system by the Law nr. 231 from the date.08.06.2001, where he does a solution of the type *sui generis*, by determining administrative responsibility for legal persons that are responsible for criminal actions committed on their interest or their advantage. This careful solution of Italian legislator is done in order to avoid violations of article 27, *parag.1* of the Italian Constitution, which determines principle of guilt and personal criminal responsibility. Aspect *sui generis* of the mentioned law is seen in the fact that despite avoidance of the notion “*criminal responsibility*” and limitation of sanctions of criminal nature, as way of preserving harmonization of legal acts, the procedure which is developed towards a legal person is typical criminal and is based on provisions of the Code of Italian criminal procedure and is under competences of criminal court.<sup>19</sup>

The trend of accepting criminal responsibility in European countries was not followed by Germany, because dogmatic problems in the existing system are considered unresolved for acceptance of such responsibility.<sup>20</sup> Even German legislator provides even more restrictive solution, determining only administrative responsibility for legal persons, for criminal actions committed by subjects they represent. Respecting in this way article 19 of the German criminal code which determines that “*only natural persons can commit criminal actions*”. In the German system, development of legal procedure towards legal persons is under competences of administrative court.

It is natural that countries which were impacted by German and Italian judicial system, hesitated for a long time to admit criminal responsibility for legal persons, for example.: Hungary<sup>21</sup> and other states. But until now, almost all European countries have determined criminal responsibility within their legislations for legal persons, for criminal acts committed on their behalf or their benefit (Netherlands, France, Belgium, Finland, Norway, Switzerland, Denmark, etc).

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<sup>19</sup> For this reason the solution provided by Italian legislator is considered as a model “*parapenal*” or “*semi criminal*” for responsibility of legal persons for criminal actions.

<sup>20</sup> Bohlander, M.: Principles of German Criminal Law, *Studies in International & Comparative Criminal Law*, Oxford, 2009, pg. 23 and continual Böse, M.: Corporate Criminal Liability in Germany – Corporate Criminal Liability. Ed. Rodha, I. & Pieth, M., Basel 2011, pg.227-228.; Weigent, Th.: *Societas delinquere non potest?* – A German Perspective, *Oxford University Press*, 2008, ICJ 65 (927).

<sup>21</sup> Santha, F.: Criminal responsibility of legal persons in Hungary – theory and (a lack of) practice, pg. 198 and continual. (<http://www.upm.ro/proiecte/EEE/Conferences/papers/S1A38.pdf>) {02.03.2014}.

In the last decade, an orientation of determination of criminal responsibilities of legal persons has been noted even in the Balkans, that in the provisions of criminal codes (Macedonia, Bosnia and Herzegovina) or by specific laws (Albania, Kosovo, Croatia, Montenegro and Serbia) determined conditions of legal person's responsibilities, procedural aspects and sanctions that might be applied towards them. In the Balkan countries one of current problems noted is practical implementation of laws from this field.

### ***3. Criminal responsibility of legal persons according to Kosovo legislation***

As in many other countries, the Republic of Kosovo as well acceded in principle "*societas delinquere potest*" by norming criminal responsibility of legal persons. Conception of criminal responsibility in Kosovo as well is result of necessity to create legal basis for an efficient fight against crime of legal persons, and on the other hand a responsibility towards requirements of international mechanisms for regulation of this field.

Criminal responsibility of legal persons as a concept in Kosovo has been accepted for the first time in the Criminal Code of 2003,<sup>22</sup> where in article 106 in principle was determined that "*Criminal acts for which legal person can be criminally responsible, criminal responsibility of legal person, criminal sanctions that can be implemented towards legal persons and specific provisions which regulate criminal procedure applicable towards legal persons, are provided specifically according to the law*".

On the level of formal recognition, criminal responsibility of legal persons is determined according to Criminal Code of 2012<sup>23</sup>, which also contains some provisions on responsibility of legal persons, but it does not fully regulate this institute to apply it in practice as well.

Full regulation of this institute in Kosovo has been provided by approval of the law 04/L-030 for responsibility of legal persons for criminal acts

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<sup>22</sup> This Code proclaimed by UNIM Regulation no.2003/25, entered into force on 6 April of 2004.

<sup>23</sup> Code on Criminal Procedure of Republic of Kosovo, entered into force, on 1 January 2013. *Official Gazette of Republic of Serbia* /No.19/13 July 2012.

(hereinafter law 04/L-030),<sup>24</sup> applying in this way even principle provisions of Criminal Code, that envisage regulation of this institute. With entry into force of law 04/L-030 the Law on economic crimes has been abolished (1986)<sup>25</sup>, which up to this time has regulated the field of responsibility of legal persons.

Law 04/L-030 regulates responsibility of legal persons for criminal acts, determines criminal sanctions that can be pronounced, and contains specific provisions of criminal procedures that can be applied (article 1). Further, we will try to present some essential aspects of criminal responsibility for legal persons in Kosovo, in particular affirmations of the law 04/L-030 and main problems that we consider will present challenge for legal system in Kosovo on the occasion of judgement of legal persons.

The law defines that “*responsible persons*” is: “*physical person which in the framework of legal person has the trust to perform specific duties, or an authorisation to act on behalf of legal person as well as there is high reliability that it is authorised to act on behalf of legal person*” (article 2, *parag.1, point.1.1*). that provides possibility to the court to apply criminal responsibility against legal person only when it is proved that besides authorisation, there is reliability that the responsible person presented “*interests*” of legal person, expressed his will, and not only because he was an employee of legal person.

While criminal responsibility of legal person derives of criminal act of natural person, then one of conditions to conceptualize this responsibility is identification of natural persons that can act on behalf of legal persons, and in which conditions criminal act committed by them can be basis of responsibility for legal person as well.

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<sup>24</sup> Law 04/L-030 for responsibility of legal persons for criminal acts was approved on 31.08.2011 and entered into force on 01.01.2013. The author of this paper was member of Commission of Ministry of Justice for development of the first draft of this law. Considering that in the further procedure in the commission of Kosovo Parliament, there was more a focus to a debate on the needs of amending EU standards in this field and in this way they are not included many proposals of experts for development of a functional law. This caused approval of a law with shortcomings and some unclear provisions, that we consider would challenge the system of criminal justice in Kosovo. On the other hand, this also has critics on criminal legislations of the Balkan countries. that many laws in these countries have been approved aiming at fulfilling some criteria in regard to EU, without taking into consideration the functional aspect of theirs and circumstances where should they apply.

<sup>25</sup> “Official Gazette “former Yugoslavia, nr. 10/86.

Depending on the model followed by legislations of various countries, basis of responsibility of legal person in relation to action of natural persons, is determined in many ways, such as: explicit definition of persons that are in the structure of legal person, that can committ criminal acts on his behalf; by identification of responsibility of legal person only by actions of high bodies and based on an inadequate ssystem of organization and lack of measures for prevention of criminal acts (*Compliance programe*);<sup>26</sup> or by not specifying subjects that according to hierarchy position in general that legal responsibility of legal person derives from criminal act of natural person (responsible) regardless of position in the structure of legal person, but which has authorisation to act on his behalf and with committed action provided benefits to legal person. This model is applied in Kosovo as well.<sup>27</sup>

Therefore, legal responsibility of legal person, may appear only by criminal acts that are committed by natural persons that have specific qualities<sup>28</sup> and it can be proved that they have acted on behalf of legal person,<sup>29</sup> in every concrete case of criminal proceeding against legal person. It is up to prosecution to prove this relation between natural and legal person, based on formal positioning that legal person had to reperesent legal person based on the firmal positioning that natural person had based on the employemnt act (contract or agreement on employment) or other acts of providing legal authorisations to represent legal person. Than, the second aspect consists on proving whether criminal act was also the willingness (intention) of the legal person, or at least the legal person did not undertake measures for prevention of such an action (subjective aspect of criminal responsibility of legal person).

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<sup>26</sup> Pieth, M. & Ivory, R., *Emergence and Convergence: Corporate Criminal Liability Principles in Overview – Corporate Criminal Liability, Ius Gentium: Comparative Perspectives on Law and Justice 9, Basel, 2011*, pg.22 and continual.

<sup>27</sup> This model was followed by legislator in Kosovo, where in article 5, *parag.1* of the law 04/L-030, that determines basis of criminal responsibility for legal persons, does not specify hierarchy of natural that might committ criminal action on behalf of legal person. In this capacity are subjects that are responsible who can act on behalf of legal person and with criminal act bring benefit to the last one, or cause damages on his behalf.

<sup>28</sup> For determination of natural persons that can committ criminal act on behalf of legal person, according to Kosovo legislation, should refer to article 2 of the Law 04/L-030 on definition of the notion “*responsible person*”.

<sup>29</sup> See Bozheku, E., Elezi, I.: *cit.*, pg.22 and continual.

With regards to definition of the notion of legal person, the law contains only a general definition, that legal person is only domestic or foreign legal subject, who according to the legislation in power is considered as legal person (Article 2, *parag.1, item.1.2*). The same definition is in the Criminal Code of (2012), in general provisions on criminal responsibility of legal persons (article 40 and 120).

From this, it appears that kosovar legislator avoided final definition of the notion “*legal person*” in terms of applying his responsibility for criminal acts, leaving it as a duty for the doctrine and judicial practice that through interpretation of Kosovo legislation in general, to determine which are subjects of the right that are considered legal persons. A more complete definition with regards to Kosovo legislation is in the Law Nr.02/L-123 for Trade Associations which says: “*Legal person*” is general expression that means a society, including trading society, that has a particular legal identity and are separated from him and its joint-stock.”<sup>30</sup> With the aim of identification of legal persons towards which criminal responsibility may apply, is of particular importance the distinction between legal public private persons. This is due to the fact that criminal sanctions can not apply toward all legal persons for actions committed on their behalf and benefit, such as: Legal persons with public interest. Such distinction the law 04/L-030 provides in article 4, *parag.3*. which provides that: “*Republic of Kosovo, state administration bodies and local self governments and foreign state organizations that act in the Republic of Kosovo can not be responsible for criminal acts, but responsible person holds criminal responsibility*”. This definition first expresses orientation of the law 04/L-030 its main aim is discipline of private legal persons.

In regard with criminal acts for which legal person may be criminally responsible, kosovar legislator decided for less limited solution, providing possibility to the legal person to be responsible for criminal acts from the particular part of Criminal Code of Kosovo and for other acts, whenever the conditions are met for responsibility of legal person (article 3, *parag.2*), accepting therefore the model “*all-crimes approach*”, such is

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<sup>30</sup> Law nr.02/L-123 for trade societies, as legal person capacitates: societies with limited liabilities and Joint Stock company, while individual companies, collective societies and commanditary societies, don't have the status of legal person. In general, there is no final definition of the notion for legal person, characterizing it as a society of people or fund with specific aim (i.e. foundation), that according to the law has legal personality. He differs from other societies of people by possessing legal personality and may appear in front of courts as prosecutor and respondent (“*Parteifähigkeit*” – capacity to be party in the court). (<http://www.eurofound.europa.eu/emire/GERMANY/LEGALPERSON-DE.htm>, (15.12.2014)).

the case with legislation of Netherland<sup>31</sup>, Croatia<sup>32</sup>, etc. We think that such a broader solution, limiting only in the condition that criminal act matches the nature of legal person and fulfill conditions for criminal responsibility is practically more right than listing criminal acts for which legal person may be held responsible (*list-based approach*), such is the case with Italian,<sup>33</sup> Spanish,<sup>34</sup> Estonia,<sup>35</sup> legislator, etc. which explicitly define criminal acts for which legal person may be responsible. Advantage of the first model is argued through the fact that main criteria for legal responsibility is prove whether the legal person benefited from the criminal act, which is performed on his behalf and whether he is guilty (always have in mind normative conception of guilt).

Territorial validity of the law 04/L-030 is defined in article 4, which envisages that this law is applied toward legal persons (domestic and legal) that are responsible for criminal acts committed in the territory of Republic of Kosovo, affirming in this way the principle of territoriality. Also, this law is applied toward foreign legal person which is responsible for criminal act committed outside the state in damage of Republic of Kosovo, its resident or domestic legal person (real protection principle) and towards domestic legal person (domestic) which is responsible for criminal act committed outside the territory (Principle of active personality)

Kosovar legislator provides exclusion of criminal responsibility for legal person which is committed during realization of authorizations that are entrusted to him according to the law (article 4, *parag.4*).

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<sup>31</sup> See Dutch Penal Code (*Wetboek van Strafrecht*) (DPC), 1976, article 51.

<sup>32</sup> See Act on the Responsibility of Legal Persons for the Criminal Offences, *Croatia, Official Gazette no. 151/2003*, neni 2.

<sup>33</sup> After approval of the law 231/2011 on administrative responsibility of legal persons for criminal actions the Italian legislator by reforms of 2002, 2003, 2005, 2006 and 2007 included by specific laws some new forms of criminal acts for which legal person may be responsible, such as: terrorism and slavery, market abuse, keeping stolen things and money laundering, etc. See De Maglie, C.: *Societas Delinquere Potest? The Italian Solution*, Ed. by Pieth, M. & Ivory, R. – *Corporate Criminal Liability, Ius Gentium: Comparative Perspectives on Law and Justice 9, Basel, 2011*, fq.260 dhe vazhdim.

<sup>34</sup> For deeper information on criminal responsibility of legal persons in Spanish system, in particular see De La Questa, J.L.: *Criminal Responsibility of Legal Persons in Spanish Law, International Review of Penal Law, AIDP/IAPL, 84,1/2, 2013*, fq.143-179.

<sup>35</sup> Ginter, J.: *Criminal Liability of Legal Persons in Estonia, Juridica International, XVI/2009*, pg.151.

### ***3.1 Basis and the limit of criminal responsibility for legal persons according to the law 04/L-030***

Basis and limit of criminal responsibility for legal persons in Kosovo is determined in article 5 of the law 04/L-030, which provides fundamental provisions towards this discipline, but it is even the most controversial and problematic of the law in questions.

Criminal responsibility of legal person derives from criminal act committed by the person in question, on his behalf and benefit. In this way, article 5, *parag.1* defines that: “*Legal person is responsible for criminal act of the person responsible, that acting on behalf of the legal person within authorisations committed criminal act in order for the legal person to realise some benefit or has caused damage. Responsibility of legal person exist even when action of legal person was against with the business policy or orders of legal person.*”

Definition that criminal act should be committed unless “*on behalf*” but also “*within authorisations*”, is a right formulation of the legislator which means that for a criminal act against legal person it is not sufficient that criminal act is committed by responsible person only by representing legal person (*on behalf*) but should have acted within given authorisation by the legal person itself. While the other part “*...in order for that the legal person realises benefit ...*” can present problem during interpretation in practice, because it envisages a specific will of the responsible person, which is difficult to prove in practice. At this point courts in Kosovo should be careful in interpretation of this part of the provision in question, because the aim of a responsible person does not always match with the aim of legal person (even he can not have identification).<sup>36</sup> Therefore the court should regardless of the will of responsible person, to prove whether legal person wanted or allowed such an act through his behavior and the policy it implemented.

As it is known in the criminal law, principle of criminal responsibility presents one of its basic principles, which means that every individual responds only for consequences, respectively facts (that according to the law are defined as criminal acts) that he personally caused by his action

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<sup>36</sup> More on subjective aspect of responsibility of legal person in relation with interest or will of natural person, and arguments of guilt of legal persons should match with interests of natural person, see Lattanzi, G.: *Reati e responsabilità degli enti*, Milano, 2005.

or inaction (objective action)<sup>37</sup> and are result of will or his carelessness (subjective aspect)<sup>38</sup>. According to this principle, a person can not be responsible for the criminal act committed by another person, but only for the act that he committed personally and by his fault.

Based on the postulates of this principle, some of teoreticians insisted that criminal responsibility of legal person is not possible, because it would mean that the last one is blamed for a criminal act committed by another person (natural person).<sup>39</sup> This principle as an obstacle for acceptance of criminal responsibility of legal persons was treated even earlier, when we spoke about hesitations of some countries to accept this responsibility, such is the case with Italy where the legislator avoided the notion of criminal responsibility to respect article 27 of Italian Constitution where principle of criminal responsibility is stimulated,<sup>40</sup> which in the doctrine plan is overcome through normative conception of criminal responsibility of legal person, and this should comprise the basis of any interpretation from judicial practice.

We should bear in mind that definition of guilt of legal persons, besides law provisions that define this institute, it is based also on principles and regulations provided in the criminal code and the code on criminal proceeding, as much as they can match the nature of legal person. In this spirit the law of Kosovo 04/L-030 for responsibility of legal persons for criminal acts, in article 3 *parag.1* provides that: “ *Unless otherwise provided by the law, provisions of Criminal Code of Kosovo and Code on Criminal Proceeding apply toward legal persons*”. Therefore, a more coherent interpretation of provisions is required within positive criminal legislation in general, through a deeper study to clarify criteria that present basis of criminal responsibility for legal person. Otherwise, from practical aspect, it can be problem to justify court decisions against legal

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<sup>37</sup> According to objective aspect, criminal action is personal when there is cause connection between action or omission and consequences, on the contrary the person can not be criminally responsible. CCP in article 20 determines that: “*Personi nuk është penalisht përgjegjës kur midis veprimt ose mosveprimt të tij dhe pasojës mungon lidhja shkakore*”.

<sup>38</sup> According to subjective aspect, criminal action is personal of the individe when he is mentally capable (or has limited mental ability but exists a level of ability) and the action is committed with guilt (will or carelessness). So, from this aspect personal principle is identified with the conception of criminal responsibility.

<sup>39</sup> More on tjis principle in relation ot criminal responsibility of legal person see: Bozheku, E., Elezi, I.: cit. pg 40 and continual.

<sup>40</sup> For deeper knowledge of this princile in the positive italian law see Ramacci, F. cit. pg. 107 and continual.

persons as responsible for criminal acts committed on their behalf and benefit.

In this regard, in order to consider a legal person as guilty, it is necessary that the committed criminal act on his behalf or benefit, to be proved by objective and subjective side.

While, as basic conditions for criminal responsibility of legal person are that criminal act should have been committed “*on his behalf*” and “*on his benefit*”, in his plan to prove guilt of the legal person, main duty of the court is right interpretation of these two conditions (objective aspect of criminal responsibility of legal person). First, in order for the criminal act to be committed “*on behalf*” of the legal person it is not sufficient only to prove that in concrete case acted on his behalf and had authorisation for such an action. On the contrary, legal person can not be proclaimed guilty. Second aspect, should be proved if the legal person had benefit respectively exclusive interest from such acts. Benefit of legal person may be direct and indirect.<sup>41</sup> Besides other criteria, these two conditions should be proved in cumulative way to create criminal responsibility of legal person. Another basis of guilt of the legal person according to law 04/L-030 is also cause of damage.<sup>42</sup> Legal person may be proclaimed guilty in case it is proved that damage is result of an interest of legal person or he did not respect necessary standards during implementation of the action.

For example, a construction company may be proclaimed guilty if the damage came as consequence of non-taking protection measures, and justification of criminal responsibility based on this interest benefited by not spending in buying equipment for security at work. Also, such a

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<sup>41</sup> Direct benefit of legal person of committing criminal act may be in cases when management bodies of legal person favor committing of criminal acts fby natural persons, with the aim to end up in illegal way. ie...: stiumate corruption of representatives to benefit from public tenders, etc. While an indirect benefit the legal person may have in cases when they dont apply adequate measures for prevention of criminal acts in order to preserve thhis budget, etc. for example a construciton company doesnt invest in security measures in order not to spend too much and as a consequence it causes damages, or a company for production of food does not invest in technological equipment in accordance with the standards and by this endangers lives and health of the population, etc.

<sup>42</sup> Committing actions (cause of damage) as consequence of negligence of a person may be pollution of environment or cause of damage by another construction company that has bought all the equipment in accordance with standards for prevention of pollution or other consequences at work but are not put in function or are not maintained and this negligence causes dangerous consequences. Therefore, cause of damage shal be result of an interest of the legal person or his negligence to act in accordance with legal obligations.

company may be proclaimed guilty in case it did not apply protection measures in line with standards required for security during implementation of its activity, and as consequence damage has been caused.

So, in both these cases the caused damage is in relation to behavior of legal person and is identified with his interest and responsibility for facts he could envisage. Therefore application of criminal responsibility is in line with the spirit of law 04/L-030 (*ratio legis*) and principle of guilt that a subject is responsible for facts it could envisage. On the other hand, in case such relation of legal person can not be proved by the caused damage can not have criminal responsibility. For example, can not have criminal responsibility a construction company in case it manages to prove that it took protection measures in accordance with required standards, but the damage caused during performance of the action or in relation with it is consequence of “*vis major*”.

In this regard, cause of damage as bases of criminal responsibility makes sense only if proved that it is in relation with an interest or negligence of legal person in relation to his legal obligations.

Therefore, in order to prove criminal act by subjective aspect, the guilt of legal person should be based on the way of its internal organization, existence and implementation of a model for prevention of criminal acts or no, or another act in this regard.

In practice criminal acts performed on behalf and on benefit of legal person in many cases are direct consequence of a weak organization of legal person to avoid such actions.<sup>43</sup> On this basis the guilt of legal persons is justified and his punishment if proved that determined criminal act is consequence of weak organization of legal person to avoid it,<sup>44</sup> while the legal person can not prove the opposit in the criminal procedure.

In this way through normative conception the guilt of legal person is justified as will and carelessness. The will exists when the act expresses the will of legal person (for example: corruption acts stimulated by legal persons itself), while the act is considered that it is committed by negligence in cases when it came out as consequence of a weak and

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<sup>43</sup> See. Manna, A.: La responsabilità amministrativa delle persone-il punto vista del penalista, *Cassazione penale* 2003, pg.1101.

<sup>44</sup> Manduchi, C.: *cit.*, fq.2

unnecessary organization of legal person to avoid such an act (*culpa in vigilando*)<sup>45</sup> and this should be basis of blaming legal persons even according to provisions of law 04/L-030.

Independence of criminal responsibility of legal person in Kosovo (in terms of a criminal responsibility in parallel<sup>46</sup> in relation to natural person) is provided in article 5, parag.2, where it is envisaged that legal person is responsible for criminal act in case the responsible person who committed criminal act is not sentenced for that act.<sup>47</sup>

But, in deep contradiction with previous definition is the other provision (*parag.3*) where it is provided that criminal responsibility of legal person is based on the guilt of responsible person. Also, the law defines that subjective elements of criminal act that exist only with responsible person will be valued in regard to legal person (*parag.4*).

This definition of the legislator in Kosovo, creates uncertainties and are in opposition with the main principle of criminal responsibility of legal person, because his guilt is understood and affirmed only by normative aspect (which is also considered “key” of accepting criminal responsibility for legal person), and can not be conditioned with willingness or carelessness of natural person, according to psychological criteria of guilt (traditional conception).<sup>48</sup> This contradictory solution of the law 04/L-030, complicates prove of guilt of the legal person, specifically in cases when responsible person is not sentenced, because by his guilt the legislator has also connected criminal responsibility of the legal person. On the other side, this brings the legal person in an unfavorable situation in front of the court in other cases, when the natural person needs to be sentenced, that according to given solution means automatic blaming of the legal person for simple reason that criminal act is committed on his

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<sup>45</sup> See Bozheku, E.: Criteria for criminal responsibility of legal persons under subjective profile, *Avokatia*, 2012, pg 37 and continual.

<sup>46</sup> Kambovski, V.: Criminal law, (*General part*), Skopje, 2010;

<sup>47</sup> In practice there might be situations when for different reasons the responsible person can not be punished for criminal act committed on behalf and on benefit of person, for example when after committing criminal act, loses the ability to be responsible, escapes, dies, etc. In such situations criminal responsibility of the legal person can not be excluded, therefore definition of the legislator in this case is correct.

<sup>48</sup> For a deeper analyses on this aspect, see also: Bozheku, E., Elezi, I. cit. fq. 296 dhe vazhdim, Bozheku, E.: Guilt – some theoretical, methodological, functional and practical aspects of the second element of criminal act, *E Drejta/Law*, Prishtinë, n.2/2010; Ramacci, F.: *Corso di diritto penale*, II ed., Torino, 2011; etc.

behalf, regardless of attitude or relation of legal person with such an act, disabling them to prove innocence.<sup>49</sup>

From provisions of the law 04/L-030, appears that his main problem is clear definition of the basis of criminal responsibility for legal person. In this regard, lack of defined clear and formal criteria is seen as fundamental problem, through provision of an organizational model and effective control (*compliance program*) for legal person, as main criteria of prove of guilt or innocence of the legal person. This would be in accordance with the aim of sentence of legal persons for criminal acts.

Existence of an organizational culture (which in the anglo sacon system is known by terminology “*corporate culture*”) as system of values, way of organization and control, based on which legal person needs to exercise the activity, in an ongoing basis was topic of discussion in the world doctrine in relation to application of criminal responsibility.<sup>50</sup> Possibility of implementation of a “*corporate culture*” at legal persons is understood as avoidance of pressure that heads of the legal can perform towards lower level employees, so that they realise unlawful actions to bring benefit to legal person.<sup>51</sup> But in this regard we should always be careful because general regulations of organization (*corporate culture*<sup>52</sup>) tha a legal person may have, can not be replacement of a “*model of organization and effective control*” (*Compliance programe*) which is dedicated exclusively for prevention of criminal acts.

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<sup>49</sup> Puka, A.: Considerazioni sulla responasabilità degli enti in Kosovo, *Riv. Collona Roma, Sapienza, 2015*, pg.137.

<sup>50</sup> *Ibidem*.

<sup>51</sup> Henning, P.J.: Corporate criminal liability and the potential for rehabilitation, *Wayne State University Law School, Legal Studies Paper Series no.09-21, 2009*, pg.15

<sup>52</sup> A “*corporate culture*” at legal persons in terms of prevention of criminal acts can function and be basis for avoidance of guilt, only if the legal person has a model of organization and effective control (*compliance program*) dedicated for this purpose, that in an explicit way defines measures that undertakes continually to prevent jhis employees to committ criminal acts, and also to have a control body on effectiveness of these measures. Such a model should be applicable and to be proved as sufficient for prevention of criminal acts so that legal person could prove his innocence at the court or at least to have mitigation of sentence. In case of

criminal proceeding, from the legal person who claims innocence is requested to prove that he took adequate measures that criminal act should not happen anymore, and that it has been committed by the guilt of responsible person by not applying decisions and regulations of the legal person. It can not be sufficient basis for avoidance of generalized criminal responsibility “*corporate culture*, which by specific acts defines general regulations for behavior of his employees.

In this regard, lack of legal criteria for proving innocence by legal persons, that would oblige him to approve a “*compliance program*” for this purpose (in accordance with the law), is also main shortcoming of the law 04L-030 and laws approved in many countries for responsibility of criminal responsibility for criminal acts, with exception of some countries, for example Italia, where the law<sup>53</sup> explicately defines that the legal person would not respond for the criminal act if he can prove in front of the court his innocence based on the law criteria. ër

In general laws on responsibility of legal persons for criminal acts, envisage the possibility for the law to provide mitigation of damages when it is proved that the legal person had a “*compliance program*” at the time of committment of criminal act,<sup>54</sup> or based on reporting of violation or acceptance of guilt<sup>55</sup>, as indicato that it has “*willingness*” that in the future not to act in contrary to the norms in force, and to avoid unlawful actions of the subjects they represent. In the Italian system as well, existence and efficiency of a model of organization and supervision body enables avoidance of responsibility for criminal acts or at least a reduction of sanctions.<sup>56</sup>

Similar to the italian mode, the legislator in Kosovo in the case of amending the law must provide formal criteria upon wich the legal person can prove that he is innocent for the crimnial act which was committed on his behalf and his benefit, if he manages to prove that he undertook all measures that such criminal act doesn’t happen and in any way did not contribute (in active and passive way) for such an action to be committed.<sup>57</sup> As an integral part of a “*compliance program*” of legal person in Kosovo should be: a) Model (Programme) of organization,

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<sup>53</sup> Italian law 231/2001 on administrative responsibility of legal peprsons for criminal acts. For a deeper knowledge of the italian model see Fiorella, A. & Lancelloti, G.: *La responsabilità dell’impresa per i fatti da reato*, Torino, 2004; Vinciguerra, S. & Gastaldo, C.M. & Rossi, A.: *La responsabilità dell ente per il reato commesso in suo interesse*, Padova, 2004.; Manduchi, C.: *The introduction of corporate “criminal” liability in Italy*, *Diritto&Diritti* (<http://www.diritto.it>) 2010; Lattanzi, G: *Reati e responsabilità degli enti*, Milano, 2005.;etc.

<sup>54</sup> Pieth, M.,Ivory, R.: cit. fq.44.

<sup>55</sup> Nanda, V. P.: *Corporate Criminal Liability in the United States: Is a New Approach Warranted?*, *Ius Gentium*, cit. pg.71.

<sup>56</sup> Manduchi, C.: *cit.*, fq. 3

<sup>57</sup> Based on criteria of an internal control for legal persons, their obligation to have an ethics and to approve a “*compliance program*”, specific importance within international documentation has also Manual of the Organization for Economic Cooperation and Development (OECD) with topic: “*Good Practice Guidance on Internal Controls, Ethics and Compliance*”.

*where at least it should define clearly the way of functioning of the legal person, way of taking decisions and measures applied for prevention of criminal acts and b) Supervision body (of control), which need to exercise continuous control over the subject of legal person that needs to implement the model and make sure this model is changed and amended in an ongoing basis, to be more efficient in prevention of criminal acts.*

We think that current legislation in Kosovo, in cases when legal person manages to prove that he undertook measures for prevention of criminal act, that has a code or internal regulation for this purpose, the effect should be possibility of exception of guilt or mitigation of damage, or even the effect of pronouncing lighter security measures towards legal person. This would also be a way that would minimize the risk of an unfair interpretation of current provisions of article 5 of the law 04/L-030.

### ***3.2 Other penalties and criminal sanctions against the legal person under the law 04/L-030***

Besides the problem of guilt conception for legal persons, theoreticians that adhered in the theory of fiction (based in the principle “*societas delinquere non potest*”) as an obstacle for implementation of responsibility toward legal entities considered the impossibility or difficulty of applying criminal sanctions toward them.

One of basic arguments of these theoreticians against criminal responsibility for legal person, is based on impossibility to apply imprisonment sanction (as typical criminal sanction) and some other measures of criminal nature, and has in general been considered difficult to match criminal measures for legal persons.<sup>58</sup> Such an attitude is held even today in the countries that did not accept the institute of criminal responsibility for legal persons, and that is mainly based in controlled economy from the state.<sup>59</sup>

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<sup>58</sup> Wagner, M.: Corporate Criminal Liability – National and International Responses, *International Society for the Reform of Criminal Law 13th International Conference Commercial and Financial Fraud: A Comparative Perspective Malta, 8-12 July 1999*, pg.2

<sup>59</sup> See Cheng Yang, V.: Developments in Criminal Law and Criminal Justice: Corporate Crime-State-Owned Enterprises in China, *Crim.L.F.14*, pg.1 and continual. While criminal responsibility of legal persons is imposed by empowering of corporations in the capitalist systems, it is natural that in the countries with controlled economy this institute has not been applied. We consider that this was also one of factors why places of former

But, today by regulation of responsibility of legal persons for criminal acts by majority of world legislations, does not appear as a problem the system of criminal sanctions toward them, even criminal sanctions are justified as subsidiar in regard to civil sanctions<sup>60</sup> that are not sufficient for prevention of criminality of legal persons.

Depending on the model of conception of responsibility of legal persons for which various states decided, we can do a separation of the system of sanctions against legal persons in:

- *Sanctions of administrative nature* (for example. Germany, which did not adhere in the model of determining criminal responsibility for legal persons, as majority of european countries did, that accepted the model of states in the system “*Common law*”<sup>61</sup>);
- *Semi criminal sanctions or administrative- criminal* (Italia);
- *Criminal sanctions* (states that accepted criminal responsibility of legal persons).

As sanctions that can be pronounced toward legal person in Kosovo according to the law 04/L-030 are: penalties, conditional sentence and security measures. Sentences provided are fine and termination of legal entity (article8).

The fine is the most applicable penalty toward legal persons and most convenient to impact prevention of delinquency of legal persons<sup>62</sup> which is envisaged as replacement of the sentence with imprisonment applied toward natural persons for specific criminal acts and is equivalented with it. As an illustration, for example in article 9, (*parag.2, point.2.1*) of the law 04/L-030 defines that: “*for criminal acts that provide sentence of imprisonment from fifteen (15) up to three (3) years, the Law can*

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socialist block (Albania, countries of former- Yugoslavia, etc) hesitated for a long time to accept criminal responsibility of legal persons.

<sup>60</sup> Neumann Vu, S.: *Corporate Criminal Liability: Patchwork verdicts and the problem of locating a guilty agent, Columbia Law Review (104 Colim.L.Rew.459) 2004*, pg.11

<sup>61</sup> For a deeper study compared to administrative sanctions that are applied in the german legal system for legal persons and criminal sanctions in the american system, see Diskant, E.B.: *Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine Through Comparative Procedure, The Yale Law Journal, 2008*, pg. 128-172.

<sup>62</sup> Jefferson, M.: *Corporate Criminal Liability: The problem of sanctions, Journal of Criminal Law (JCL65(235)), 2001*, pg. 2 and continual.

*pronounce fine, from one thousand (1.000) up to five thousand (5.000) Euro.* Such a model of equivalent fine sentence for legal person is present in other states, for example in Croatia, where for imprisonment sentence of 15 years envisaged for natural person, for the same act the legal person can be sentenced by fine from 2800 up to 685.000 euro (approximately because the fine sentence in the croatian law is defined in local currency).<sup>63</sup>

In the law 04/L-030 the fine sentence is defined in article 9, where *parag.1* provides that: *“For criminal acts of legal persons, the fine sentence can not be lower than (1.000) Euro and larger than one thousand (100.000) Euro.”* Bearing in mind that according to its nature, the fine sentence is more favorable and is more often executed towards legal person, we consider that the large limit of this penalty in Kosovo (100.000 euro) is very low for legal persons. Further more, this provision did not take into consideration provision of the Criminal Code of Kosovo, which for criminal acts of natural person, committed in relation to terrorism, human trafficking, provides that fine sentence can be up to five thousand (500.000) euro (article 46 ofi CCK). On the other hand, analyses of legislation of other countries (Albania, Macedonia, etc.) it is noticed that the maximum of the fine sentence is around 500.000 euro. Further more when taking to consideration the nature of criminal acts committed by legal persons (mainly economic) appears that this definition of the fine sentence in Kosovo is not well thought of by the legislation, except it shows an absence of harmonization by definition of the Criminal Code. Change of this provision was in the middle of some proposals during the phase of approval of the law 04/L-030.

According to Article 10, on the occasion of measuring the fine, the court should take into consideration circumstances such as the consequences that have arisen or could arise; the circumstances in which the crime was committed; economic strength and the size of the legal entity; legal person's behavior after committing the crime, etc.

As in most jurisdictions in the world, Kosovo law envisages termination of the legal person (Article 11). The imposition of this sentence is limited to cases where a legal person is established with the purpose of committing criminal acts or activities mainly used for committing offenses (*parag.1.*). This doctrine sentence that compares to the death

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<sup>63</sup> Kučić, V., Crnković, A.: Criminal Liability of Companies in Croatia, *Lex Mundi*, 2008, pg.1-2.

penalty is applied to natural persons, presents severe penalty within the system of penalties for legal persons. As such, this sentence may be necessary in cases of serious offenses, such as those relating to terrorism, various forms of organized crime, and in all cases where a fine and other measures are considered insufficient to prevent crime of the concrete legal entity.

The law 04/L-030 article 12 defines a suspended sentence. With the suspended sentence the court may determine the legal person a punishment of up to fifty thousand (50,000) euro, but that the punishment not be executed if convicted legal person for the time determined by the court, which can not be less than one and no more than two (2) years (validation), does not commit any new criminal offense that has elements of the offense in terms of section 5 of the law in question.

Article 13 foresees the following types of security measures: *prohibition of committing certain activities and tasks; confiscation of assets; confiscation of material benefit and publication of the judgement.*

Chapter IV of the law 04/L-030 defines procedures that should be implemented during the trial of legal persons.

The Law provides that for the criminal act of the legal person and the legal person is raised and applies uniform procedure and a judgement is issued (article 18, *parag.1*). While in the following paragraph independence of the legal person is expressed in relation to the responsible person in the procedural aspect, which states that for legal reasons, and other reasons criminal procedure can not be raised or applied against the person responsible. (*parag.2*). Following, in articles 19-30 of the law 04/L-030 other procedural aspects are regulated, such as: territorial competences, representation of legal person accused. Submission of decisions and notes to the legal persons, development of legal proceedings, the content of the judgement, etc.

A particular definition of the law 04/L-030 is also provision of precautions that the court may pronounce toward legal person in case specific circumstances justify the fear that the legal person accused would repeat the criminal act, or would end up the attempted criminal act, or would end up the criminal act he threatens with. Such measures provided are: *prohibition of certain activities and tasks; prohibition of business with state and local; and the prohibition of acquisition of licenses, authorizations, concessions and subsidie* (article 31).

#### **4. Conclusion**

Criminal responsibility has been normed in majority of state legislations, but continues to be one of the most discussable topics within judicial systems, with an attempt of harmonization with principles of the criminal law.

After a long tradition in the “Common law” system, in the last decades criminal responsibility of legal persons has been accepted in the countries that are part of “Civil law”, as well (except Germany which applies administrative responsibility, and Italy which is defined as a model of sei-criminal measures), as a responsibility toward the need to protect from crimes of legal persons. Justification of applying criminal responsibility toward the legal person, stands in the strong impact itself and position that legal (natural) persons have in the society.

Challenge of the states that accepted criminal responsibility for legal persons, remains to define most accurate law criteria for application of this responsibility. Such a need remains actual for Kosovo legislator as well, that on the occasion of amending the law 04/L-030, to regulate those aspects that present problem for justified implementation of criminal responsibility for legal persons.

One of basic aspects that requires clarification from theoretical and practical point of view remains the concetion of guilt of the legal persons. For an accurate definition of this problem, solution is normative conception of guilt of the legal person, unlike psychological conception or psychological-normative guilt of legal person. It is up to the prosecution and the court to prove the responsibility of legal persons in paralel with responsibility of natural person, as an autonomous responsibility, although it derives from criminal acts committed by natural person (responsibility). This means that the guilt og legal person is based on his behavior, business policy he implemented with the aim of prevention of criminal acts.

Aiming at creating more clear judicial basis on responsibility of legal persons in Kosovo, it is necessary to define the duty of legal persons according to the law, to approve models of organization and efficient control (compliance program) and this should be basis of proving their guilt or innocenc.

However, even with the current legislation, exists a legal framework that enables follow up and trial of legal persons. for criminal acts that may be committed on his behalf or benefit. Some of aspects that might be unclear in the law for criminal responsibility of legal persons, can be overcome by an interpretation of the legislation in force, first of all based on provisions of the Criminal Code and Code of Criminal Procedure of Kosovo.

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