

# CRIMINAL LIABILITY OF LEGAL PERSONS IN THE REPUBLIC OF MACEDONIA

VOISLAV STOJANOVSKI

Faculty of Law, Masaryk University, Czech Republic

## Abstract in original language

The concept of criminal liability of legal entities in the Republic of Macedonia was introduced in 2004. This article presents an overview of the reasons for such legislative move, it analyzes the most important provisions stipulated in the Criminal Code and the Code of Criminal Procedure, provides a summary of international standards in relation to the topic and presents the current situation concerning the actual implementation.

## Key words

Criminal liability of legal entities, corporate liability, Republic of Macedonia.

## 1. INTRODUCTION

In 2003 Transparency International, an international non-governmental organization addressing corruption, published its annual Corruption Perceptions Index<sup>1</sup> placing the Republic of Macedonia at the 106 place out of 133 countries. These results pointed out that the country was one of the most corrupted states in Europe. Aside from high levels of corruption the Macedonian society was facing another great problem in the form of organized crime. Following the armed conflict that took place between the National Liberation Army (Albanians of Macedonia) and the Macedonian armed forces in 2001, a great number of illegal weapons remained on Macedonian territory. These weapons were later used in illegal trafficking and commitment of crimes, making organized crime a problem that had to be addressed immediately. In the search for a solution, best practices from around the world were analysed and the conclusion was that in order to fight corruption and organized crime more adequately the institute of Criminal Liability of Legal Persons could be introduced. In March 2004 the institute of Criminal Liability of Legal Persons was introduced. The Criminal Code<sup>2</sup> was amended and for the first time in history Criminal Liability of Legal Persons was incorporated in the Macedonian legislation.

This decision was also influenced by international standards pertaining to criminal liability of legal persons. Representatives from both the Council of Europe as well as from the United Nations advised the Macedonian government to closely follow the conventions it has ratified as well as recommendations coming from the mentioned international organizations. These conventions and recommendations are:

1. Council of Europe, Recommendation No. R (88) 18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities from 1988.

---

<sup>1</sup> Transparency International Corruption Perceptions Index 2003, Berlin. Available online: [www.transparency.org/content/download/3222/19543/file/cpi2003.pressrelease.en.pdf](http://www.transparency.org/content/download/3222/19543/file/cpi2003.pressrelease.en.pdf).

<sup>2</sup> Official Gazette of the Republic of Macedonia No. 19/2004.

It is designed to promote measures for rendering enterprises liable for offences committed in the exercise of their activities, beyond existing regimes of civil liability of enterprises to which these recommendations do not apply. They apply to enterprises, whether private or public, provided they have legal personality and to the extent that they pursue economic activities.

2. Council of Europe, Convention on the Protection of the Environment through Criminal Law from 1998.

Article 9, paragraph 2 from this convention states „Corporate liability shall not exclude criminal proceedings against a natural person.“

3. Council of Europe, Criminal Law Convention on Corruption from 1999.

Article 18, paragraph 3 states „Liability of a legal shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to the criminal offences“

4. United Nations, Convention against Transnational Organized Crime from 2000.

Article 10, paragraph 4 states „Each state arty shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.“

5. United Nations, Convention Against Corruption from 2004

Article 26, paragraph 4 is identical as Article 10, paragraph 4 from the against Transnational Organized Crime from 2000.

6. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism from 2005

Article 10, paragraph 4 is identical with article 10, paragraph 4 and article 26, paragraph 4 from the above mentioned conventions.

## **2. CRIMINAL LIABILITY OF LEGAL ENTITIES AS PRESCRIBED IN THE CRIMINAL CODE**

Under Chapter 2, section 5, article 28-a states that in the cases stipulated in the special part of this criminal code or in another law which prescribes criminal activities, the legal entity shall be held criminally accountable if the commitment of the crime can be attributed to an activity or a failure to perform the obligatory supervision, committed by the management authority or the responsible official within the legal entity, or another person authorized to act on behalf of the legal entity within the framework of its authorizations, or when it has overstepped its authorizations in order to provide gain for the legal entity. The criminal accountability of the legal entity does not abolish the accountability of the perpetrator of the crime. Regarding the crimes stipulated in the law, all legal entities shall be held criminally accountable with the exception of the state. Foreign legal entities shall be held criminally responsible if they have committed the crime on the territory of the Republic of Macedonia, regardless of whether they have their representative office or a branch office which performs activities on the territory of the Republic of Macedonia.

Article 122 in its sixth paragraph provides a definition of legal entity. The seventh paragraph defines the responsible person. A legal entity shall mean: the Republic of Macedonia, units of local self-government, political parties, public enterprises, companies, institutions and other associations, funds, financial organizations, and other organizations specified by law, which are registered as legal entities, and other communities and organizations to which have been recognized as having the property of a legal entity. A foreign legal entity shall mean: a public enterprise, institution, fund, bank, company or any other form of organization in accordance with the laws of a foreign country pertaining to the performance of economic, financial, banking, trade, service or other activities, and which has a headquarters in another country or a branch office in the Republic of Macedonia or has been founded as an international association, fund, bank or institution. A responsible person within a legal entity shall be considered to be a person within the legal entity, who considering his/her function or based on special authorization in the legal entity, is entrusted with a certain circle of matters which concern the execution of legal regulations, or regulations that are enacted on the basis on a law or a general act of the legal entity, in the management, use and disposition of property, the management of the production or some other economic process, or the supervision over them. An official person is also considered to be a responsible person, when this concerns crimes where a responsible person is found to be perpetrator, and which crimes are not foreseen in the chapter on crimes against official duty, i.e. crimes by an official person foreseen in some other chapter of this Code. When this code specifically stipulates, a responsible person shall also be considered the person who performs a special function or an authorization or is entrusted to independently perform certain operations within the foreign legal entity, as well as the person which is a representative of the foreign legal entity within the Republic of Macedonia.

The Macedonian Criminal Code does not contain the theoretical bases for establishing corporate mens rea. However a closer analysis shows that the identification doctrine was used as a method in establishing the blameworthiness of legal entities. Under this doctrine, certain employees of the company are seen as having sufficient standing within the corporation to be identified as part of the corporation. Their actions and mens rea can be seen as representing that of the company.<sup>3</sup>

There are three systems of determining for which crimes the corporations can be held liable. Under the first system—general liability<sup>4</sup> or plenary liability<sup>5</sup> the juristic persons' liability is similar to that of individuals, corporations being virtually capable of committing any crime. The second system requires that the legislator mention for each crime whether corporate criminal liability is possible. The third system consists of listing all the crimes for which collective entities can be held liable<sup>6</sup>. In the Republic of Macedonia the second system is used. Thus, legal entities are liable only in those cases where that is explicitly stipulated by the Criminal Code . The crimes for which a legal entity can be held liable include environmental offences, fraud, smuggling, money laundering, trafficking etc.

---

<sup>3</sup> Jonathan Herring, *Criminal Law*, Oxford, OUP Oxford, 2 edition, 6 Jul 2006, pg. 121.

<sup>4</sup> Florin Streteanu & Radu Chirita, *Raspunderea penala a persoanei juridice* 7, Rosetti 2002, pg. 112.

<sup>5</sup> Cristina De Maglie, *Centennial Universal Congress of Lawyers Conference-Lawyers and Jurists in the 21st Century: Paper: Models of Corporate Criminal Liability in Comparative Law*, 4 Wash. U. Global Stud. L. Rev. 547, 2005, pg. 552.

<sup>6</sup> *Ibid.*

## 2.1 SANCTIONS

Chapter 6 of the Criminal Code contains provisions governing the sanctions which can be imposed to legal entities. For crimes committed by legal entities, the following sanctions may be applied:

1. monetary fine;
2. temporary ban to perform a specific activity;
3. permanent ban to perform a specific activity; and
4. termination of the legal entity.

The monetary fine shall be applied in an amount which may not be less than 100.000 (around €1.600) or more than 30 million denars (around €480000). For crimes committed for the purposes of gaining profit or for crimes which cause a more substantial material damage, one may prescribe a fine for twice the maximum amount for this sanction or proportional to the degree of the caused damage or the gained profits, but not more than 20 times the amount

The temporary ban to perform a specific activity in for a time period of one to three years shall be applied in addition to the monetary fine, if during the performance of the activity of the legal entity, a crime has been committed for which crime a physical person would be sentenced with a fine or imprisonment of up to three years, and the manner in which the crime was committed suggests a threat of a repetition of the same crime or commitment of a similar crime.

The permanent ban to perform a specific activity, out of all the activities performed by the legal entity shall be applied in addition to the monetary fine, if a crime has been committed for which crime a physical person would be sentenced with at least three years of imprisonment, and the manner in which the crime was committed suggests a threat of a repetition of the same crime or commitment of a similar crime. The court shall also apply this sanction when a crime has been committed after a previous judgment whereby the legal entity has been temporarily banned from performing a specific activity.

The termination of the legal entity sanction shall be applied in addition to the monetary fine, if a crime has been committed for which crime a physical person would be sentenced with at least five years of imprisonment, and the manner in which the crime was committed suggests a threat of a repetition of the same crime or commitment of a similar crime. The court shall also apply this sanction when a crime has been committed after a previous judgment whereby the legal entity has been permanently banned from performing a specific activity.

The sanction temporary or permanent ban to perform a specific activity and termination of a legal entity, may not be applied to a legal entity established by law, or a political party. Based on a legally effective judgment whereby the legal entity has been sentenced for termination, the competent court shall initiate a procedure, specified by law, for liquidation of the legal entity within 30 days from the day of legal effectiveness of the judgment. The legal entity for which a bankruptcy procedure has been opened, shall be sanctioned for the crimes committed before the opening of the bankruptcy procedure.

When determining the sanction the court shall take into account the balance sheet and the income statement of the legal entity, type of the activity and the nature and severity of the

committed crime. If the court specifies a monetary fine for two or more crimes, the unique sanction may not be as high as the sum of the individually specified fines, nor to exceed the legal maximum prescribed for a legal entity.

If the convicted legal entity fails to pay the fine within the time period specified by law, which may not be shorter than 15 days nor longer than 30 days counting from the day of the legal effectiveness of the judgment, the court shall order a forced execution.

If the fine can not be executed from the property of the legal entity, because the legal entity does not have such property or has ceased to exist before the execution of the sentence, the sentence shall be executed from the property of the founder or the founders of the legal entity, proportionally with the invested shares, or in the case of a company, from the property of the shareholders or associates, proportionally with their respective shares. The fine for foreign legal entities shall be executed from the property confiscated in the Republic of Macedonia, or with the application of an international agreement, from the property abroad.

The court may specify a probationary postponement of the execution, for a time period of one to three years, of the monetary fine and the ban to perform a specific activity, if a crime has been committed for which the law prescribes a monetary fine or an imprisonment sentence of up to three years, if the legal entity deposits the amount of the applied fine in the court and guarantees that another crime will not be committed during the probation period. If a new crime is committed during the probation period or a crime, committed previously by the legal entity, has been uncovered, the sanction shall be executed.

It seems that Macedonian legislators implemented a criminal combative approach when determining sanctions. Some authors<sup>7</sup> argue that alongside punitive measures states should try to implement more preventive and retributive sanctions like placing legal entities under state supervision or control or sanction of community service order.

The criminal prosecution of the legal entity may not take place after a period of five years from the execution of the crime. The statute of limitations of the execution of the monetary fine, shall come to pass when three years have passed from the day of the legal effectiveness of the passed judgment stipulating the fine. The statute of limitations of the execution of the temporary ban to perform a specific activity, shall come to pass when the time stipulated in the passed judgment has expired. The statute of limitations of the execution of the permanent ban to perform a specific activity, shall come to pass when five years have passed from the day of legal effectiveness of the passed judgment stipulating this sanction. The statute of limitations of the execution of the termination of the legal entity, shall come to pass when ten years have passed from the day of legal effectiveness of the passed judgment stipulating this sanction.

## **2.2 CONFISCATION**

The material profit acquired to a criminal activity comprising money, movable and immovable objects of value, as well as any other assets, property or equity, material or immaterial rights shall be confiscated from the perpetrator, and if this confiscation is not possible, other items shall be confiscated from the perpetrator which correspond to the

---

<sup>7</sup> Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability (Theories of Institutional Design)*, Cambridge University Press, 1994.

acquired profits. The material profits shall also be confiscated from third parties to whom it has been transferred without an appropriate compensation, if they did not know, and could know and were obligated to know that it had been acquired through a criminal activity.

The objects which have been declared as cultural heritage and natural rarities, as well as those to which the damaged party is personally attached, shall be confiscated from third persons, regardless of the fact that they did not know, could not have known and were not obligated to know that these objects have acquired through a criminal activity and regardless of whether these objects have been transferred to the third parties with or without an appropriate compensation.

The goods that are confiscated are returned to the damaged person, and if there is no damaged person, they become the property of the state. If during the criminal proceeding, the damaged person is adjudged a property and legal claim, the court shall pronounce a taking away of property gain, if this exceeds the amount of the claim.

Nobody may keep or claim for their own objects that been occurred through a criminal activity. Objects that were intended or have been used to commit a crime shall be confiscated from the perpetrator, regardless of whether they belong to the perpetrator or to a third party, if this is required by the interest of general safety, health of the people or moral reasons. The objects which have been used or were intended to be used to commit a crime may be confiscated if there is a threat that they may be used to commit another crime. Objects, which are the property of a third party, shall not be confiscated, except if the third party knew, could now and was obligated to know that these objects have been used or were intended to be used to commit a crime. The court shall pas a decision to confiscate the objects within the framework of a procedure specified by law also in the case when, due to factual or legal reasons, it is impossible to conduct the criminal procedure with respect to the perpetrator of the crime. The application of this measure does not interfere with the right of third parties to compensation of damages from the perpetrator of the crime. Under the conditions stipulated in the ratified international agreements, the objects may be returned to another country.

### **3. PROCEEDINGS AGAINST LEGAL ENTITIES**

The Criminal Procedure Code<sup>8</sup> contains rules which govern the proceedings against legal entities. In its nineteenth chapter the Code stipulates that after a criminal report against the responsible person or representative of the legal entity is being submitted, and there are grounds for suspicion that the conditions for criminal responsibility of the legal person are fulfilled, Public Prosecutor can request initiation of the criminal procedure for the same criminal act against the legal entity as well. The Public Prosecutor can decide not to overtake prosecution or to give up from criminal prosecution, if the legal entity does not have what so ever property, or the property is so small, that can not cover the expenses of the criminal procedure, or if a bankruptcy procedure is initiated against the legal entity. For a criminal act committed by a legal person a unique procedure is being conducted. Should some justifiable reasons exist, the procedure can be divided.

The main trial procedure starts with examining the responsible person for every point of the indictment. Afterwords, the same is being done with the representative of the legal entity. Random order of presenting the evidences is determined by the court starting firstly from the

---

<sup>8</sup> Official Gazette of the Republic of Macedonia No. 15/2005.

evidences that are referring to the responsible person. Provisions for bringing the decision without main trial are also applicable in the criminal procedure against legal entities.

The verdict pronounced to the legal person has to content the name of legal person and its residence, personal number, name and surname of its representative and the residence address, as well citizenship and the number of the travel document of the foreigner selected as a representative of the legal person. The verdict is registered in the criminal record for legal entities.

#### **4. IMPLEMENTATION**

Several training activities with regard to the criminal liability of legal entities, including a training course for police officers of the department for organised crime which started in as well as a multidisciplinary course for prosecutors, customs officials, tax officials, officials of the Financial Intelligence Unit (FIU) and of the financial police. They indicate that 128 newly appointed high level police officials have been trained on the recent amendments of the Criminal Code and the Code of Criminal Procedure in this respect, and that the Police Academy as well as the Academy for Judges and Prosecutors have included this topic in their curricula for in-house training. The authorities state, however, that there are no clear indicators that, in practice, criminal investigations have been carried out against legal persons except in the case of tax offences. The practical application of this legislation still needs to be encouraged. The authorities have to step up their efforts and to provide further training activities for police, prosecutors and judges in this field<sup>9</sup>.

Even four years after the amendments of the Criminal Code entered into force, Public prosecutors decided to initiate proceedings only in one tenth of the cases where criminal liability of legal entities was possible.<sup>10</sup> Until this days there is no final decision for any other type of crimes but evasion of taxes comitted by legal entities. This situation shows that the concept of criminal liability of legal entities is not properly implemented in the Republic of Macedonia.

#### **Literature:**

- Jonathan Herring, *Criminal Law*, Oxford, OUP Oxford, 2 edition, 2006.
- Streteanu & Radu Chirita, *Raspunderea penala a persoanei juridice 7*, Rosetti 2002.
- Cristina De Maglie, *Centennial Universal Congress of Lawyers Conference-Lawyers and Jurists in the 21st Century: Paper: Models of Corporate Criminal Liability in Comparative Law*, 4 Wash. U. Global Stud. L. Rev. 547, 2005.
- Vlado Kambovski, *Criminal Liability of Legal Entities – a comparative research*, Skopje, Faculty of Law, 2007.

---

<sup>9</sup> Greco RC-II (2007) 8E, Compliance Report on the Republic of Macedonia, Second Evaluation Round, Strasbourg, 19 October 2007 Available online: [www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2\(2007\)8\\_FYRoMacedonia\\_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2007)8_FYRoMacedonia_EN.pdf)

<sup>10</sup> Vlado Kambovski, *Criminal Liability of Legal Entities – a comparative research*, Skopje, Faculty of Law, 2007 pg. 18

- Andrew Ashworth, Principles of Criminal Law, OUP Oxford; 5 edition, 2006.
- Brent Fisse and John Braithwaite, Corporations, Crime and Accountability (Theories of Institutional Design), Cambridge University Press, 1994.

**Contact – email**

*vstojanovski@justice.com*