

PENALTIES APPLICABLE TO THE JUDICIAL PERSON IN ROMANIAN CRIMINAL LAW

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Abstract in original language:

Criminal liability of legal person is not a new one. This origins in ancient law, it falls in late-nineteenth century to the European criminal doctrine, that today reach one of the central themes of scientific and legal approaches. Study the historical evolution of this institution is able to support the idea that the criminal liability of legal persons is in perfect agreement with the fundamental principles of criminal law, the very nature of the legal person is justified by the necessity of a socio - economic.

Key words in original language:

Criminal liability; legal person.

1. GENERAL CONSIDERATIONS

The issue of criminal liability of legal person has been the object of concern for legal doctrine, but especially for Romanian legislature for aligning our legislation to the EU, with Romania's EU This interest has become even more acute today, when for certain offenses (environmental, tax, money laundering, consumer protection) is necessary to bring criminal responsibility of legal person for acts committed.

Because the legal responsibility to be committed, the offense must be committed to the following conditions: the achievement of the object or on behalf or in the interest of the legal person, any person acting individually or as part of a legal person who is responsible for leadership among its form of guilt that attracts criminal liability to that provided by law, not about the state, public authorities or public institutions not engaged in private.

According to art. ¹ 53 C. pen., The legal person is applicable to a main punishment - fine - and more complementary punishments.

2. FINE

Unlike the individual, legal person if the legislature has provided for one main sentence, fine.

2.1 SPECIAL LIMITS OF THE FINE

Penalty fine in the regulation applicable to the legal person established an almost perfect parallelism with the provisions governing the sanctions in this case the person. However there are some differences between the two rules.

As with the person, the fine applicable legal limits known general and special limits. General minimum was set at 2500 RON, and most general 2,000,000 RON. Determination special limits after an algorithm similar to that used for natural person, ie according to the prison sentence provided for the crime committed. Thus, the law provides for the crime committed by individual prison sentence not exceeding 10 years or fine, the minimum fine for the

particular legal person is 5,000 RON, and most notably the fine is 600,000 RON. When the law provides for the offense committed by the person detențiunii death penalty or life in prison more than 10 years, the minimum fine for the particular legal person is 10,000 RON, and most notably the fine is 900,000 RON.

In connection with this mechanism can be brought against two objections. First, the provision of only two intervals of individualisation judicial - as the jail sentence is less than or greater than 10 years - was not the happiest choice. This is because on the one hand, the range of judicial individualization becomes extremely large, thereby matchlessly solutions in practice and on the other hand, some crimes in which there is an obvious difference in terms of degree of social danger assigned same special of punishment.

2.2 INDIVIDUAL PENALTY FINE

As regards individualisation penalty fine, art. 72 C. pen. was complemented with a new paragraph became paragraph. 3, in the following forms: the establishment and application of legal sanctions to take account of the general provisions of this Code, the penalty set limits on the special person, the seriousness of the crime committed and the circumstances that attenuate or aggravated criminal liability.

Achiesãm to think that would be desirable to add an additional criterion of individualization, namely turnover or asset value of the patrimony of the legal person, to achieve the purpose fine.

2.2.1 MITIGATING AND AGGRAVATING CIRCUMSTANCES

The effects of aggravating and mitigating circumstances are regulated in a manner similar to that seen in individuals. According to art. 76 para. 4 C. pen., Introduced by Law no. 278/2006 concerning the criminal liability of legal person, especially when the minimum fine is 10,000 RON, or more, the fine is lower below this minimum, but no more than a quarter, and especially when the minimum is 5,000 RON, or greater is lower under the minimum but less than one third. If particular minimum sentences with 5,000 RON category in which most crimes - should not be lowering the penalty to a minimum of one third, as would generally exceed the minimum so that the fine is 2500 RON. Accordingly, you should recognize that the text refers to lowering the minimum sentence, with one quarter and one third of it.

Thus, individual courts will be in the range 7500 - 10,000 RON in the first category of offenses, and in the range 3.334-5.000 RON for the second. Consequently, if circumstances of detention, the punishment of a crime of ownership of the property found, breaking of seals or gamble and a crime of slavery or deprivation of liberty unlawfully (Article 189 para. 1) is 1666 lei. And the difference between a vindictive petty larceny and murder very seriously, the more committed people, and they committed in the presence of mitigating circumstances, is of 2,500 lei.

These very narrow limits, the court will have to make individual judicial restraint in case of mitigating circumstances, the result is unfortunate option legislature to establish two special limits of a fine, imprisonment as punishment is less than or greater 10 years.

In the case of aggravating circumstances, the sanction mechanism is similar to that established for punishment with a fine ordered in person, indicating that the increase would apply to the legal person is no more than a quarter of the most special.

2.2.2 THE CRIME

As regards the crimes, the sanction mechanism established by art. 40 is similar to that provided by art. 34 points. c), indicating that growth is less applicable than for individuals, reaching only up to 1 / 3 of the most special. To appeal to a lower growth than that of the person, in considering the need to achieve a progressive increase of increases for the following forms of plurality (postcondamatorie relapse and postexecutorie). Legal requirement for a growth lower than that of the person, although it may excite nedumeriri, could be justified by the higher amount of penalty fine if the legal person.

2.2.3 RELAPSE

In relation to the recurrent, the formulation of text art. ² paragraph 40. 1 could result in an initial analysis that the only offense of the second term should be committed intentionally. Indeed, the wording "again commits a crime with intent" indicates that the first conviction and called for such a deed. Ies from the incidence of recurrent acts of guilt, the amnestied, decriminalizing or rehabilitation that has occurred.

As sanctioned in the case referred to a recurrent growth of up to 1 / 2 of the most particular postcondamatorie recurrence until 2 / 3 of the maximum for the particular postexecutorie, succeeding thus a gradual increase in increases for various forms of pluralității offenses. Highlighting criminal history of legal status to the apprehension of a repeat but not done through a service criminal record, as with individuals, but through mention in the records kept by the body that authorized the establishment of legal and body registered legal entity.

2.2.4 PLURALITY OF INTERMEDIATE

In turn, the plurality of intermediate devoted to art. 40 para. 2, a known treatment of similar offenses contest, as in person. Its incidence is more limited than if the person, the only situation in which we can discuss a plurality of intermediate if the legal person being the one in which crime was committed in the fault.

2.2.5 THE COMPETITION BETWEEN CAUSES AND AGGRAVATING CIRCUMSTANCES OF AGGRAVATION

Article 80 para. 4, provides that where a concomitant provisions on aggravating circumstances, and repeat competition penalty fine for the legal person can be increased up to maximum general. In reality, if we relate to a situation of legal punishment with a maximum of 600,000 RON particular (art. 71 para ¹. 2), even in case of concurrent application of aggravating circumstances, the offense continued, and recurrent postexecutorii competition offenses cumulând increases not may never reach the most general. Therefore, we believe that in reality, the text quoted is only to emphasize the idea that most generally can not be exceeded under any circumstances.

2.3 HOW INDIVIDUAL PERFORMANCE

In matters penalty fine imposed legal, the legislature has not provided any alternative to the actual execution. In other words, conditional suspension of execution of sentence is not applicable to the fine legal person, unlike the Belgian legislation, this is possible.

3. CONCLUSIONS

Law no. 278/2006 concerning the criminal liability of legal person has marked the establishment of actual criminal liability of legal person in Romanian law. Once adopted, the scientific work related to corporate criminal liability must amend the appropriate subject, abandoning the arguments supporting or combating this form of liability in favor of a full deslușiri how it will work effectively on the basis of existing legislation .

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