

## *1. A short summary on the history of the research topic*

Criminal liability and punishability within the framework of criminal proceedings of legal persons has a long history in the *common-law system* and in the legal regulations of certain continental countries of Europe (e.g. the Netherlands, France). The Anglo-Saxons interpret the term “person” as covering both natural and legal persons, which is a practical solution, and they have a rich case law and literature regarding the criminal liability of legal persons [Wells, Wolf].

In the territories of Europe “brought up” on German dogmatic bases, the criminal liability or at least their punishability within the framework of criminal proceedings was too strange to get integrated into the body of criminal law in the context of the dogmatic maturity of traditional criminal law principles and the bases of liability, and instead, the personal liability of the managing officials of companies was examined. [Roxin, Jescheck]

However, criminalisation processes gathered speed with the rapid spread of *social and economic development* and a lot of criminal facts are committed by legal persons and not by natural persons. Behind the structures of legal persons, we can find the individual criminal and sometimes the company is established in order to hide the committal of crimes. Criminal law may not remain negligent regarding the breach of consumer protection and tax fraud, crediting manipulation and harms caused to the environment amounting to several million forints, the perpetrators of which cannot be found in many cases due to the complex multiple organisational structures of legal persons.

Therefore, the literature of criminal law is rather in favour of the justification of this new form of liability, which is true even for the German lawyers who previously rejected the idea in full [Heine, Fieberg].

In the contemporary Hungarian literature, the first study to touch upon the issue of the criminal liability of legal persons was first published in 1995 [Fülöp]. Following the change of the regime, a lot of studies were published in this matter arguing for and also against the introduction of this special form of liability [Kigyóssy, Sántha, Tóth, Erdei].

Apart from the literature and certain legislative bodies of the Member States, *the legislators of the European Union* also noticed the more intense presence of companies and legal persons in criminal activities [Delmas-Marty-Vervaele]. That was why several legal sources were published, first for the protection of the financial interests of the Union and later on, for that of wider areas (environmental protection, trafficking in persons etc) in which the Member

States are urged to reconsider the introduction of the application of efficient, proportionate and deterring sanctions against legal persons in their legislation. This requirement in itself does not entail any obligation to resort to the means of criminal law when the rules of the civil, corporate, administrative and competition law of the Member State correspond to the three concepts required as the features of sanctions. However, the majority of the Member States, including Hungary, consider it necessary to “come with the big gun”, that is, to apply criminal means.

## ***2. The objective of the dissertation and means applied for the preparation of the dissertation***

The *objective* of the dissertation is to consider which regulation would be the most efficient regarding actions against criminal illegal acts of partnerships. During this, we overviewed the regulatory models of the countries of Europe beyond the relevant European Union legal norms and the international norms, indicating the dogmatic and procedural problems arising from the issue, as well as the possible alternative solutions to be given to these.

*Our research method* was to process the Hungarian and foreign literature (monographs, textbooks and manuals, articles) and, in some cases, the jurisdiction together with studying the relevant legal sources on reliable pages, usually on the official website of the European Union. We made efforts to use the up-to-date *acquis* and to get an overview on the literature and legal acts published in English, German and French where possible. We formulated our scientific results in the hope that the “stepchild” of the development of the Hungarian criminal law, i.e. the criminal liability of the legal person, aiming at succeeding for centuries be integrated into the order of criminal law, even if not as an organic part.

## ***3. The summary of the scientific results of the dissertation***

### ***3.1. Certain notions attached to the criminal liability of the legal person***

When examining the criminal liability of the legal person, it is of primary importance to clarify who the person is and what is the act substantiating the liability of the company. The dissertation provides details on the theories regarding the liability of the legal person.

### ***3.2. Re-evaluation of the traditional basic principles of criminal law and other problems occurring during the punishability of the legal person***

The introduction of the criminal liability of the legal person and the punishability of the legal person within the framework of a criminal procedure raises the issue of reconsidering and re-evaluating some traditional basic principles of criminal law. The dissertation provides an overview on these and offers proposals for the solutions.

### ***3.3. Opinions on the criminal liability of the legal person in the legal acts of the European Union and of the international law***

After surveying several *legal acts* of the European Union (conventions, framework decisions, joint actions, directives), we considered the relevant legal acts of the international law (OECD Convention, UN Convention, FAFT recommendation, conventions and decisions of the Council of Europe). Besides, we referred to the *Corpus Juris Europaeae* as a product of the European criminal law science.

### ***3.4. The legislation and jurisdiction of European States***

We provided an overview on the legal situation of thirty European countries, that is, of the Member States of the European Union, as well as Switzerland, Norway and Iceland.

We can differentiate between the models prevailing in the countries of continental Europe: they lay down liability either in *material criminal law* ("punishability") or in *administrative law (minor offences)*, although the regulatory system in several states does not make a rigid distinction.

In the framework of a *cross-section comparing laws*, we described the more or less common features of the regulatory models of the countries which were presented previously in details, and made an attempt on their systematisation according to certain aspects (possible methods of codification; the criminal offences substantiating the liability of the legal person; which legal persons are affected when examining liability; the conditions of liability; the relationship between the punishability of the individual and that of the legal person; the method of determining the fine to be imposed etc.).

### ***3.5. Hungarian regulation***

Following the overview of the development in the legal history of the criminal liability of partnerships, the dissertation presents the views of those who elaborated on the subject in Hungary.

It dedicates a separate chapter to Act CIV of 2001 on the criminal sanctions to be applied against legal persons.

### ***3.6. Procedural issues relating to the punishability of the legal person***

The literature in the jurisprudence on criminal proceedings against legal persons is not extensive, and in this regard, the relevant international documents have no provisions either. The majority of the countries regulate the issue by extending the personal scope of the procedural law to be applied against natural persons and thus, the basic questions (e.g. what are consequences of the different statuses of companies during the proceedings; how the company can be represented during the proceedings; what is the procedural situation of the company under prosecution (obligation to contribute and the right to defence); how certain enforcing measures can be applied against the company and what are the rules that govern evidencing) remained unanswered in some cases.

The dissertation attempts to provide answers to all the questions arisen.

### ***3.7. Criminal liability of the state***

The state is a legal entity invested with extensive rights and obligations, and is a specific legal person. When examining its criminal liability, we are faced with differing problems both in the international (e.g. the issue of state sovereignty, the lack of supranational institutions etc.) and in the national laws (e.g. the state may not be made responsible by itself and may not sanction itself; fine cannot be interpreted with regard to state bodies etc.). However, the picture on the criminal liability of legal persons cannot be full without touching upon this matter, too.

### 3.8. Liability of the management of the company

When examining the criminal liability of legal persons, we cannot disregard the criminal liability of the management of the legal person, since it is often the management to be held responsible for the legal operation of the legal person's activities and for the prevention of a criminal offence committed as a legal person.

## 4. Own views

1. In our view, it is not a must to create criminal liability for legal persons, and it is not necessary to do so at all costs. Authors accepting the traditional continental dogmatics have good reason to challenge the establishment of the criminal liability of the legal person as a recognised notion. In Hungarian law, it is not the criminal liability of the legal person but *the legal person's liability established during the criminal proceedings* which is based on the criminality of the legal person for a criminal offence committed by the member or employee of the legal person within the scope of operation or in the interest of the legal person.

Despite the establishment by the criminal court and in the criminal proceedings, this liability is *not a criminal liability* but a legal liability established in the adhesion procedure as, *on the one hand*, it does not establish criminality: it justifies the application of the measure by establishing the criminality of the member or employee of the legal person regarding which an action or default may be imputed to the legal person; *on the other hand*, it does not avail itself of the system of sanctions of criminal law but a specific system of sanctions "of the public administration kind", which does not result in criminal liability despite the fact that such is established in the adhesion criminal proceedings.

2. Naturally, it is beyond doubt that the legal person is legally liable for its operation. Its levels are as follows:

- a) civil liability (contractual and compensational) in civil proceedings or in out-of-court settlements;
- b) liability in administrative law: fine and other sanctions (e.g., fines in taxation, social security, environment, health, administration, economic competition etc.) imposed for the breach of public administration and economic management rules;

- c) liability established in criminal proceedings concerning the individual activity of the member or employee of the legal person and, as such, is founded on criminality.

In cases under points a) and b), the criminal liability can be objective, while the grounds for the liability under point c) are the actions or default of the member or employee of the legal person imputed subjectively.

According to the legal regulation, the responsibility enforced against the legal person may also be efficient, proportionate and deterring in the cases specified under points a) and b), so these three aspects are not sufficient in themselves to justify the necessity of the version under point c).

In the version under point c), it is justifiable only in the case of legal persons established by an organisation complying with the legal notion to be held responsible, and other partnerships come under the notion of criminal association or criminal organisation only.

3. If we decided to create criminal liability hereunder, we consider that the most feasible way seems to be a model of *individual liability* in which we do not narrow down the range of actual perpetrators to certain categories within the legal persons, but the legal person is held responsible for any criminal offence committed by any representative or employee acting on behalf and within the range of interests of the legal person provided the nature of the legal person allows for the realisation of the facts concerned. By reversing the burden of proof, the legal person would have the opportunity to exonerate itself from the charges, and the company should prove that it had no knowledge, and with due care and caution taken, could have had no knowledge of the conduct of its employee breaching the law. If the identity of the actual perpetrator cannot be identified within the legal person, the legal person's liability would all the more be highlighted.

### ***5. Possible means of utilising the results of the dissertation***

Although the subject of the dissertation was published in Hungarian literature as a monograph some years ago [*Sántha*], the range of problems worked out hereunder (relationship between the Community law and the national criminal laws, criminal liability of the state and the executive officials) has not been elaborated to such details so far. The dissertation includes an extensive research by comparing laws and provides a discussion on the subject from different aspects.

The criminal liability and punishability under criminal proceedings of legal persons is a good example of the fact that not even the Hungarian criminal law is free from the influence of Community law, and that the Hungarian legislators have to have the expectations of the Union in mind. By criticising Act CIV of 2001, which was created in this spirit, the dissertation provides orientation with regard to the possible ways of further legal developments. Also, by providing a detailed overview on procedural matters, it can facilitate the work of the authorities applying the law. Last but not least, the summary of the scientific results of the dissertation can be used in law education at university, too.

## ***6. Publications in the subject***

1. Issues on legal persons as legal entities in the criminal laws of The Netherlands and France, taking into account the imminent regulations in Hungary. In: Acta Jur. et Pol. Tomus LIII. Fasc. 10. Special print from the Szabó András Memorial Volume. Szeged, 1998
2. Thoughts on the criminal liability of legal persons. In: Ügyvédek Lapja 2001/1
3. Thoughts on the necessity of introducing the criminal liability of legal persons into the Criminal Code. In: Jogelméleti Szemle 2001/2
4. Views on the criminal liability of legal persons in the European Union. In: Collega 2001/12
5. Views on the criminal liability of legal persons in the European Union. In: Jogelméleti Szemle 2001/4
6. Codification of legal persons as legal entities in the criminal laws of Austria and Hungary. In: Collega 2002/2
7. Societas delinquere non potest ...? In: Acta Jur. et Pol. Tomus LXII. Fasc. 3. Szeged, 2002
8. Criminal liability of the legal person in The Netherlands. In: Acta Jur. et Pol. Tomus LXIII. Fasc. 5. Szeged, 2002
9. Criminal liability of the legal person in France. In: Jogelméleti Szemle 2003
10. Punishability of companies under the criminal law of Switzerland. In: Európai Jog 2004/7
11. Views on the criminal liability of legal persons. In: Conference publication for the conference "Current issues on the criminal law and the law of criminal proceeding in Serbia and Hungary". Szeged, 2004
12. Punishability of companies in the common-law systems. In: Acta Jur. et Pol. Tomus LXVI. Fasc. 5. Szeged, 2005

13. The new Act on the criminal liability of legal persons in Austria. In: The Wiener A. Imre Honour Volume. Ed. Complex. Budapest, 2005
14. Procedural law issues on the criminal responsibility of legal persons. In: Conference publication entitled "Keresztmetszet" of the conference "Fiatal Büntetőjogászok II. Fóruma". Ed. Nyomdász Kft. Szeged, 2005
15. The responsibility of company executives in the German and French criminal laws. In: Acta Jur. et Pol. Tomus LXVII Fasc. 5 Szeged, m2006
16. Current issues on the criminal liability of legal persons in the enlarging European Union. In: *Ad futurum memoriam*. Studies in the honour of the 85<sup>th</sup> birthday of Cséka Ervin. Szeged, 2007