

## **Criminal Liability of Legal Persons According to Albanian Judicial Practice**

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### **Abstract**

The work addresses the criminal liability of legal persons in Albanian criminal law, aiming for a balanced analysis of the normative framework and its application in judicial practice. The study begins with an examination of the provisions of the 1995 Criminal Code, which laid the foundations for the criminal liability of legal persons, and continues with an analysis of Law No. 9754/2007, which is a *lex specialis* in this field in Albania. The work primarily focuses on the practice of the Supreme Court, particularly analyzing the conditions under which a criminal offense is considered committed in the name and for the benefit of a legal person, the role of representatives and governing bodies in establishing the link between individual acts and the criminal liability of the subject, and the criminal sanctions applied by courts, including both primary and supplementary penalties. This study is based on a doctrinal legal analysis combined with a case-study approach. In this context, the research examines primary legal sources, including the provisions of the Criminal Code and Law No. 9754/2007 “On the Criminal Liability of Legal Persons”, together with selected decisions of the Supreme Court and the Constitutional Court. Particular attention is paid to the way in which these legal provisions have been interpreted and applied in judicial practice, highlighting both the convergences and the discrepancies that emerge between

legal doctrine and its practical implementation. In conclusion, the study critically evaluates the effectiveness of the current legal framework and judicial practice. It identifies specific issues and emphasizes the need for clarification and improvements in how courts address the criminal liability of legal persons, as well as legislative reforms.

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**Keywords:** Criminal liability of legal persons, Corporate criminal liability, representation liability, penalties, Albanian law, Judicial practice, Corporate crime

## Introduction

The liability of natural persons has existed for thousands of years. Unlike natural persons, the concept of legal persons<sup>1</sup> has only been recognized in certain jurisdictions since the 19th century. With the creation of legal entities, it quickly became clear that the liability of natural persons alone was insufficient and that liability for legal entities also needed to be regulated.

A legal entity can achieve productive and social goals that are impossible for an individual to achieve, because it can become a social and economic center of great importance and is capable of committing illegal acts that an individual cannot commit to achieve them.<sup>2</sup>

In criminal law, legal persons, as creatures of law, do not act in the real world, even in relations with third parties. It is natural persons, as part of the governing bodies and their representatives, who carry out actions in the name and on behalf of legal persons. It is precisely the voluntary actions of natural persons, as part of the bodies of legal persons, that, when they result in socially dangerous consequences, are of interest to criminal law.<sup>3</sup>

Consequently, when forming the grounds for applying criminal law measures against a legal entity, it should be reflected that the crime was committed in the interests of the legal entity.<sup>4</sup>

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<sup>13</sup> Civil Code, Article 26:

"Legal persons are private entities, associations, foundations, and other entities with a private character, which acquire legal personality in the manner prescribed by law."

<sup>24</sup> Bani, Erjon. The abolition of criminal responsibility of legal persons. Lecture held at the School of Magistracy, Tirana, 30 October 2025.

<sup>3</sup> Podgorica (Kerka), Ela. Reflections on the objective aspect of the criminal act. Doctoral dissertation, University of Tirana, Faculty of Law, Department of Criminal Law, Tirana, 2014, p. 66, citing Saliu Ismet, *International Criminal Law* (Pristina, 2005), 312.

<sup>4</sup> Otajonov, Abrorjon Anvarovich. 'Criminal liability of legal persons: issues of theory, legal regulation, and law enforcement practice.' *World Bulletin of Management and Law* 29 (2023): pp. 3.

<https://media.neliti.com/media/publications/602304-criminal-liability-of-legal-entities-iss-0116d9e5.pdf>

The legal person, as a special subject, occupies an important place in criminal law. The liability and punishment of legal persons is now an indisputable fact, as the legislator himself has determined the legal basis and the criteria for assuming its criminal liability, namely in Article 45 of the Criminal Code (hereinafter referred to as the Criminal Code) and Law No. 9754, dated 14.06.2007, On the Criminal Liability of Legal Persons.<sup>5</sup>

### ***Methodology***

This study is doctrinal in nature, drawing on the analysis of the Albanian criminal framework and the relevant legal literature. In this context, the main legal sources have been examined, including the provisions of the Criminal Code, Law No. 9754/2007 “On the criminal liability of legal persons”, other legal acts related to this field, and scientific papers on these topics.

In parallel with the analysis of the normative framework, the study also relies on judicial case law through a case-study approach. In this regard, decisions of the Supreme Court and the Constitutional Court, as well as courts of other jurisdictions, that address issues related to the criminal liability of legal persons have been analyzed. One limitation of this research is the scarcity of judicial decisions in Albanian practice that directly address the criminal liability of legal persons, which makes the analysis of the jurisprudence challenging.

### ***I. Criminal liability of legal persons according to the Criminal Code of 1995***

The criminal liability of legal persons is an important development in modern criminal law, driven by the need to address criminal activities carried out through organizational structures and in furtherance of their interests. In Albanian law, this liability is grounded in Article 45 of the Criminal Code, which provides that legal persons, except state institutions, are criminally liable for offenses committed in their name or for their benefit by the relevant bodies and representatives, without excluding the individual liability of natural persons. In accordance with this provision, the legislator has adopted Law No. 9754, dated 14.06.2007, “On the Criminal Liability of Legal Persons”, which regulates the conditions of liability, criminal procedure, and punitive measures applicable to these entities, thereby establishing a specific normative framework for this institution.

*According to Article 45 of Law No. 7895, dated 27.1.1995, the Criminal Code of the Republic of Albania, the legislator states that for legal*

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<sup>5</sup> Hoxha Dorina, Kaçupi Skënder and Haxhia Maksim. Criminal Law. General Part. Durrës, 2019, p. 263.

*entities, "The court, when during the judicial review it proves that a legal entity carries out activities that constitute criminal offenses, may order: The complete or partial closure of the activity and the confiscation of income, funds and any other property obtained from that activity."*<sup>6</sup>

According to the amendments added by Law No. 9275, dated 16.9.2004, "*Legal persons, except state institutions, are criminally liable for criminal offenses committed in their name or for their benefit by their bodies and representatives.*

*Local government units bear criminal liability only for actions committed within the framework of their activities, which are also carried out through the delegation of public services. The criminal liability of legal persons does not exclude the criminal liability of persons who have committed or collaborated in the commission of the same criminal offenses...*

*Criminal offenses, the corresponding punitive measures applied to legal persons, and the procedures for their imposition and execution, are regulated by a special law."*<sup>7</sup>

Article 45 of the Criminal Code provides that legal persons, except public institutions, are criminally liable for offenses committed in their name or for their benefit by their bodies and representatives. The relevant punitive measures applied to legal persons, as well as the procedure for their imposition and execution, are regulated by a special law. Based on this delegation, the Assembly of the Republic of Albania has adopted Law No. 9754, dated 14.6.2007, "On the criminal liability of legal persons", which sets out the rules governing liability, criminal proceedings, and the types of punitive measures imposed on legal persons for committing a criminal offense.<sup>8</sup>

## ***II. Criminal liability of legal persons according to Law No. 9754 dated 14.06.2007 'On the criminal liability of legal persons'***

International pressures to implement a special regime on the criminal liability of legal persons, in line with both Article 45 of the Criminal Code and Albania's commitments upon ratification of international conventions, especially the "Criminal Convention on Corruption" through Law 8778 dated 26.04.2001, led our legislator on 14.06.2007 to adopt Law 9754 "On the Criminal Liability of Legal Persons" for criminal offenses committed in their

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<sup>6</sup> The Criminal Code of the Republic of Albania 1995, Article 45.

<sup>7</sup> <sup>8</sup> Criminal Code of the Republic of Albania, amended, Article 45

Application of criminal law to legal persons (Repealed by Law No. 8733, dated 24.1.2001; amended by Law No. 9275, dated 16.9.2004)

<sup>8</sup> Agaj, Erlanda. "The Nicosia Convent, the confrontation in Albanian legislation." *Optime*, no. 2 (2024): pp. 299.

<https://www.albanica.al/optime/article/view/6167/6130>

name and for their benefit.<sup>9</sup> The object of this law is defined in Article 1, which provides that this law establishes the rules governing liability, criminal proceedings, and the types of punitive measures imposed on legal persons for committing a criminal offense.

At the heart of this law is the fact that its provisions also compete with the administrative and civil liability of the legal entity<sup>10</sup>, as well as with the criminal liability of the natural person who committed the criminal offense.<sup>11</sup>

Regarding the latter, we also emphasize the position of the Criminal Chamber of the Supreme Court, which has stated that the criminal liability of a legal person does not exclude the criminal liability of natural persons who have committed or are accomplices in committing the same criminal offense, provided that the natural or legal entity has the qualities to be the subject of that criminal offense.<sup>12</sup>

The autonomy of a legal person, criminal liability in the sense of parallel criminal liability in relation to that of a natural person, is expressed in Article 3 of Law No. 9754, dated 14.06.2007 “On the Criminal Liability of Legal Persons”, from which it follows that the legal person is liable for the criminal offense even if the responsible person who committed the criminal offense has not been convicted of that criminal offense.<sup>13</sup>

According to Article 3, a legal person is liable for criminal offenses committed: *a) in its name or for its benefit, by its bodies and representatives; b) in its name or for its benefit, by a person under the authority of the person who represents, directs and administers the legal person; c) in its name or for its benefit, due to the lack of control or supervision by the person who directs, represents and administers the legal person.*<sup>14</sup>

The Constitutional Court has also analyzed the general provisions of Law No. 9754 and Article 45 of the Criminal Code, emphasizing that Article 45, in its first and fourth paragraphs, provides that legal persons, except state institutions, are criminally liable for offenses committed in their name or for their benefit by their bodies and representatives. It further states that the relevant punitive measures applied to legal persons, as well as the procedures for their imposition and execution, are regulated by a special law. Based on

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<sup>9</sup> Bozheku, E., and Elezi, I. Criminal liability of legal persons. Second edition. Series of publications on legal, economic-political, and social studies. Tirana: Botimet Kumi.

<sup>10</sup> Law no. 9754, dated 14 June 2007, 'On the Criminal Responsibility of Legal Persons', Article 2, point 3.

<sup>11</sup> Criminal Code of the Republic of Albania 1995, Article 45, point 3.

<sup>12</sup> Decision No. 186 dated 05.07.2022 of the Criminal Chamber of the Supreme Court of Albania.

<sup>13</sup> Decision No. 6, dated 11.01.2024, Criminal Chamber of the Supreme Court of Albania, p. 14.

<sup>14</sup> Law no. 9754, dated 14 June 2007, 'On the Criminal Responsibility of Legal Persons', Article 3.

this delegation, the Assembly, pursuant to Articles 78 and 83, point 1, of the Constitution, has approved Law No. 9754/2007, which establishes the rules governing liability, criminal proceedings, and the types of punitive measures imposed on legal persons for committing a criminal offense. According to Article 11, point 1, thereof, the penalty of a fine consists of the payment, in favor of the state, of a sum of money, within the limits provided for in this law. Depending on the type of criminal offense, the limits are categorized into three hypotheses in point 4 of Article 11, with reference to the prison sentences provided for in the Criminal Code for criminal offenses committed by individuals:

- (i) *for crimes for which a minimum sentence is prescribed, not less than 15 years' imprisonment or life imprisonment, the legal person is sentenced to a fine ranging from 25 million lekë (Albanian currency) to 50 million lekë (Albanian currency) (letter "a");*
- (ii) *for crimes for which a minimum sentence is prescribed, not less than 7 years and up to 15 years of imprisonment, the legal entity is fined between 5 million lekë (Albanian currency) and 25 million lekë (Albanian currency) (letter "b");*
- (iii) *For crimes carrying a maximum sentence of less than 7 years, the legal person is punished with a fine ranging from 500,000 lekë (Albanian currency) to 5 million lekë (Albanian currency) (letter "c"). For petty offenses, the fines range from 300,000 to 1 million lekë (Albanian currency) (point 5 in the same section).<sup>15</sup>*

Also, as the most extreme measure, the law, in its Article 12, provides for the termination of the legal entity.

### ***III. Judicial practice of the Supreme Court of the Republic of Albania***

Pursuant to Article 45 of the Criminal Code, legal persons, except public institutions, shall bear criminal liability for criminal offenses committed in their name or for their benefit by their bodies or representatives. Local government units shall incur criminal liability only for acts committed in the exercise of delegated public functions. The criminal liability of a legal person shall not exclude the criminal liability of the natural persons involved. The criminal offenses, the corresponding punitive measures, and the relevant procedures shall be regulated by a special law.

In line with the Criminal Code, Law No. 9754, dated 14.6.2007, "On the Criminal Liability of Legal Persons," Article 3 provides that a legal person bears criminal liability for acts committed on its behalf or for its benefit by its

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<sup>15</sup> Decision No.32 dated 30.05.2023 (V-32/23), Constitutional Court of the Republic of Albania, p.9, paragraph No.19.

bodies and representatives, by persons acting under their authority, and for acts resulting from the lack of control or supervision by the legal person's managers or administrators.

### ***III.I. Interpretation of 'In the Name of' and 'For the Benefit of'***

The criminal liability of a legal person arises from the criminal act of a natural person who acts on its behalf and for its benefit or advantage. Thus, Article 3 of Law No. 9754, dated 14.6.2007, "On the Criminal Liability of Legal Persons," stipulates that a legal person is liable for the criminal act of a responsible person who, acting on its behalf within the framework of authorizations, commits a criminal act intending to realize some benefit for that legal person or causes damage.

Article 3 of Law No. 9754, dated 14.06.2007 "On the Criminal Liability of Legal Persons," stipulates that a legal person is liable for criminal offenses committed:

- a) in its name or for its benefit, by its bodies and representatives;
- b) on its behalf or for its benefit, by a person who is under the authority of the person who represents, directs, and administers the legal person;
- c) in its name or for its benefit, due to the lack of control or supervision by the person who directs, represents, and administers the legal person.

The grounds on which the legal liability of a legal person is established in relation to a criminal offense committed by natural persons can be determined in several ways:

*individualization of persons who are part of the structure of the legal person and, acting on its behalf, may commit criminal offenses; determining the liability of the legal person only due to the actions of the higher management bodies, within the framework of an inadequate organizational system and the failure to take preventive measures against the commission of criminal offenses, or without individualizing the subjects according to their hierarchical position in the legal person, may commit criminal offenses acting on its behalf, but generally determining that the criminal liability of the legal person derives from the criminal offense of the responsible natural person regardless of the organizational or hierarchical function in the structure of the legal person, but who has the authorization to act on behalf of the legal person and who, through the criminal offense committed, has realized or intended to realize a benefit in favor of the legal person.*<sup>16</sup>

In practice, problems have occasionally arisen in the correct analysis of the elements "in the name of" and "for the benefit of". If we refer to the doctrine, it turns out that the position has been held that the criterion of committing a criminal offense "in the name of" a legal person should be

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<sup>16</sup> Decision No. 6, dated 11.01.2024, Criminal Chamber of the Supreme Court,

interpreted in relation to those criminal offenses that are committed by entities that directly represent the legal person and act in its exclusive interest.<sup>17</sup>

On the other hand, judicial practice has maintained a position that, in part, differs from the doctrine on this aspect. According to the Criminal Chamber of the Supreme Court, a legal person's liability exists even when the legal person's action contradicts the legal person's business policy or orders. The determination that the criminal offense must be committed not only "in the name of" but also "within the framework of authorizations" is a correct formulation by the legislator. This means that for a legal person's criminal liability, it is not enough that the offense be committed by the responsible person merely by representing the legal person and on its behalf; the responsible person must have acted within the framework of the authorizations given by the legal person itself. While the remaining part "... to realize some benefit for that legal person..." may present a practical problem, because it requires a specific intention on the part of the responsible person, which is difficult to prove.<sup>18</sup>

To consider a legal person guilty, it is necessary to prove, both objectively and subjectively, that the offense was committed in its name and for its benefit. Although the basic conditions for a legal person's liability are that the offense must have been committed "in the name" and "for its benefit," in practice, the court's primary duty is to correctly interpret these two conditions, which constitute the objective aspect of a legal person's criminal liability. First, for a criminal offense to have been committed "in the name" of a legal person, it is not enough to prove that a natural person within the legal person's structure committed the offense; it must also be shown that, in the specific case, that person acted on its behalf and had authorization for such action. Otherwise, declaring the legal person guilty is impossible.

The second aspect concerns the proof of the benefit, namely the exclusive interest, of the legal person arising from the criminal offense. The benefit obtained by the legal person may be direct or indirect. In addition to other criteria, these two conditions must be proven cumulatively to establish the criminal liability of the legal person. Causing damage constitutes another basis for the legal person's guilt, within the meaning of the law. The legal person may be declared guilty if it is proven that the damage stems from an interest of the legal person or that it has not acted in accordance with the standards required during the exercise of the activity.<sup>19</sup>

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<sup>17</sup> Bozheku, E., and Elezi, I. Criminal liability of legal persons. Second edition. Series of publications on legal, economic-political, and social studies. Tirana: Botimet Kumi.

<sup>18</sup> Decision No. 154, 16.05.2023, of the Criminal Chamber of the Supreme Court, paragraph 14.

<sup>19</sup> "Ibid., paragraph 31.

### ***III.II. Representative Liability***

The group of natural persons potentially liable for criminal activity linked to a legal entity can be mainly divided into three categories.

The first category includes individuals who hold managerial, administrative, or representative roles within the legal entity. This group typically comprises company executives, members of the general assembly, board of directors, and supervisory board members. Due to their roles, these individuals have significant influence over the company's governance and strategic decisions, making them primarily responsible for ensuring the legality of its actions.

The second category covers natural persons operating under the authority of the legal entity's management bodies or within their employment relationships. However, not all employees fall into this category. It specifically refers to those whose professional duties enable them to significantly influence the day-to-day operations of the legal entity. Examples include financial officers, operational managers, supervisors, construction engineers, and company lawyers, whose actions can directly impact the company's conduct.

Third category: natural persons who are not part of the legal entity's internal organizational structure but who have a legal relationship with the legal entity, according to one of the methods specified in the Civil Code (i.e., those who have a power of representation).

Based on the above legal framework, it is concluded that the commercial company, as a legal person, conducts its activities through its bodies. Specifically, the administrators, as the company's legal representatives, undertake all administrative actions of the company. The administrators will carry out these actions in accordance with the law and the company's policies (Article 95 of Law No. 9901/2014).

If, during the activities of a legal entity, the provisions of general and, in particular, criminal legislation are violated, this violation has occurred as a result of the actions or inactions of the company's bodies and, as a rule, primarily of its administrator, who cannot be exempted from criminal liability

As a legal person, a commercial company conducts its activities through its bodies. Specifically, the administrators, as the company's legal representatives, undertake all administrative actions of the company. The administrators will carry out this activity in accordance with the law and the company's policies (Article 95 of Law No. 9901/2014). If, during the activities of the legal person, the provisions of the legislation in general and the criminal legislation in particular are violated, the violation results from the actions or omissions of the company's bodies and, as a rule, primarily from those of its administrator, who cannot be exempted from criminal liability (except when he manages to prove the opposite). This reasoning is consistent with the provisions of paragraph 3 of Article 45 of the Criminal Code, and of Articles

27 and 28 of Law No. 9754/2007, which do not exclude the liability of the company's representatives.<sup>20</sup>

Specifically, the administrators, as the company's legal representatives, undertake all administrative actions of the company. The administrators are required to exercise their functions in compliance with the law and in accordance with the company's internal policies, as provided in Article 95 of Law No. 9901/2014. In the course of the legal entity's activity, if violations of the applicable legal framework occur—particularly those related to criminal legislation—such violations generally arise from the actions or omissions of the company's governing bodies. In most cases, primary responsibility is attributed to the administrator, who, by virtue of his managerial role, cannot be exempted from criminal liability unless he is able to demonstrate that the unlawful conduct did not result from his actions or omissions.<sup>21</sup>

Regarding the participation of individuals representing legal entities in criminal proceedings, the law clearly regulates how legal entities are represented during criminal investigations and prosecutions. In criminal cases arising within the framework of a legal entity's activities, the entity's management body or authorized representative may participate in the trial as a party or as a defense representative. In this context, the entity's management body or representative enjoys the rights granted to defendants or complainants under the Criminal Procedure Code.<sup>22</sup>

#### ***IV. Application of Penalties***

The Law on Criminal Liability of Legal Persons provides for principal penalties, namely fines and the termination of the legal person, as well as additional penalties, such as the closure of activities, controlled administration, prohibition from public procurement, revocation of licenses, concessions or subsidies, prohibition from providing funds, restriction of activity and publication of the court decision, and confiscation under the Criminal Code. The Law differentiates between private and public legal persons, limiting the latter, including local government units, political parties, and trade unions, to certain types of penalties, such as fines, prohibition from public procurement, revocation of licenses or subsidies, and publication of the court decision.

##### ***IV.I. Principal penalties: Fine and dissolution of the legal person***

1. For legal entities that are criminally liable for committing a crime, the following principal penalties apply:

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<sup>20</sup>Ibid., paragraph 18.

<sup>21</sup> In Decision no. 105, dated 23 November 2021, the Criminal Chamber of the Supreme Court

<sup>22</sup> Pjetërnikaj, Ylli. Legal entity as defendant, Presentation, p. 37.

- a) fine;
- b) dissolution of the legal entity.

From a literal reading, it is found that in letters “a” and “b” the term “minimum” is used, while in letter “c” the term “maximum” is used, even though the object and purpose of regulating the paragraphs of the norm are common - determining the limits of fine punishment measures for legal entities in a graduated manner to respond to the principle of proportionality according to the type of crime. Likewise, it is noted that the references “minimum” and “maximum” in letters “b” and “c” are also accompanied by the quantitative adverbs “not less” and “less” of imprisonment sentences for criminal offenses in the Criminal Code.<sup>23</sup>

*The sentence of liquidation of a legal person, due to responsibility for the commission of a criminal offense, is imposed when one of the following reasons exists: a) it was established to commit a criminal offense; b) it has used its field of activity to a significant extent to serve the commission of a criminal offense; c) serious consequences have resulted from the commission of a criminal offense. 2. The liquidation of a legal person, due to responsibility for the commission of a criminal offense, may also be imposed in cases of committing a criminal offense more than once and for other aggravating circumstances, according to the Criminal Code and other criminal provisions. 3. The decision to liquidate a legal person is implemented through compulsory liquidation procedures by the competent authorities, in accordance with legal provisions. The part of the income and assets that, after the completion of the compulsory liquidation procedure of the legal person, constitutes means or proceeds of a criminal offense, is confiscated.*<sup>24</sup>

One of the few cases in which the court has imposed the most extreme measure of the principal penalties against a legal entity is decision no. 1323, dated 26.04.2016, of the District Court of Tirana, "which states, based on Article 12 of Law no. 9754, dated 14.06.2007, "On the Criminal Liability of Legal Entities", that the termination of the legal entity is ordered."<sup>25</sup>

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<sup>23</sup> Decision no. 32, dated 30 May 2023 (V-32/23), Constitutional Court of the Republic of Albania, p. 16, para. 42.

<sup>24</sup> Law no. 9754, dated 14 June 2007, 'On the Criminal Responsibility of Legal Persons', Article 12.

<sup>25</sup> By Decision no. 1323, dated 26 April 2016, the District Court of Tirana held that: "A criminal intent, clear, structured, and detailed, aimed at unlawfully benefiting from the work and good faith of the persons financially harmed by this criminal offense (reporting parties and witnesses in the proceedings). The defendant appears to have evaded and concealed himself from the investigation and the trial of the case, and is being tried in absentia while subject to the security measure 'pre-trial detention' (arrest in prison). Accordingly, the court finds that a sentence of imprisonment must be imposed on the defendant.

The case concerns a construction entrepreneur who, through a commercial company, from 2010 to 2013, concluded notarial contracts for the sale of apartments under construction, selling the same properties multiple times to different persons and receiving large sums of money from dozens of citizens, without subsequently delivering the apartments and leaving the country. The District Court found him guilty of the criminal offense of fraud, imposed a serious sentence of 18 years' imprisonment on the natural person, and ordered the legal entity closed. The Court of Appeal upheld the finding of guilt and the legal qualification of the offense, but, due to legal changes to the Criminal Code, reduced the sentence to 7 years' imprisonment for the natural person under a more favorable provision. The Supreme Court, after reviewing the Prosecutor's Office's appeal, overturned the Appeals Court's decision only with respect to the punishment imposed on the natural person, but found no violation with respect to the punishment imposed on the legal person.<sup>26</sup>

The winding-up of a legal entity constitutes the most severe form of criminal liability against that entity and, consequently, requires careful and rigorous application by the court. Although the law expressly provides for the cases in which this measure may be ordered, its application must be guided by the principle of proportionality and by the concrete assessment of the social danger of the criminal offense, the degree of guilt and the mitigating or aggravating circumstances, in accordance with the criteria set out in Article 47 of the Criminal Code and the practice of the Supreme Court. The application of termination as a punitive measure, without an in-depth analysis of its necessity, risks producing disproportionate consequences, not only for the legal entity itself, but also for employees, creditors, and the public interest, thereby exceeding the punitive and preventive purposes of criminal law. For this reason, this measure should remain an instrument *ultima ratio* (of last resort), reserved only for cases where the criminal offense constitutes the essence of the legal entity's activity, as in the case subject to judgment in the aforementioned decision of the Criminal Chamber of the Supreme Court, or when other punitive means prove insufficient to fulfill the function of criminal justice.

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*Based on the above, the court finds the defendant guilty of committing the criminal offense of "Fraud," provided for by Article 143/2 of the Criminal Code, and sentences him to 18 years of imprisonment.*

*Likewise, pursuant to Article 12 of Law no. 9754, dated 14 June 2007, "On the Criminal Liability of Legal Persons," the court orders the dissolution of the legal person."*

<sup>26</sup> Decision no. 54, dated 17 February 2023, of the Criminal Chamber of the Supreme Court.

#### ***IV.II. Additional penalties***

For persons who have committed crimes or criminal offenses, in addition to the principal penalty, one or more additional penalties may be imposed.

In Article 10 of Law No. 9754, dated 14.6.2007 “On the Criminal Liability of Legal Persons,” the legislator expressly provides for additional penalties against legal persons responsible for committing the criminal offense, to be applied as accessories to the principal penalties, as follows,

- a) closure of one or more activities or structures of the legal entity;*
- b) placing the legal entity in controlled administration;*
- c) prohibition on participating in public procurement procedures;*
- d) removal of the right to obtain or use licenses, authorizations, concessions, or subsidies;*
- e) prohibition on publicly soliciting funds and financial resources;*
- f) removal of the right to exercise one or more activities or operations;*
- g) the obligation to publish the judicial decision.*

- 2. The additional penalties, provided for in letters “a”, “b”, “d”, and “dh” of point 1 of this article, do not apply to local government units, public legal entities, political parties, and trade unions.*
- 3. The additional penalties are executed together with the principal penalty.*
- 4. The court, under the conditions set out in Article 36 of the Criminal Code, decides, in each case, on the confiscation of the means or proceeds of the criminal offense.<sup>27</sup>*

Article 10 of Law No. 9754/2007 clearly outlines the measures that may be imposed on a legal person that has committed a criminal offense. In addition to the principal penalty, the law provides measures such as the closure of activities, placement under controlled administration, a prohibition on participation in public funds, or an obligation to publish the court decision. These measures aim not only at punishment but also at preventing future illegal benefits and dangerous actions.

The exceptions the law provides for local government units, public legal entities, political parties, and trade unions reflect the need to preserve the institutional and public functions of entities that play social or political roles. The imposition of additional penalties alongside the principal penalty, together with the confiscation of the criminal's assets, ensures full legal responsibility, combining criminal sanctions with administrative and economic restrictions.

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<sup>27</sup> Law no. 9754, dated 14 June 2007, “On the Criminal Liability of Legal Persons”, Article 10.

The legislator in point 2 of this article seeks to establish a guarantor position for local government units, ensuring the integrity of private or state entities in the development of public activities in their favor by exercising oversight to prevent the commission of criminal offenses. As noted above, in the second paragraph of Article 45, it is understood that local government units, despite being state institutions, are exempt from the general rule that criminal liability is not imposed for actions arising from the delegation of public service by the local government unit to a public or private person.<sup>28</sup>

One of the cases in which the court has imposed an additional penalty is noted in the decision of the Shkodra Court of Appeal, which, pursuant to Article 10, point 1, letter "c" and Article 15, point 1, of Law No. 9754, dated 14.06.2007, decided to impose an additional penalty on the defendant legal entity, prohibiting it from participating in public procurement procedures for public funds for a period of 1 (one) year.<sup>29</sup> In the case at issue, it was alleged that a commercial company, a legal entity, submitted falsified documents during a procurement procedure, and the Court of Appeals found it reasonable to impose an additional penalty.

However, this reasoning, followed by the Court of Appeal of Shkodër, was not considered sustainable in subsequent judicial review. At the appeal stage, the Criminal Chamber of the Supreme Court, after a full analysis of the file and the interpretation of the legal criteria for the criminal liability of the legal entity, concluded that the elements of the criminal offense, and more specifically the subjective aspect related to the legal entity, were missing, as the action was committed by a trusted person employed by the entity, while the legal entity itself was in good faith.<sup>30</sup>

## Conclusions

From the analysis of the doctrine and the case law, several important conclusions can be highlighted. First, the courts have changed the interpretation of the requirements for a criminal offense to be committed “in the name of” and “for the benefit of” a legal person. Second, judicial practice shows that the criminal offense of a legal person can be used independently from the liability of the natural person who committed the criminal offense. Third, in Albanian courts, there is a tendency to impose financial fines more often. In contrast, more severe sanctions, such as the dissolution of a legal person or other additional measures, should be applied only in ordinary cases.

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<sup>28</sup> Hoxha, Dorina; Kaçupi, Skënder; and Haxhia, Maksim. Criminal Law. General Part. Durrës, 2019, p. 263, cited in

Bala, E., Criminal Punishment of the Legal Person, p. 15.

<sup>29</sup> Decision no. 159, dated 7 April 2014, Court of Appeal of Shkodër.

<sup>30</sup> Decision No. 17, dated February 2015, of the Criminal Chamber of the Supreme Court.

Despite being codified in Albania for many years, the criminal liability of legal persons continues to be applied by the courts in a problematic and inconsistent manner. The commission of the offense “in the name of” and “for the benefit” of the legal person is the main point on which the courts and the doctrine diverge. These aspects, which also pertain to the subjective dimension of the commission of the criminal offense, have repeatedly served as grounds for revising trial decisions from one instance to another. The courts have similarly analyzed the coexistence of criminal liability of a natural person with that of a legal person. In the authors' assessment, these ambiguities and the lack of uniformity in the analysis of legal provisions can only be resolved through unifying decisions of the Criminal Chamber of the Supreme Court, to guarantee the uniform application of the law.

Another aspect that warrants attention is the Courts' reluctance to impose additional penalties on legal entities, in contrast to the well-developed practice of imposing such penalties on natural persons. In this regard, we assess that legislative intervention may be necessary to clarify and identify the specific criminal offenses to which each penalty applies.

Seen from a comparative perspective, the Albanian legal framework on the criminal liability of legal persons is largely consistent with many European legal systems and with the standards set out in international instruments, particularly those of the Council of Europe and the European Union aimed at combating criminal offences committed by and in commercial companies. Albanian legislation provides for independent criminal liability of legal persons, the possibility of its coexistence with the liability of natural persons, and the application of financial and organizational sanctions, standards similar to those in the European Union.

Finally, we assess that legislative intervention may also be required regarding the principal penalty and the termination of the legal entity, given that imposing these measures may adversely affect creditors or other persons related to the legal entity. In this situation, we assess that the imposition of this penalty should be linked to other laws, such as the Civil Code and bankruptcy legislation, to ensure the rights of third parties.

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