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Conceptual aspects of the criminal responsibility of the corporation (Comparative analysis)

Abstract. The article is devoted to the stages of historical development of the institution of criminal liability of a legal entity, primarily a corporation, the peculiarities of this institution in the context of the "doctrine of identification" and its important conceptual issues. Based on the analysis of the legislation and practice of different countries, the article presents different models of criminal liability of corporations and their characteristics; Also, the flaws in the modern practice of the "doctrine of identification" and the grounds for its reformation.

Key words: criminal liability of a legal entity, criminal liability of a corporation, "doctrine of identification".

Introduction. The criminal liability of a legal entity is an important issue, which remains the subject of specialists' discussion and, like any type of liability requires legal analysis, theoretical and practical justification.

Historically, the criminal liability of a corporation (a legal entity) was regarded as a "legal impossibility" because it was believed that the actual will to commit a crime could not be distinguished from the individual will of its partners. Despite the above, by including the criminal law regimes obtained from international treaties and agreements into the national legislations, as well as by the influence of the legal system of the common law countries, this "impossibility" became an "opportunity" and today it is recognized by the majority of countries.[1]

A comparative analysis of the legislation and practice of different countries reveals that the criminal liability of legal entities is primarily provided for economic, ecological crimes and crimes against the state. Organized crime groups often use the construction of a legal entity to hide clients and transactions, to secure illegally obtained profits, as well as to avoid the liability of individuals. The role of corporations in illegal activities can include the whole range of organized transnational

1 Jacques Simhon. Criminal liability of legal entities.2021. https://cms.law/en/col/publication/criminal-liability-of-legal-entities

crimes - trafficking, drugs, counterfeit medicines, arms and others, therefore the issue of criminal liability of legal entities has been considered an important component of the fight against transnational organized crime.

Article 10 of the UN Convention against Transnational Organized Crime on the Liability of Legal Persons is an important recognition of the role that legal persons may play in committing or facilitation of transnational organized crime. According to the first paragraph of the mentioned article, "Each participating state, taking into account its legal principles, must take such measures as may be necessary to establish the responsibility of legal entities and their participation in committing of such serious crimes, in which an organized group of criminals is involved. According to Article 5 of the same convention , for participation in crimes provided for by Articles 6, 8 and 28". "This type of responsibility can be criminal, civil or administrative" (ibid., paragraph 2). "The imposition of such responsibility should not prevent the imposition of criminal liability for natural persons who committed the aforementioned crimes" (ibid., paragraph 3). "Each participating state shall ensure the implementation of effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions, against the legal entities held accountable in accordance with this article" (ibid. paragraph 4).

As of today, the laws of most states recognize legal entities (including corporations) as subjects of criminal liability, although the approaches differ, in particular, some countries extend criminal law to corporations in their entirety (eg, USA, Canada, England, Wales, Argentina, Austria, Belgium, Denmark, Netherlands, Norway, Switzerland, Romania and others); According to the legislation of some countries, corporate criminal responsibility has an incomplete form, that is, a list of crimes is defined for which it is possible to initiate criminal prosecution against the corporation (eg, Brazil, France, Portugal, Spain, Poland, Slovakia, Georgia and others); Some countries use the so-called "quasi" criminal liability (MA, Italy), although there is still a small number of states that have not yet accepted the concept of recognizing a legal entity as a subject of criminal liability (eg, Germany, Greece, Turkey).

Main text. The issue of criminal liability of corporations first arose in countries with a common law system and it was not an easy road. At first, it was believed that "a corporation cannot commit treason or any other crime within the scope of its corporate powers," despite the fact that, for the first time in England, in 1842, "The Queen v. In the "Great North of England Railway Co" case, Lord Denman found the corporation guilty of criminal law and applied a criminal sanction to it - a fine for violating "The Elkins Act"[2], which indicated that the issue of corporate liability was actively on the agenda. The introduction of this innovative institution was hampered by the

2 Kathleen F. Brickey. Corporate Criminal Accountability: A Brief History and an Observation. 1982. P.413. https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2261&context=law_lawreview

legal fiction of the legal entity, which was limited only to the activities of "intra vire"[3], which was defined by the relevant founding documents. "The corporation's action does not involve „mens rea"[4] and is therefore not personally liable." A corporation cannot have intentions, therefore it cannot be found guilty of a crime requiring "malus animus"[5]. The imposition of liability for such acts is contrary to established rules regarding the liability of a principal for the acts of his agent." [6] Despite the above, the analysis of the practice reveals that against in parallel with the development of a country's economy, the increase in the number of corporations and their capitalization, it has become necessary to tighten legal regulations and control mechanisms.

In common law countries, the so-called "Doctrine of Identification" was established. Lord Denning (1957) gave a clear answer to the question - who identifies with the corporation - "The corporation should be compared to a person who has a brain, a nervous system and hands, which are controlled by the brain and the nervous system." The role of the hands is played by the employees and agents of the corporation who obey the commands of the brain and are not responsible for the mind or will. The heads of the corporation are responsible for the latter." Moreover, actions of those persons are identified with actions of a corporation. This is the interpretation of the responsibility of the "innocent" corporation, in which it is sufficient to establish the objective side of the crime and it is no longer required to prove the guilt of the offender. [7]

According to a British author Joanna Ludlam, "companies may not have their own intentions, but such intentions can be attributed to a company using the 'identity principle'." In general, the application of this principle is limited to the actions of board of directors, managing director and other persons included in the general management who perform management functions and express the will of a company. This means that if individuals named above are the direct subjects of the crime, the corporation can also be held responsible for the same crime." [8]

Modern practice has proven that the "doctrine of identification" somewhat complicates the process of criminal prosecution against a corporation. [9] This is particularly the case in large corporations, where those empowered to direct and represent the "mind and will" of a corporation may be distant from the specific areas of the business within which the crime is committed. This caused

3 Intra vire – „Within the powers". A Latin term which relates generally to an action taken within an organisation's or person's scope of authority as conferred by statut.

4 Mens rea - "დამნაშავე გონება". Mens rea ხაზს უსვამს ბრალდებულის გონებრივი მდგომარეობის მნიშვნელობას დანაშაულის ჩადენის დროს.

5 Malus animus - "ბოროტი განზრახვა", ზიანის მიყენების, უკანონო ან ამორალური ქმედების ჩადენის განზრახვა.

6 Kathleen F. Brickey. Corporate Criminal Accountability: A Brief History and an Observation. 1982. P.411. https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2261&context=law_lawreview

7 file:///C:/Users/user/Desktop/11626-26187-1-SM.pdf C.41.

8 Joanna Ludlam. Corporate Liability in the United Kingdom. https://www.globalcompliancenews.com/wcc/corporate-liability-in-the-united-kingdom/

9 Regarding the principle of identification, see information on the famous British case - Herbert Smith Freehills, No "directing mind and will" found in SFO prosecution of Barclays, 5 May 2020

some difficulties for the prosecution, which led to the revision of relevant regulations and initiation of the process of reformation (for example, adoption of Bribery Act 2010 (UKBA), [10] the same issue related to the Proceeds of Crime Act 2002 Act 2002) [11] and the Criminal Finances Act 2017).

In 2017, the British Prime Minister, David Cameron, said: "In addition to criminal prosecution of companies that fail to prevent bribery and tax evasion, special measures should be taken and the scope of economic crimes for which corporations can be held criminally liable should be expanded." [12] It should be mentioned, that these types of problems still exist in common law countries, which is why the reforms in the mentioned direction are in progress in the USA and the United Kingdom.

Before charging a corporation in the **United Kingdom**, a prosecution must answer two basic questions: First, is there sufficient evidence to prosecute a corporation? Second, is it in the public interest to prosecute a particular corporation? [13] If the answer to both questions is positive, criminal proceedings begin. The more serious the crime, the more likely it is that the corporation's criminal liability is in the public interest. "Indicators of the severity of the crime include not only the amount of profit or loss, but also the stability and integrity of unidentified victims, shareholders (partners), employees, creditors, financial markets and international trade." [14]

Under modern conditions in England and Wales, criminal prosecution of a corporation begins: 1. If a corporation's activities contravene the applicable legislation (eg, Bribery Act - 2010, Proceeds of Crime Act - 2002, Criminal Finances Act - 2017 and others); 2. If there is a vicarious liability of the corporation, which is generally used in the case of criminal acts that do not require determining the person's guilt according to the existing regulations; 3. Applying the "principle of identification" when a natural person who represents the "mind and will" of the corporation commits a crime (cumulative liability). [15]

An analysis of the United Kingdom's practice in recent years reveals that the subject of the fairness of the "doctrine of identification" has been somewhat questioned. [16] The UK government has admitted that public confidence in business has been severely shaken due to high-profile fraud

10 Joanna Ludlam. Corporate Liability in the United Kingdom. https://www.globalcompliancenews.com/wcc/corporate-liability-in-the-united-kingdom/

11 Section 7 of the UKBA imposes strict liability on companies that fail to prevent bribery, unless the company can demonstrate that it has taken appropriate measures to prevent bribery.

12 Herbert Smith Freehills, No "directing mind and will" found in SFO prosecution of Barclays, 5 May 2020

13 Joanna Ludlam. Corporate Liability in the United Kingdom. https://www.globalcompliancenews.com/wcc/corporate-liability-in-the-united-kingdom/

14 Joanna Ludlam. Corporate Liability in the United Kingdom. https://www.globalcompliancenews.com/wcc/corporate-liability-in-the-united-kingdom/

15 https://commonslibrary.parliament.uk/research-briefings/cbp-9027/

16 Economic Crime Plan 2019 to 2022. Available at: assets.publishing.service.gov. uk/government/uploads/system/uploads/attachme nt_data/file/816215/2019-22_Economic_Crime_ Plan.pdf file:///C:/Users/user/Desktop/11626-26187-1-SM.pdf

ulent and dishonest practices by corporations. [17] Courts interpret the "doctrine of identification" very narrowly, as confirmed in 2020 by the Supreme Court (SCUK) in the high-profile Barclays case. [18] On May 28 of the same year, in the case of "The People (At The Suit of The Director Of Public Prosecutions) and T.N.", the Court of Appeal found that "in large corporations, leadership authority is so distributed among various directors, managers and other persons involved in management that it is difficult to identify and therefore, imposing responsibility to one or more persons based on managerial activities. [19] The court explained that from the point of view of imposing responsibility, the real function (authority) and responsibility of the employee of the company in the given field, and not the nominal title of his/her position plays a decisive role. Based on this, as part of an ongoing reform of the institution of criminal liability of corporations in the UK, a report of the United Kingdom Law Commission[20] was published in June 2022, which includes ten options for reform. Each option involves a radical reform of the "doctrine of identification" in order to avoid unjust results, while maintaining it conceptually, but changing its interpretation. The commission proposes to the British government to introduce a new type of crime - "failure to prevent fraud" - to prevent fraud by corporations, while the general crime - "failure to prevent economic crime" - should be removed due to its broad meaning (it is less specific and has the possibility of wide interpretation); To clarify the circumstances, in the presence of which the criminal responsibility should be imposed on a corporate body and/or the directors personally, and finally, to expand the types of existing sanctions.

In addition to the above, in the view of the UK Law Commission, the current legislation creates an unfair disparity between large and small companies. The application of the "doctrine of identification" to small companies is easier because their management is more involved in the company's operational activities and day-to-day decision-making than their counterparts in large companies, who are likely to be more distanced from day-to-day management activities. [21]

In the US, corporations are held criminally accountable under both federal and state laws. Corporations' liability under federal criminal law is largely based on the "doctrine of vicarious liability" [22] As for the laws of the states, they differ even at the doctrinal level.

In 1903, the US Congress in the "Elkins Act" stated: "An act of an employee of a corporation, within the scope of his official authority, is considered an act of the corporation itself." The consti-

17 Corporate liability for economic crime: call for evidence. Available at: www.gov.uk/government/consultations/corporate -liability-for-economic-crime-call-for-evidence. file:///C:/Users/user/Desktop/11626-26187-1-SM.pdf

18 2020. Barclays case http://ukscblog.com/case-comment-barclays-bank-plc-v-various-claimants-2020-uksc-13/

19 The Courts Service of Ireland. Available at: www.courts.ie/view/judgments/d026fe75- 4a40-44a9-b2f2-8c19aa3fc-d03/0e23fb31-2aeb436c-97f0-a465ce21cece/2020_IESC_26 (Unapproved).pdf/pdf. file:///C:/Users/user/Desktop/11626-26187-1-SM.pdf

20 The Law Commission of the United Kingdom is an independent body established in 1965. The Commission is making recommendations to reform legislation in England and Wales.

21 https://www.inhouselawyer.co.uk/legal-briefing/corporate-criminal-liability-in-the-uk-is-change-in-the-air/

22 https://media.business-humanrights.org/media/documents/f72634fd87adfd3d31a22f5f4b93150267b8a764.pdf

tutionality of this act was questioned in 1909 in New York Central and Hudson River Railrood Co. v. United States" was considered by the US Supreme Court. According to the lawyer of "New York Central", the "Elkins Act" in the part of the responsibility of corporations was contrary to the American Constitution, because in this case innocent shareholders were harmed, who may not have even known about the illegal actions of the heads of the corporation, although the court did not share this position[23] of the lawyer and determined: "The corporation is liable for the crime committed by its head or representative".[24] According to some mentioned American authors, it is nothing but a variety of subsidized liability. [25]

It should be noted that in the beginning of the 20th century, in the common law countries, the doctrine of "respondeat superior" was used as a theoretical basis for the criminal liability of a corporation, in other words, they relied on the so-called Substitute theory, which was transferred from civil law (delict liability), [26] according to which a natural person can be held civilly liable based on the actions of his agents (representatives). According to this doctrine, in order to impose criminal liability on a corporation, it is necessary that its agent culpably ("mens rea") commit an unlawful act ("actus reus"); Second, the latter must act within his authority, and third, the purpose of the agent's action must be to benefit the corporation. [27] If this standard is met, the corporation is liable, regardless of whether the latter expressly required its agent not to commit the crime. [28] Today, the presented theory is valid only in three cases, namely if:

1. The employee of the corporation violated public order (public nuisance);

2. Criminal defamation (on the part of an employee);

3. The law imposes responsibility on the corporation for the criminal actions of those to whom the leadership/representation of the corporation is delegated - the "principle of delegation".

It is important to note that Article 2 of the US Penal Code establishes the principle of "absolute liability" in relation to corporations, a corporation can be held liable both independently (sep

23 New York Cent.&H.R.R. V. United States 212. U.S. 481, 29 S.Ct. 304,53 L Ed 613 (1909).
24 United States V. Thompson-Powel Drilling Go., 196 F. Supp 571 (N.D.tex. 1961)
25 Cooke J., Law of Tort (Fifth Edition), 333.
26 Laurel J. Harbour and Natalya Y. Johnson. Can a Corporation Commit Manslaughter? Recent Developments in the United Kingdom and the United States. «Defense Counsel Journal» July, 2006. P. 226-234.
27 http://www.procuror.spb.ru/izdanija/1998_01_09.pdf
United States v. Singh, 518 F.3d 236, 249-50 (4th Cir. 2008)("a corporation accused is liable for the criminal acts of its employees and agents acting within the scope of their employment for the benefit of the corporation and such liability arises if the employee or agent acted for his own benefit as well as that of his employer"); United States v. Potter, 463 F. 3d 9, 25 (1st Cir. 2006); United States v. Jorgensen, 144 F.3d 550, 560 (8th Cir. 1998); United States v. Sun Diamond Growers, 138 F.3d 961 (D.C.Cir. 1998)
United States v. Potter, 463 F.3d 9, 26 (1st Cir. 2006); United States v. Automated Medical Laboratories, 770 F.2d 399, 406 (4th Cir. 1985); United States v. Ionia Management S.A., 525 F.Supp.2d 319, 324 (D. Conn. 2007)
28 United States v. Potter, 463 F.3d 9, 26 (1st Cir. 2006); United States v. Automated Medical Laboratories, 770 F.2d 399, 406 (4th Cir. 1985); United States v. Ionia Management S.A., 525 F.Supp.2d 319, 324 (D. Conn. 2007)

arately) and jointly with its employees. [29]

In America, the circle of employees to whom the "principle of identification" applies is wide. However, "it is not necessary that an employee be primarily interested in the benefit of a corporation, as courts recognize that many employees act primarily for their own personal benefit."[30]

In recent years, legislative reform has also affected the US Model Penal Code (MPC - 1962), with changes setting a much higher standard for the criminal liability of corporations. In particular, it can be used if there is a clear legislative purpose to impose such liability. In the absence of the mentioned purpose, the "due diligence" standard is used. In the USA, the responsibility of corporations is often based on the "doctrine of subsidized liability", which according to specialists is a very serious lever. "The criminal act of one low-ranking employee may be sufficient to hold a corporation criminally liable; moreover, a jury's unanimous agreement on the identity of an employee directly committing the crime is not necessary to convict the employer (the corporation). [31] It is important that the liability of the corporation is excluded if it has taken all necessary and reasonable measures to prevent and deter criminal acts by the employees, otherwise it would be possible for the corporation to be punished under criminal law only for the wrong selection/employment of an employee, which is completely illogical. In this regard, the US State Department of Justice (DOJ) explained that "a corporation cannot control all the actions of its employees, and therefore it should not be responsible for all such actions." [32]

A corporation is a complex structure, where most of the important decisions are made by collegial bodies, which makes it difficult to identify the direct culprit. The larger the company, the more likely it is to avoid liability in light of the "principle of identification," which emphasizes the importance of the corporation taking reasonable preventive measures to avoid criminal offenses. In connection with this, in 2021, the Colombian Congress considered two bills that deal with the scope of criminal liability of corporations and imply a substantial change in the concept of criminal law.[33] In recent years, there has been a clear trend to oblige corporations to adopt risk management,

29 For example, a court in the state of Indiana charged „Ford" with second-degree murder in the deaths of four people, on the grounds that the company's cars were placed in a place where the gas tank was at a greater risk of exploding in the event of a car accident. Also, the Columbia state court found Mercedes-Benz company guilty of corruption and fined it 27.36 million.

30 Hyewan Han & Nelson Wagner, Twentieth Survey of White-Collar Crime: Corporate Criminal Liability, 44 AM. CRIM. L. REV. 337, 342-43 (2007) (citing as examples Cox v. Adm'r U.S. Steel & Carnegie, 17 F.3d 1386, 1404 (11th Cir. 1994); United States v. Automated Med. Labs., Inc., 770 F.2d 399, 407 (4th Cir. 1985); and United States v. Bainbridge Mgmt., L.P., Nos. 01 CR 469-1, 01 CR 469-6, 2002 WL 31006135 at *4 (N.D. Ill. Sept. 5, 2002)).

31 American Criminal Law Review. https://jenner.com/system/assets/publications/1090/original/AMCRIMLAW_Weissman_0108.pdf?1314129072 P.1320; (ანგვე, იხ.: Arthur Andersen LLP v. United States, No. H-02-121 (S.D. Tex. 2002) (instructing jury that it need not unanimously agree on the same Andersen employee having committed obstruction of justice so long as each juror agreed that an employee obstructed justice), aff 'd, 374 F.3d 281, 291 n.8 (5th Cir. 2004), rev'd on other grounds, 544 U.S. 696 (2005))

32 American Criminal Law Review https://jenner.com/system/assets/publications/1090/original/AMCRIMLAW_Weissman_0108.pdf?1314129072 P.1329

33 The draft laws also specify what types of sanctions can be applied in case of criminal liability of the corporation (fine; immediate dismissal of administrators, directors and representatives; prohibition of certain economic activities

business compliance systems and ethical guidelines (codes) to prevent anticipated business risks and criminal offenses committed by corporations. [34]

In addition to common law countries, after years of discussions and debates, the majority of continental European countries also recognized a legal entity as a subject of criminal law. Despite the above, this issue still does not lose its relevance and is constantly the subject of polemics of experts for and against it.

In 1929, at the Bucharest International Criminal Law Congress, the possibility of introducing criminal liability of a legal person was first observed. In 1946, at the Nuremberg trial, the International Tribunal recognized that the state and its organs can also be subjects of international crimes. In 1978, the European Committee on Crime Problems of the European Union adopted a recommendation on the recognition of legal persons as subjects of criminal law in European countries, in relation to economic and environmental crimes. In addition, the recommendation #(88)18 adopted by the Committee of Ministers of the European Union, which refers to the imposition of criminal liability of corporations in relation to corporate crime, is also an important act. [35]

In 1988, on the recommendation of the Committee of Ministers of the member states of the Council of Europe, the foundations for the introduction of criminal liability of the corporation were listed, namely:

- Increasing number of violations committed by corporations in the course of doing business, which causes significant harm to individuals and society as a whole;
- The appropriateness of imposing liability in cases where benefits are obtained from illegal actions;
- Difficulties in identifying specific persons who should be held accountable for the crimes committed, related to the complex management structure of the enterprise;
- Insufficient effectiveness of the application of sanctions against an individual to prevent a company from committing new offenses;
- The need to punish companies for illegal actions, to prevent further violations and to fully compensate damages imposed. [36]

The Council of Europe Criminal Law Convention on Corruption is also important in

(business); entering into contractual relations with state agencies or organizations in which the state has an interest; tax benefits partial or complete cancellation or absolute prohibition of their reception for a certain period; liquidation of a legal entity).

34 Jacques Simhon. Criminal liability of legal entities.2021. https://cms.law/en/col/publication/criminal-liability-of-legal-entities

35 ქოქრაშვილი ქ., გორგაძე ლ. იურიდიული პირის სისხლის სამართლებრივი პასუხისმგებლობის საკანონმდებლო რეგულირების თავისებურებანი. სამეცნიერო პრაქტიკული ჟურნალი „თემიდა“. ISSN: 1512-1305 #10 (12). 2016

36 Recommendation No. (88)18 of the Committee of Ministers of the member countries of the Council of Europe on the liability of undertakings - legal persons for offenses committed in the course of their business activities.

this regard. [37] According to the preamble of the convention, "The effective fight against corruption requires broad, rapid and well-functioning international cooperation in criminal matters." [38] In the case of corporations, corruption crimes fall under the category of white-collar crimes. [39] According to Article 18 of the same Convention, [40] "Each Party shall take such legislative and other measures as may be necessary to establish the criminal liability of legal entities for active bribery, solicitation of influence and money laundering crimes provided for in this Convention, committed for the benefit of a legal entity." For the purpose, by the natural person, individually or on behalf of the legal entity, who held a leading position within the legal entity based on the following:

- the right to represent a legal entity;
- the right to make decisions on behalf of a legal entity;
- The right to exercise control within the legal entity.

as well as participation of that natural person as an accomplice or instigator in the crimes mentioned above." Except for the cases provided by the first paragraph of the above-mentioned article, "each party shall take the necessary measures to ensure the responsibility of a legal entity, when the (lack of) supervision and control by a natural person mentioned in the first paragraph may lead to crime committed by a natural person for the benefit of a legal entity in which he worked, [41] specified in the first paragraph, " (ibid., paragraph 2). [42]

37 Criminal Law Convention on Corruption. Strasbourg, 27.I.1999. https://rm.coe.int/168007f3f5 რომლის პრეამბულაში აღნიშნულია, რომ „კორუფცია წარმოადგენს საფრთხეს სამართლის უზენაესობისათვის, დემოკრატიისათვის და ადამიანის უფლებებისათვის; საფუძველს უთხრის კარგ მმართველობას, სამართლიანობას და სოციალურ თანასწორობას; ხელს უშლის კონკურენციას, აფერხებს ეკონომიკურ განვითარებას; საფრთხეს უქმნის დემოკრატიულ ინსტიტუტებს და საზოგადოების ზნეობრივ ფასეულობებს".

38 საქართველო წარმოადგენს გაეროს კორუფციასთან ბრძოლის კონვენციის (UNCAC), ევროპის საბჭოს სისხლის სამართლის და სამოქალაქო სამართლის კონვენციების ხელმომწერ მხარეს. ეს კონვენციები განსაზღვრავენ კორუფციის განმარტებას და სახელმწიფოს ვალდებულებებს მასთან ბრძოლის მიმართულებით. ცალკე უნდა აღინიშნოს ასოცირების შეთანხმების დებულებებიც. შეთანხმების პოლიტიკური ნაწილი მოიცავს რამდენიმე მნიშვნელოვან დეკლარაციას და ვალდებულებას კორუფციის მიმართულებით. მხარეები ასევე ვალდებულებას იღებენ, „უზრუნველყონ კანონის უზენაესობა, განახორციელონ კარგი მმართველობა, ებრძო-ლონ კორუფციას და სხვადასხვა ფორმის ტრანსნაციონალურ ორგანიზებულ დანაშაულსა და ტერორიზმს,
ხელი შეუწყონ მდგრად განვითარებას" (მუხლი 2. მე-4 პუნქტი). ასოცირების შეთანხმება კიდევ უფრო აკონკრეტებს მხარეების თანამშრომლობის ვალდებულებას ორგანიზებული დანაშაულისა და კორუფციის
წინააღმდეგ ბრძოლაში შეთანხმების მე-17 მუხლში და გამოყოფს, რომ თანამშრომლობა უნდა მოხდეს სხვად-ასხვა დანაშაულისა თუ უკანონო ქმედებების წინააღმდეგ ბრძოლასა და პრევენციაში, მათ შორის - უკანონო ეკონომიკური და ფინანსური საქმიანობა, როგორიცაა გაყალბება, ფისკალური თაღლითობა და სახელმწიფო შესყიდვების სფეროში თაღლითობა; საერთაშორისო დონორების მიერ დაფინანსებული პროექტების თანხების გაფლანგვა; აქტიური და პასიური კორუფცია, როგორც საჯარო, ისე კერძო სექტორში. https://globalnaps.org/wp-content/uploads/2020/05/georgia-national-baseline-assessment-geopdf.pdf 94-95.

39 ამ მხრივ განსაკუთრებით აღსანიშნავია - სამსახურებრივი მდგომარეობის გამოყენებით სხვისი ნივთის ან ქონებრივი უფლების მართლასწინააღმდეგო მითვისება ან გაფლანგვა (182-ე მუხლი), კომერციული მოსყიდვის (221-ე მუხლი), სამსახურებრივი სიყალბე (341-ე მუხლი), უკანონო სამეწარმეო საქმიანობა (192-ე მუხლი) და უკანონო შემოსავლის ლეგალიზაცია (194-ე მუხლი). ეროვნული საბაზისო კვლევა ბიზნესი და ადამიანის უფლებების შესახებ. 2017.
https://globalnaps.org/wp-content/uploads/2020/05/georgia-national-baseline-assessment-geopdf.pdf 95-96.

40 კონვენცია საქართველოსთან მიმართებით ძალაშია 2008 წლის 1 მაისიდან.

41 Criminal Law Convention on Corruption. Strasbourg, 27.I.1999. https://rm.coe.int/168007f3f5

42 აღნიშნულის გათვალისწინებით უდავოა, რომ განსახილველ საკითხთან მიმართებით ევროპული სამართალი ძირითადად ეფუძნება „altar ego"-ს („მეორე მე") დოქტრინას, რომლის თანახმად კორპორაციის ხელმძღვანელთა ქმედებები გაიგივებულია თავად კორპორაციის ქმედებებთან.

In relation to the issue under consideration, it is also worth noting the 2011 United Nations "Guidelines for Business and Human Rights" (UNGPs), with which a number of international documents were brought into compliance, in particular, the OECD Guidelines for Multinational Enterprises, the European Union strategy in the direction of corporate social responsibility , EU Directive 2014/95/EU on the obligation of certain big business companies and other groups to disclose non-financial information and the International Organization for Standardization's Guidance on Social Responsibility (ISO26000 Guidance on Social Responsibility). [43] The Guidelines oblige member states to regulate rights for business conduct not only through civil and administrative law, but also through "criminal legal regimes that allow for prosecution based on the nationality of the offender, regardless of where the crime occurs." "Illegal acts can be criminalized under international humanitarian law, anti-trafficking laws, environmental laws, consumer safety laws, and more." [44]

In general, recognition of a legal entity as a subject of criminal law turned out to be a particularly difficult task for those countries where the mental attitude of a person to acts committed by him/her is considered the basis of criminal responsibility. In this context, some countries have made the liability of legal entities dependent on the liability of natural persons. Thus, in jurisdictions of this type that have at least adopted this approach, a corporation may be held liable only for violations committed by its principal or agent. [45]

The opinions of European specialists regarding the question radically differs from each other. According to some authors, criminal liability of legal entities makes it difficult for entities in the legitimate business sector to engage in organized criminal activity. In addition, it can also have a deterrent effect, given that damage to business reputation can be very costly for a corporation. [46] In addition, it is considered that the private liability of corporations cannot fully compensate for the damage caused by them, nor can it play an effective role in preventing future crimes. Specialists in favor of the presented claim explain the necessity of criminal prosecution of corporations with a number of socio-economic factors. It is assumed that the threat of criminal activity will tighten the internal control of corporations and create more motivation in the market in terms of maintaining business reputation and improving the investment environment. "Juridical persons, though they have neither mind nor will, yet the will of individuals through a system of representation and direction must be regarded as the will of a corporation, but only for certain purposes. A necessary prerequisite for the application of criminal law is individual will." [47]

According to the opponents, the criminal liability of a legal entity does not correspond

43 დაწვრილებით იხ.: ეროვნული საბაზისო კვლევა ბიზნესი და ადამიანის უფლებების შესახებ. 2017. https://globalnaps.org/wp-content/uploads/2020/05/georgia-national-baseline-assessment-geopdf.pdf

44 https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

45 https://www.unodc.org/e4j/zh/organized-crime/module-4/key-issues/liability-legal-persons.html

46 https://www.unodc.org/e4j/zh/organized-crime/module-4/key-issues/liability-legal-persons.html

47 Phillimore R. Commentaries upon international Law. London, 1879. P. 5.

to the personal principle of culpable responsibility. It is possible to tighten the responsibility of legal entities by tightening the administrative, tax and private legal responsibilities. However, "a legal entity cannot be identified with the persons authorized to lead it, because the corporation has its own will, which is expressed in the decisions made by a more or less qualified majority of its members." [48] Criminal liability of the corporation is the punishment of an innocent person, which is completely ineffective, for example, the fine imposed on the company actually affects the "pockets" of the entrepreneur (partners/shareholders), who may have nothing to do with the specific crime committed by the head or representatives of the corporation, they actually have no means of detecting/preventing criminal activity in the future; The fact of criminal prosecution of a corporation shifts the public's attention directly to the corporation and does not focus attention directly on the persons responsible for the crime. Moreover, a large corporation is ultimately unable to prevent crime because it is impossible to control the behavior and intentions of each employee, so corporate criminal liability is somewhat a case of neither justice nor adequate deterrence. [49]

The EU Directive 2018/1673 is also important in relation to the topic under discussion. [50] Money laundering and the related financing of terrorism and organized crime are a significant problem for EU countries, seriously damaging the integrity, stability, security and reputation of the financial sector. In order to solve these problems, as well as to complement Directive 2015/849 of the European Parliament and the European Council, Directive 2018/1673 aims to combat money laundering through the use of criminal law, [51] while obliging Member States to "take the necessary measures to ensure the criminal liability of legal entities for the crime related to money laundering". The directive defined the expansion of the scope of criminal liability in relation to corporations. The directive also provides for shifting the burden of proof to the corporation, which must prove that it has taken all necessary steps to prevent money laundering. The directive develops the so-called AML (Anti Money Laundering) standard introduced in 2012 by the initiative of the international organization FATF (Intergovernmental Financial Monitoring Commission). The concept of "predicate" (predicate) crime, which refers to a crime, as a result of which a person receives income through a criminal act, and therefore represents a kind of basis for the obligations of all AML subjects to track not only the directly received income, but also the cash flow in its previous stages. The European Union countries are also obliged to qualify as a criminal act the aiding, abetting and attempting of the aforementioned actions. [52] («aiding, abetting and attempting»).

48 Rassat M.-L. Droit penal. Presses Universitaires de France.
49 OECD Anti-Corruption Network for Eastern Europe and Central Asia. Liability of Legal Persons for Corruption in Eastern Europe and Central Asia. https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf P. 19
50 Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.284.01.0022.01.ENG
51 ob.: Article 7, para 1 of the Directive
52 Directive (EU) 2018/1673 on combatting money laundering by criminal law – 6AMLD.

From the point of view of criminal liability of corporations, the OECD Bribery Convention[53] is also important, which stipulates, that "each state,[54] in accordance with its legal principles, shall take all necessary measures to establish the liability of legal entities for bribing a foreign public official".

As for the approach of some countries of continental Europe in relation to the subject, for example, before recognizing a legal entity as a subject of criminal law in France, still according to the ordinance of May 5, 1945, "press organizations were subject to criminal liability in case of establishing the fact of cooperation with the enemies of the country".[55] With the new Criminal Law Code of 1992 (which entered into force in 1994 and whose area was significantly expanded by the legislative amendments of 2005)[56], the legal entity was recognized as a subject of criminal law. Under the French legislation, a legal entity is criminally liable if a punishable act is committed on behalf of or for the benefit of a legal entity, by a body or representative of that legal entity. In addition, judicial practice establishes the need to identify the body or representative who committed the crime on behalf of a legal entity.[57] Later (2002), the Court of Cassation determined that for the criminal liability of a corporation it was sufficient to assume the involvement of the governing body or representative in the action,[58] and in 2012 the Court of Cassation returned to its old position and determined that "in order for a legal entity to be held criminally responsible, it is necessary to accurately detect its body or a representative who committed a crime on behalf of that legal entity".[59] In practice, there are also cases where criminal liability has been imposed on a corporation, even though it has not benefited from the criminal act (eg, cases of violations of safety or supervisory regulations).[60]

A peculiarity of French llegislation is that, in addition to legal entities of private law, criminal liability can also be imposed on legal entities of public law, other than the state. According to Article 121-2 of the French Penal Code, "Municipalities, regions, provinces and other public bodies shall be held criminally liable only for crimes committed by them in the exercise of activities which may be delegated to another public or private body by a public service delegation agreement". Legal entities under public law (except the state) are also subject to criminal liability by the legislation of Belgium,

53 იხ.: Mark Pieth, 'Article 2 – The Responsibility of Legal Persons' in Mark Pieth, Lucinda Low and Peter Cullen (eds), The OECD Convention on Bribery: A Commentary (2006) 9, available at at 13 October 2007.

54 გაზიარებული აქვს 44 სახელმწიფოს, მათ შორის 6 ისეთ სახელმწიფოს, რომელიც არ შედის OECD-ში. კონვენციის რეკომენდაციები განახლდა 26/11/2021. იხ.: https://www.oecd.org/daf/anti-bribery/2021-oecd-anti-bribery-recommendation.htm

55 file:///C:/Users/user/Downloads/17-16-1-PB.pdf

56 Extention of the scope of criminal liability of legal Entities As From 31 december 2005 french Law 2004-204 of 9march 2004

57 Criminal Chamber of the Cour de Cassation, December 2, 1997, No. 96-85.484

58 Criminal Chamber of the Cour de Cassation, June 20, 2006, No. 05-85.255

59 Criminal Chamber of the Cour de Cassation, April 11, 2012, No. 10-86.974

60 Eric Lasry. Corporate liability in France. https://www.globalcompliancenews.com/white-collar-crime/corporate-liability-in-france/#:~:text=According%20to%20Article%20121%2D2,expressly%20provided%20for%20by%20law.

[61] Denmark and Iceland, with the exception - liquidation is not used as a sanction against them.

In French law and practice, the "doctrine of identification" is broadly interpreted, which means that the liability of a legal entity can arise not only from the actions of those authorized to manage or represent it, but also from the actions of any of its employees acting within the scope of their authority.

In Netherlands, the criminal liability of corporations was recognized in 1950 - on the basis of the "Economic Offenses" Act. It was reflected in the Criminal Code for the first time in 1976. In accordance with the second paragraph of Article 51 of the Code, "If a crime is committed by a corporation, responsibility will be imposed not only on the corporation, but together with it or instead of it, criminal prosecution will be initiated against those persons who are authorized to make decisions within their competence." In addition, it must be determined whether those persons took all necessary and reasonable measures to prevent the crime." [62] According to the presented norm, the legislation of Netherlands, together with the corporation, initiates criminal prosecution not only against persons authorized to lead and represent, but the wider circle of persons subject to responsibility.

In 2003, the Dutch Supreme Court adopted a general rule establishing the criminal liability of a corporation, according to which a corporation can be held criminally liable only if the unlawful act can be "reasonably" attributed to it, within the scope of its activities and given the particular circumstances. According to the mentioned explanation of the court, existing problems could not be solved in relation to the issue under discussion. Dutch criminal law does not actually recognize the "doctrine of identification", so the actions of each individual employee can be the basis for the imposition of criminal penalties on the corporation. In 2003, Supreme Court ruling also held that a corporation can be held liable if it was able to detected and failed to prevent an employee's unlawful conduct. [63]

In Belgium, the criminal liability of a corporation has been allowed since 1960. According to Article 5 of the Belgian Criminal Code, "a legal person is criminally liable for crimes that are either essentially related to its corporate objectives and interests or that are committed on its behalf. A legal entity can be held responsible even if the person through whom it acted is not considered guilty or cannot be identified." [64] On July 11, 2018, an amendment to the Belgian Criminal Code abolished the complex system that regulated the simultaneous criminal liability of legal and natural

61 New Rules on the Criminal Liability of Legal Entities. https://www.lexology.com/library/detail.aspx?g=bd6dac87-4cae-4f11-876b-17ac14875c29

62 Hans Lensing. The Dutch Penal Code from comparativve perspective. The Dutch Penal Code. P.22.

63 Phase 3 Report of the Working Group on the Netherland's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. www.oecd.org/

64 https://ul.qucosa.de/api/qucosa%3A36367/attachment/ATT-0/ P.51

persons; Also, "immunity from criminal prosecution" was removed from some categories of public law legal entities. [65]

Germany is one of the few countries in Europe whose legal system still does not recognize a corporation as a subject to criminal entity. Currently, there is only one legal tool available to sanction companies that have violated criminal law, which is the imposition of a fine as an instrument of the Administrative Offenses Act. [66] Section 14 of the German Penal Code deals with the liability of members of the governing body of a corporation, although the German Administrative Offenses Act (OWIG. Section 30) provides for the imposition of a fine as a sanction. According to some German authors, this is very ineffective and in many cases the fining of companies directly depends on the decision of the prosecutors, and the amount of the fine is often very modest. [67] To confirm this, the literature discusses the most high-profile cases of recent times, for example, the "Siemens" bribery case - in order to obtain licenses for various infrastructure projects, the company bribed officials in Israel, Mexico and Venezuela. "Siemens" received 394.74 million EUR as a profit from the mentioned criminal act and was fined 395 million EUR. Another example, Volkswagen's "Dieselgate" scandal - manipulated software was installed in cars produced by the company, which allowed the car to recognize test conditions and temporarily reduce emissions. [68] "Volkswagen" received up to 1 billion euros in profit and was fined 5 million euros by the decision of the Braunschweig public prosecutor's office (June 2018). [69] The cases of "Siemens" and "Volkswagen" proved an inadequacy of existing sanctions, they failed to fulfill the function of deterrent effect in terms of involvement of corporations in criminal activities.

Currently, the issue of introducing criminal liability of the corporation is being actively discussed in Germany. On June 16, 2020, Germany's grand coalition government passed the "Verbandssanktionengesetz" ("Association Sanctions Act"), taking a step toward introducing "corporate criminal law" in Germany. According to the mentioned document, initiation of criminal prosecution of the corporation will not depend on the opinion of the prosecutor's office, but will become mandatory if the established conditions are met. In addition, if the annual income of a company is more than 100 million euros, in case of negligence it can be fined up to 5% of its annual income, in case of intentional criminal action - up to 10% of the annual income - it is mentioned in the document.

65 https://ul.qucosa.de/api/qucosa%3A36367/attachment/ATT-0/ P.52

66 Emanuel H.F.Ballo, Christian Schoop. Germany: Corporate sanctions reform is on the way. The Global Anti-Corruption Pers pective. 2022. https://www.dlapiper.com/en/us/insights/publications/2022/02/global-anticorruption-perspective-q1-2022/germany-corporate-sanctions-reform/

67 Markuntsov, S./ Wassmer, M., "The Problem of Imposing Criminal Liability on Legal Persons in Germany and Russia", Russian Law Journal 6/3, 2018, p. 132.

68 Arbour, A, "Volkswagen: Bugs and Outlooks in Car Industry Regulation, Governance and Liability", European Journal of Risk Regulation No. 1, vol. 7, 2016.

69 Aleksandar Radan JEVTIC. Corporate criminal liability in Germany: an overdue reform?https://www.revuedesjuristesdesciencespo.com/index.php/2020/11/01/corporate-criminal-liability-in-germany-an-overdue-reform/ 2020.

The aforementioned document submitted by the German government to the Federal Council has been criticized by politicians, lawyers and business representatives for its lack of innovation and low degree of deterrent effect. [70] According to critics, the "existential threats" to companies with excessive fines can cause a panic reaction among company employees. However, the existing legislation already allows for the tightening of sanctions, without changing the nature of corporate responsibility.

In 2021, German Federal Ministry of Justice published a draft of the "Corporate Sanctions Act", the purpose of which is to introduce criminal liability of corporations and to apply criminal sanctions in case of reasonable suspicion. [71] Germany's coalition parties have in fact agreed that the mere administrative liability of corporations is in some cases inappropriate and outdated.

The aforementioned bill "failed" in June 2021 and was returned for discussion at the end of the year with minor changes, [72] which are still under consideration. According to experts, in order to reach a coalition agreement, the following important issues will be discussed:

- Basics of criminal liability of corporations;
- introducing the so-called "active repentance";
- Determining the rules for conducting an internal investigation, in the light of compatibility with the law on personal data protection (eg, opening the e-mail of a corporation employee) and establishing the relevant legal framework. [73]

Thus, in Germany, the principle[74] of "Societas delinquere non potest" ("Society cannot break the law") still applies, and they are subject to the Code of Administrative Offenses (Ordnungswidrigkeitengesetz or OWiG), according to section 30, "If a representative of a company commits a criminal or an administrative offense, the result of which is a violation of the obligations imposed on him/her by the company, or when the company was enriched due to this action, or such enrichment was intended - a person who acts only for the company is not automatically considered a representative. It must have a managerial function, which at the same time confers representative authority."[75] Despite the above, the analysis of German practice reveals that in some cases some types of criminal sanctions are still applied to companies, for example, §73-74 (confiscation) of

70 Aleksandar Radan JEVTIC. Corporate criminal liability in Germany: an overdue reform?https://www.revuedesjuristesdesciencespo.com/index.php/2020/11/01/corporate-criminal-liability-in-germany-an-overdue-reform/ 2020.
71 Pinsent Masons. Germany to strengthen criminal liability for acts committed in UK, 4 August 2020
72 Pinsent Masons. New German government puts corporate criminal law back on the agenda, 7 December 2021
73 Emanuel H.F. Ballo, Christian Schoop. Germany: Corporate sanctions reform is on the way. The Global Anti-Corruption Perspective. 2022. https://www.dlapiper.com/en/us/insights/publications/2022/02/global-anticorruption-perspective-q1-2022/germany-corporate-sanctions-reform/
74 Scholz, ZRP 2000, 435, 437; https://iurratio.de/journal/zur-strafbarkeit-von-unternehmen/
75 Andreas Lohner, Nikolai Behr. Corporate Liability in Germany. https://www.globalcompliancenews.com/white-collar-crime/ corporate-liability-in-germany/

the German CriminalCode.[76] The issue of recognizing a legal entity as a subject of criminal law in Georgia arose in 2004, the proposed legislative innovation in our country also caused differences of opinions and heated debates, however, on July 25, 2006, on the basis of the changes implemented in the Criminal Code of Georgia, a legal entity was recognized as a subject of criminal law, which in a way has "shaken" the principle of individual responsibility in criminal law.

For the purposes of criminal law, a legal entity means an entrepreneurial (commercial) or non-entrepreneurial (non-commercial) legal entity (its successor).[77]

A legal person shall be held criminally liable for the crime provided for by the Criminal Law Code of Georgia, which is committed on behalf of a legal person or through (using) it and/or for its benefit, by a responsible person,[78] the latter means a person authorized to lead, represent, make decisions on behalf of a legal person or / and a member of the supervisory, control, audit body of a legal entity.[79] According to our legislation, the issue of the responsibility of a legal entity does not depend on committing a crime by a natural person, in particular, "a legal entity shall be held criminally responsible even in the event that a crime is committed in the name of or through (using) a legal entity and/or for its benefit, regardless of whether a natural person who committed a crime it is detected or not".

The Law of Georgia "On Entrepreneurs" includes certain prohibitions in relation to corporations against which criminal proceedings have been initiated. For example, according to the provisions of Article 77, Clause 3, Sub-Clause "D", they are prohibited from enjoying the right of redomicil. In accordance with Article 81, Clause 4 of the same law, "from the moment of initiation of criminal proceedings against a legal entity until the entry into legal force of a court judgment or the termination of criminal proceedings, it is not allowed to conduct liquidation and reorganization procedures against a legal entity on the basis of an appeal by the body conducting criminal proceedings."

Conclusion. Considering all of the abovementioned, despite the fact that the legislation of most countries has taken into account the possibility of criminal liability of a legal entity (preferably - a corporation), with a number of differences and peculiarities, the research issue still does not lose its relevance, in the legal literature there are many well-argued points by specialists both in favor and against.

Based on the comparative analysis of the issue under discussion presented in the article, we

76 German Criminal Code. https://www.gesetze-im-internet.de/englisch_stgb/

77 საქართველოს სისხლის სამართლის კოდექსი. 22/07/1999. 2287 https://matsne.gov.ge/ka/document/view/16426?publication=241 107^{1-0} მუხლის პირველი პუნქტი

78 იქვე, 107^{1-0} მუხლის მეორე პუნქტი

79 იქვე, 107^{1-0} მუხლის მესამე პუნქტი

can distinguish three models of the composition of subjects of criminal liability for corporate crime:

- When criminal prosecution can be initiated both independently against a corporation and against an individual, and also cumulatively, that is, against both at the same time, such a model exists in most countries, eg: USA, UK, Argentina, Canada, Brazil, France, Netherlands, Norway, Switzerland, Austria, Belgium, Portugal, Spain, Denmark, Slovakia, Romania, Poland, Georgia;
- When only an individual is subject to criminal prosecution - eg: Germany, Greece, Turkey;
- When an individual is prosecuted, however, cumulative liability is also acceptable, excluding independent liability of a corporation - eg, Italy. [80]

Also, as a result of research, I would like to highlight several models of criminal liability of corporations:

- Liability based on the "doctrine of identification" in the narrow sense of the interpretation of the doctrine (if a person authorized to lead and/or represent is accused of committing a crime). Such a model exists in Albania, Croatia, Montenegro, Moldova, Estonia;
- The "extended identification" model of responsibility, where the responsibility of a legal entity also arises due to an inability to supervise management employees - Georgia, Azerbaijan, Bosnia and Herzegovina, Latvia, Lithuania, Slovenia, Ukraine and others. The interpretation of the "doctrine of identification" has been gradually expanding in the recent period, in which the analysis of international practice as well as reports and guidance documents of international organizations play a major role. For example, the OECD „Good Practice Guidelines" [81] require a legal entity to be liable even when "a person with a higher level of managerial authority fails to prevent a criminal act by a lower-level employee (eg, a case of bribing a foreign public official), including an inability to exercise effective supervision or failure to properly perform internal control; [82]
- "Subsidiary liability" model, when committing a crime by any employee acting within the scope of the employment relationship in order to obtain the benefits of a legal entity may lead to the liability of a legal entity - Bulgaria, Russia and others;
- "Organizational model", when the responsibility of the legal entity is determined due to the shortcomings of the corporate culture. [83] Under this model, the corporation's liability is not

80 International Mapping of Criminal liability of Executive Officers and Legal Entities. A survey conducted by the lawyers of BARO ALTO law firm and members of the IR Global network. 2022.

81 https://www.oecd.org/daf/anti-bribery/44884389.pdf

82 OECD Anti-Corruption Network for Eastern Europe and Central Asia. Liability of Legal Persons for Corruption in Eastern Europe and Central Asia https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf P.19

83 მაგ. რუმინეთში კანონი არ განსაზღვრავს პირთა წრეს, რომელთა დანაშაულებრივმა ქმედებამ შეიძლება გამოიწვიოს კორპორაციის სისხლისსამართლებრივი პასუხისმგებლობა, მაგრამ მოითხოვს, რომ „ეს ქმედება იყოს დანაშაულის ნიშნების შემცველი, რაც გათვალისწინებულია სისხლის სამართლის კანონმდებლობით (Criminal Code of Romania. რტ.19/1. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)042-e).

tied to the liability of any other person. [84]

All presented models of corporate responsibility try to distinguish between crimes that serve private goals of guilty individuals and the goals of corporations, so it is important to determine the connection between the actions of a guilty individual and a corporation. Based on the analysis of legislation and practice, most often this connection is established by the interest criterion, which means that actions of heads and/or representatives can be attributed to a legal entity only if they are at least partially committed in the interests of a legal entity. That is why the legislation of all countries often uses the wording: "in the name of", "in the interest of" and "for the benefit of".

Finally, there are still a number of problematic issues and unanswered questions related to the criminal liability of corporations, which are the subject of independent research and require detailed research.

84 OECD Anti-Corruption Network for Eastern Europe and Central Asia. Liability of Legal Persons for Corruption in Eastern Europe and Central Asia https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf P.28