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THE LEGAL REGIME OF CORPORATE LIABILITY IN BOSNIA AND HERZEGOVINA AND LATVIA – A BRIEF COMPARATIVE OVERVIEW

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Abstract. The purpose of this research is to provide an overview of the basic characteristics of the legal regime and types of liability of legal entities in Latvia, as a member of the European Union, and Bosnia and Herzegovina, as a candidate for membership in this community of European states. This comparative study highlights similarities and differences between approaches to the criminal and civil liability of legal entities in the two countries. The principal results and major conclusions are that legal entities can be liable for other natural or legal persons, and this liability can be based on law or contract, either for an indefinite number of cases or a specific case. Here, there are minor differences between Bosnia and Herzegovina and Latvia, primarily based on the different treatment of certain companies and the fact that partnerships in Latvian law do not have legal subjectivity, so partners are independently liable. Regarding the liability of legal entities for criminal offenses, both criminal legislations have adopted a model where liability is regulated within criminal law provisions, not through lex specialis. The main difference between the legislations lies in the area of criminal sanctions. Criminal law in Bosnia and Herzegovina foresees penalties and security measures, while Latvian law includes coercive measures that somewhat more broadly restrict the rights of legal entities.
Keywords: legal entity, business entity, civil liability, criminal liability

Introduction

Engaging in socially unacceptable actions is not solely the domain of natural persons. Different forms of liability can also be observed in cases involving legal entities, although ultimately these cases still revolve around the actions or omissions of individuals. Nevertheless, it is appropriate in such cases, regardless of the

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culpability of the responsible individuals within the legal entity, to establish the liability of the legal entity itself, respecting the principle of "where there is profit, there should also be burden" (*Ubi emolumentum, ibi et onus esse debit*). The issue of the liability of legal entities in the form of business entities is particularly addressed by company law theory, which, in the course of its development, has transitioned from negationist to affirmativist theories regarding the recognition of the legal personality of companies (Vasiljević, 2019, pp. 77–79). Finally, with the acceptance of affirmativist theories, a further step was taken, recognizing the general legal and business capacity of companies and implying that this type of legal entity can enter into all legal relationships except those inherently reserved for natural persons, such as marriage.

When discussing the liability of business entities and legal entities in general, a division into criminal liability and civil liability is evident, although in certain cases one tortious behavior can trigger both criminal and civil tort liability. Criminal liability rests on culpability, and in that sense represents subjective and primarily individual responsibility. In contrast, in addition to subjective liability, (civil) tort and contractual liability also involve objective liability based on causation or action.

Therefore, the consequences of tortious behaviors depend on whether civil or criminal tort liability is established. The penal nature of sanctions in cases of established criminal liability is determined based on the severity of the offense and the degree of culpability (intent, conscious or unconscious carelessness). For example, white-collar crimes are often less socially dangerous compared to violent criminal offenses (St-Georges et al., 2023, p. 1753). In contrast, in civil tort liability, the principle of compensation predominates. The primary objective of civil compensation is the reparation of damages, irrespective of the degree of culpability (intent, gross or ordinary negligence). Thus, unlike criminal law, where guilt must be proven, in civil law, there is a presumption of guilt if causation between the wrongful act of the tortfeasor and the resulting damage is proven (Salma, 2008, pp. 88–97). Accordingly, the nature of incrimination in criminal law is of a public law character, while in civil law, it involves private law incrimination. Therefore, in contractual relations, for example, the amount of damages is measured according to its actual amount; in criminal law the amount of the fine imposed on the offender depends on the severity of the criminal offense or misdemeanor committed.

Consequently, there is a visible difference in the treatment of the nature of liability, or the need to analyze its types in a multidisciplinary manner from the perspective of either criminal or civil law. In this paper, the authors will attempt to provide an overview of the basic characteristics of the legal regime and types of liability of legal entities in Latvia, as a member of the European Union, and Bosnia and Herzegovina, as a candidate for membership in this community of European states. This comparative study uses descriptive-analytical methodology to analyze the legal frameworks of liability of legal entities and the differences between laws in Bosnia and Herzegovina and Latvia.

1. Legal norms as the basis of the liability of legal entities

1.1. Legal regulation on criminal liability

The legal norm serves as the basis of legal entity liability – it is designated differently depending on whether it concerns civil or criminal liability. Criminal liability is based on the principle of legality, which implies a written, precise definition of the criminal act (usually in the provisions of the criminal code) for which a legal entity may be held responsible.

In the criminal legislation of Bosnia and Herzegovina, the liability of legal entities for criminal offenses was introduced with the reform of the criminal legislation in 2003, and is the result of the acceptance of obligations arising from international legal acts that regulate this matter, namely the Convention on the Bribery of Foreign Public Officials in International Business Transactions (1997), the United Nations Convention against Transnational Organized Crime (2000), the Convention on the Protection of the Environment through

Criminal Law (1998), the Criminal Law Convention on Corruption of the Council of Europe (1999), and the Convention on Cybercrime (2001).
When it comes to criminal acts for which legal entities may be accountable, the criminal legislation in Bosnia and Herzegovina has opted for a model of a clause whereby acts that can be committed by legal entities are not exhaustively defined (Art. 123 of the Criminal Code of Bosnia and Herzegovina; hereinafter – CC of BiH, Art. 122 of the Criminal Code of the Republic of Srpska; hereinafter – CC of RS). The phrase "criminal legislation in Bosnia and Herzegovina" encompasses criminal legislation at the level of Bosnia and Herzegovina as a whole, the entities of the Republic of Srpska and the Federation of Bosnia and Herzegovina, and the criminal legislation of the Brčko District of Bosnia and Herzegovina. In this article, the relevant provisions of criminal legislation at the level of Bosnia and Herzegovina and the criminal legislation of Republic of Srpska are examined.

Three models for determining the scope of criminal offenses for which legal entities may be held responsible stand out: the first, according to which legal entities are liable for all committed criminal offenses (Australia, Canada, Netherlands); the second, in which the liability of legal entities for criminal offenses exists only in cases explicitly provided for (France); and the third, in which criminal offenses are exhaustively prescribed (e.g., USA) (de Maglie, 2011, pp. 260–261). It is observed that legal entities in the practice of the Court of Bosnia and Herzegovina most commonly appear as perpetrators of criminal offenses such as tax evasion (Art. 210 of the CC of BiH), organized crime (Art. 250 of the CC of BiH), as well as the criminal offense of money laundering (Art. 209 of the CC of BiH) (see, e.g., judgments of the Court of Bosnia and Herzegovina: S1 2 K 018505 15 K dated April 2, 2015; S1 2 K 018850 15 K dated September 15, 2015; S1 2 K 019779 16 K dated December 20, 2016; S1 2 K 023781 16 Ko dated December 27, 2016; and S1 2 K 024023 16 Ko dated January 26, 2017). In other words, there is a separation between individual and legal entities as the perpetrators of criminal acts. Although the fundamental principle of legality is cited in determining the scope of criminal acts for which legal entities may be accountable, the legislator has justifiably remained consistent with previous legal regulations on this matter. This is because a taxative listing would necessarily require revision, as was the case in Italian criminal legislation (see Italian Legislative Decree n. 231 dated June 8, 2001; Italian Decree Law n. 124 dated October 26, 2019). Hence, it is more acceptable for legal entities to generally appear as perpetrators of all criminal acts rather than listing them categorically. Such a stance is justified because white-collar criminality, within which the responsibility of legal entities arises, encompasses a wide range of criminal acts. Of course, even this kind of determination of criminal acts for which legal entities may be accountable is subject to limitations, primarily because some of these acts are conditioned by the existence of certain characteristics of their perpetrators (e.g., official persons).

At the beginning of the 21st century, this discussion (about legal entities as such) had become conceptual, both when solving issues related to Latvia's accession to the European Union and responding to current events in public and legal life, transforming and developing both criminal and civil law. The issue of corporate liability indirectly related to the EU's financial interests in accordance with the PIF Directive (Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law). It should be noted that at the beginning of the 21st century, due to Latvia's international obligations which directly or indirectly stipulated the obligation to determine the criminal liability of legal entities, a discussion was also activated in Latvia about the need to address legal entities within the framework of criminal law. The aforementioned obligations included, but were not limited to: the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990); Council Resolution of 28 May 1999 on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro; the Criminal Law Convention On Corruption (1999); Council framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro; the Convention on the Protection of the European Communities' Financial Interests (1995); and the United Nations Convention against Transnational Organized Crime (2003).

In the course of this scientific discussion (Latvijas Vestnesis, 2002), it was not doubted that the legal person is the bearer of legal obligations and is therefore also the subject of legal responsibility, but attention was also paid to the fact that it is impossible, for example, to arrest a legal person or impose a prison sentence. Furthermore, when recognizing a legal person as a criminal subject and convicting them criminally, the principle of guilt is deformed in criminal law, because guilt is a person's mental attitude towards all the objective signs of the criminal offense committed by them in the form of intent or negligence.

On the other hand, Latvia carefully followed rapid international developments. In Germany, for example, although there were already opportunities to take action against companies involved in crimes (Remeikiene et al., 2022; Kipane et al., 2023) and to combat the criminal activities of legal entities by means of administrative sanctions (a legal entity was not recognized as a subject of criminal law in Germany during this period), these administrative sanctions alone were not sufficient to fulfill the international requirements regarding the fight against terrorism, money laundering and similar criminal offences. Moreover, as of October 1, 2003, in compliance with UN anti-terrorism requirements, the Institute of Criminal Liability of Legal Persons was introduced in the Swiss Penal Code, providing companies with a maximum fine of 5 million Swiss francs. Another approach was taken by the Finnish Criminal Code, which provided that, according to the wording "Competence to apply Finnish criminal law", the criminal liability of legal entities is applicable (for example, for the negligence of a corporation by not controlling the actions of its subordinates in a timely manner).

Although there were different opinions among Latvian jurists, this discussion was largely concluded on May 5, 2005, when the National Assembly (*Saeima* in Latvian) adopted amendments to the Criminal Code in the third reading. These amendments aimed to introduce a new institute in criminal law in the context of the liability of a legal entity. At the same time, the law did not envisage triggering the criminal liability of a legal person in the same way as a natural person – i.e., means of coercive influence were provided for the realization of the criminal liability of a legal person. With the entry into force of these amendments in the Criminal Law, a regulatory basis was still needed on which to regulate the procedure for the enforcement of coercive measures applicable to a legal entity. It is significant that one of the conditions that hindered the practical application of the new law institute for Latvia was the presence of ambiguities and inaccuracies in the regulatory framework. A few years later (in 2015 and 2016), clarifying amendments were made to the Criminal Law regarding coercive means applicable to legal entities.

1.2. Focusing on the legal regulation of civil liability

The regulation of civil liability depends primarily on the type of liability involved, namely whether it is tortious or contractual liability. Civil tort (non-contractual) liability most commonly involves culpability for causing damage or behavior contrary to good customs, and it may be based on legal provisions (Salma, 2008, p. 82). On the other hand, contractual liability implies a breach of contractual obligations (p. 85). In this case, the contracting parties themselves create rights and obligations in an individual legal act. With this type of liability, there can be a departure from the principle of compensation in both directions. Namely, the contracting parties can incorporate so-called exoneration clauses into their contractual relationship, which limit or even exclude liability, usually for the economically stronger party (unless it concerns intent or gross negligence, for which degrees of fault cannot exclude liability) (Salma, 2011, p. 72). On the other hand, it is possible to agree on the application of certain sanctions (e.g., contractual penalty for late delivery of goods, etc.) even if no damage has been caused.

In Bosnia and Herzegovina, civil tort liability is regulated by the Law on Obligations (hereinafter LO), which was enacted in 1978 in the Socialist Federal Republic of Yugoslavia and has been adopted by both the Republic of Srpska and the Federation of Bosnia and Herzegovina (Art. 154–209 of the LO). On the other hand, contractual liability involves *inter partes* relations and is regulated by individual norms, namely contracts concluded between subjects of a specific contractual relationship.

Regardless of whether it is contractual or tort liability, the legislator in Bosnia and Herzegovina only recognizes compensation for material damage when it comes to legal entities. This type of damage can consist of ordinary damage or loss of profit, where the court considers the gain that could have been reasonably expected according to the normal course of affairs or special circumstances, but whose realization was prevented by the tortfeasor's action or omission (Art. 189 of the LO). The issue of compensation for non-material damage suffered by legal entities, such as damage to business reputation (goodwill), remains contentious. The Law regulating obligations provides for compensation for non-material damage only to natural persons (Art. 199–205 of the LO). However, in European Union law, there is increasing recognition of the possibility of determining such compensation, in line with Art. 41 of the European Convention on Human Rights. This is even the case when it comes to legal entities, which cannot inherently be recipients of all forms of non-material damage as in the case of natural persons (e.g., due to endangerment of health, physical disability, mental anguish, etc.) as these entities do not have feelings like humans do (Pavelek & Zajičkova, 2023, pp. 331–335). The number of such cases has particularly increased in the period after 2010, both in the practice of the Court of Justice of the European Union and in the practice of the European Court of Human Rights (pp. 339–342). There is increasing acceptance that legal entities can suffer non-material damage, which is intangible in nature and cannot be precisely monetarily assessed like material damage.

In Latvian law, civil liability is attributed to two types of liability – contractual liability and tort liability. The basis of contractual liability is a breach of contract (if the duty to compensate for losses arises from a breach of contractual obligations, then the amount of compensation shall be determined in accordance with the contract – see: Civil Law Section 1785; hereinafter CL), whereas the basis of tort liability (non-contractual liability) is a delict – illegal activity in general (Judgment of the Civil Cases Department of the Senate of the Supreme Court of the Republic of Latvia, 2008). If a person suffers losses from the illegal actions of another person outside the scope of contractual relations, the person causing the losses shall be liable for all such losses (CL Section 1784). Moreover, a loss which has already arisen may be a diminution of the victim's present property or a decrease in their anticipated profits (CL Section 1772). A loss shall be considered direct where it is the natural and inevitable result of an illegal act or failure to act; indirect where it is caused by an occurrence of particular circumstances or relationships; and accidental where caused by a chance event or force majeure (CL Section 1773).

Latvian court practice shows that claims can be brought even in cases where establishing causation can be very difficult; therefore, as an auxiliary source when considering various disputes related to the issue of causation in Latvian courts, a doctrinal document was developed in the European legal space – The Principles of European Tort Law (PETL). PETL were meant to stimulate discussion both among academics and practitioners and could serve as guidelines for national legislatures, thereby fostering gradual harmonization. This document significantly expands the range of types of causation and thus includes such types as alternative causes, potential causes and uncertain partial causation in the space of Latvian law. At the same time, it should be noted that a legal entity is to blame and therefore responsible for any violation of rights committed by its employee at the order or command of the manager or owner of this legal entity. If a delict is committed as a result of such a task, then the legal entity will be liable even if the actions of this natural person exceed the limits of the task, authorization or employment contract (Bitāns, 1997, pp. 55–81).

2. Criminal liability of legal entities

2.1. Establishing the basis of liability

The bases of criminal liability for legal entities in the legislation of Bosnia and Herzegovina are prescribed cumulatively. Firstly, in accordance with the concept of corporate crime, there is a requirement for the commission of a criminal act by an individual (perpetrator) acting on behalf of, for the account of, or in the interest of the legal entity. Corporate crime is defined in theory as prohibited and punishable conduct by corporations or their representatives acting on their behalf to achieve organizational goals (Farmer, 2022, p.

511). It should be emphasized that in practice, there are cases where a natural person is also the only employee of a legal entity, and therefore appears as the actual manager of the legal entity. In such cases, the legal entity is liable for the criminal offense within the limits of the perpetrator's responsibility. There are two types of legal entities in this regard: legal entities whose membership does not include anyone other than the perpetrator, and legal entities that, in addition to the perpetrator, have no organs that could direct or supervise the perpetrator. This solution deviates from the model of limited (derivative) liability and represents a model of extreme derivative liability of the legal entity for a criminal offense. Thus, in a verdict of the Court of Bosnia and Herzegovina (S1 2 K 02839920 K dated August 26, 2020), I.L. and A.L. were convicted as accomplices in the criminal offense of tax evasion or fraud (Art. 210, para. 3 of the CC of BiH), where I.L. was the owner and deputy director of the legal entity R.T. while A.L. held the position of director.

In addition to the above, it is necessary to meet one of the four alternative conditions: that the characteristics of the criminal offense stem from decisions, orders, or approvals of the management or supervisory bodies of the legal entity; when the management or supervisory bodies of the legal entity influenced the perpetrator or enabled them to commit the criminal offense; when the legal entity disposes of unlawfully acquired property benefits or benefits from objects resulting from the criminal offense; or when the supervisory bodies of the legal entity failed in their duty of supervision over the legality of the employees' work (Art. 124 CC of BiH, Art. 105 CC of RS). If no causal link is established between the activities of the individual and the legal entity, there can be no question of the liability of the legal entity for criminal offenses, but only of the individual responsibility of the perpetrator (Babić & Marković, 2021, p. 487). Individual criminal liability of members of these bodies arises from collective decision-making according to the principle of majority decision-making. Thus, for example, a decision of the management board of a joint-stock company is adopted when a majority of the present members vote for it (unless otherwise determined by the statute or founding act) (Vuković, 2011, pp. 303–304).

The act by which a natural person fulfills the characteristics of a criminal offense, in accordance with the basic provisions, is the activity of doing or not doing, and in that regard, is not further specified. It is the activity by which the characteristics of a specific criminal offense are realized. In contrast, the activities of legal entities are specified. The actions by legal entities, such as influencing or enabling the commission of a criminal offense, can be realized through both action (making decisions, issuing orders or approvals, disposing of unlawfully acquired property benefits, etc.) and inaction (in cases of failure to exercise due supervision).

By making decisions or issuing orders or approvals, a legal entity directs the person on how to behave (Deisinger & Vrhovšek, 2009, p. 55). A decision imposes an obligation on individuals regarding how they should behave. Unlike a decision, an order imposes an obligation on a named individual, while approval represents agreement with an already commenced act executed in accordance with the decision of the legal entity (p. 55). These activities can be realized before or during the undertaking of actions that fulfill the characteristics of incrimination and may not have a formal form. Influencing or enabling a natural person to commit a criminal offense, according to the employed formulation, constitutes complicit activities, although it is significant to emphasize that this is not complicity. These acts are, by nature, raised here to the level of executive activities. The relationships, as well as the very act of execution through which the liability of a legal entity for a criminal offense is established, are often complex. This is demonstrated in the *Srebrena Malina* case (S1 2 K 039029 21 K dated April 5, 2023), in which the Prime Minister of the Federation of Bosnia and Herzegovina was found guilty of the criminal offense of abuse of office and authority under Art. 383, para. 3 of the CC of BiH. In this case, the act of execution was the "approval" of the responsible person in the legal entity Silver Raspberry. The criminal offense was committed during the COVID-19 pandemic, when the Government of the Federation of Bosnia and Herzegovina expressed the need to purchase 100 ventilators. In this context, Silver Raspberry submitted an offer for the purchase of this quantity of ventilators amounting to 10,530,000 BAM. F.H., at the time of signing the contract with the Government, did not have the subject of the contract or the contractual legal arrangements in place to ensure the delivery of the

contracted goods. In this instance, F.H., in his capacity as the responsible person and the sole member of the management of Silver Raspberry, acted on behalf of, for the account of, and in the interest of this legal entity by granting approval and taking other actions aimed at purchasing 100 ventilators of a different model at nearly half the price. He was aware that the price of the ventilators was significantly lower and that he would gain additional profit from the difference in the agreed price.

Lastly, the only omission mode of committing a criminal offense by a legal entity is defined as the failure to exercise due supervision over the legality of the work of employees. In this case, control over the legality of work that should be exercised by the legal entity, i.e., management and supervisory bodies, is based on the relevant legal provisions relating to the activities of the legal entity. It is significant to highlight that when the legal entity is obliged to exercise appropriate supervision and fails to do so, it ultimately results in the commission of a specific criminal offense.

In modern Latvia, legal persons are not subject to criminal liability in the classical sense (as is the case with natural persons), because either a single natural person (general manager, chairperson or other responsible employee) or a group of natural persons (board, council, etc.) acts on behalf of a legal person, but not the entire collective of working people (Krastiņš, 2009, pp. 122–128). However, in order to respect the requirements of the European Union, Latvia has also planned to apply means of coercive influence to legal entities in the Criminal Law. Accordingly, coercive measures are applied to legal entities, and not criminal liability *per se*. Until 2005, legal entities in Latvia were not considered a subject of criminal liability; however, with the 2005 amendments to the Criminal Law, the situation has changed and the criminal responsibility of legal entities was introduced.

It should be taken into account that in terms of criminal law, liability is intended only for legal entities of private law – that is, those persons to whom the legislator has granted the status of a legal entity, including political parties or religious organizations, state or municipal capital companies, as well as partnerships. However, regarding partnerships, it should be noted that their legal status is obtained through registration. In the event that one of the associations of persons to be registered does not comply with the registration procedure, it will not be considered a subject of responsibility within the framework of the regulation of the application of means of coercive influence, as it will not have acquired the status of a legal entity.

On the other hand, a situation is possible where a natural person commits a criminal offense for the benefit of the estate (an estate is a legal person and may acquire rights and assume obligations), which gives grounds for the application of means of coercive influence in relation to this estate. Accordingly, the means of coercive influence could also be appropriate for the estate. A natural person who has committed a criminal offence acting in the interests of a legal person governed by private law, for the benefit of the person or as a result of insufficient supervision or control thereof, shall be held criminally liable, but the coercive measures provided for in this law may be applied to the legal person (Criminal Law Section 12).

The aforementioned connection between a private person and a legal entity can manifest itself in many ways. For example, in one case (Department of Criminal Cases, case No. SKK-23/2021), person B, being a member of a limited liability company that owned 50% of the company’s shares, and an official of the company – a member of the board, whose job duties included ensuring copyright compliance – knowingly allowed the limited liability company’s economic activities to be conducted using computer programs that were reproduced without the permission of the copyright holder – that is, copies of computer programs made illegally (by installation), as well as computer programs permanently stored in electronic form after their production. As a result of this criminal offense, the exclusive right of the owner of the computer program’s rights to their use was violated, with which this company suffered a large loss. The Department of Criminal Affairs of the Senate of the Republic of Latvia emphasized that the task of a board member as a responsible employee of a company is to manage and represent society. This means that a member of the board has a

certain set of rights and obligations which they must undertake in order to ensure the operation of the company. A natural person is guilty in the sense that they realize the illegal or legal interest of their legal entity through their action or inaction in a legally unauthorized manner, for which criminal liability is provided for in one of the articles of the Special Part of the Criminal Law (Krastiņš & Liholaja, 2018, p. 284).

2.2. Criminal sanctions in the legislation of Bosnia and Herzegovina

The system of criminal sanctions for legal entities in Bosnia and Herzegovina is dualistic and consists of penalties and security measures. In addition to the above, legal entities responsible for committing a criminal offense may also have unlawfully acquired property confiscated as a result of the offense (Art. 140 of the CC of BiH, Article 119 of the CC of RS). It is noted that the legislator in the Republic of Srpska, does not provide the possibility of imposing conditional sentences on legal entities, unlike the criminal legislation of Bosnia and Herzegovina, which does so (Art. 136 of the CC of BiH). There, a conditional sentence is imposed on a legal entity instead of a fine, and the court may impose a conditional sentence of a fine up to 1,500,000 BAM and determine that it will not be executed if the legal entity, during the probation period determined by the court, which cannot be shorter than 1 year or longer than 5 years, does not commit another criminal offense.

Both legislators in BiH have prescribed three penalties for a legal entity responsible for a criminal offense: a fine, confiscation of property, and the penalty of terminating the legal entity. The punishment is determined according to general rules, taking into account the economic capacity of the legal entity.

The fine is imposed in full amounts, ranging from 5,000 BAM to 5,000,000 BAM (Art. 132, para. 1 of the CC of BiH, Art. 112, para. 1 of the CC of RS). It is observed that the legislators did not provide for specific penalty frameworks for this fine (a solution present in Serbian and Croatian criminal legislation) that would depend on the severity of the criminal offense. Only in a separate provision is deviation from the prescribed (singular) penalty framework allowed in cases where property damage is caused to another or unlawful property gain is acquired, and in such cases, the fine cannot exceed twice the amount of the damage caused or the benefit obtained. There are views that, considering that the most common sanction for legal entities is a fine (while it is imprisonment in the case of individuals), there is no reason for liability to be criminal, but rather civil (Lee, 2011, pp. 5–6).

The second punishment is the confiscation of the property of the legal entity (at least half, a larger part, or the entire property), which is conditioned, on the one hand, by the severity of the criminal offense (the prescribed prison sentence is at least 5 years), and, on the other hand, by the fact that the activities of the legal entity were entirely or predominantly used to commit the criminal offense (Art. 132 of the CC of BiH, Art. 113 of the CC of RS). The Court of Bosnia and Herzegovina imposed this punishment on 6 legal entities in judgment S 1 2 K 013758 14 K dated July 27, 2016.

The most severe punishment, the termination of the legal entity (the so-called corporate death penalty), can be imposed if the activities of the legal entity were entirely or predominantly used to commit a criminal offense, whereby the court initiates the liquidation process of the legal entity. It is clear that in this case, the goal of the punishment as a means of special prevention is fully achieved (Weissmann, 2007, p. 319). Unlike the confiscation of property, the imposition of this punishment is not conditioned by the severity of the criminal offense. Along with this punishment, confiscation of property can also be imposed (Art. 134 of the CC of BiH, Art. 114 of the CC of RS).

It should be noted that the Court of Bosnia and Herzegovina, in imposing a fine, takes into account mitigating and aggravating circumstances, so in some cases, it approaches the minimum fine value. As an illustrative example, the case of a legal entity in form of a limited liability company (LLC) can be mentioned, which was given the minimum fine of 5,000 BAM for the criminal offense of tax evasion or fraud (Art. 210, para. 2 of

the CC of BiH). In this case, it is interesting to note that a natural person was the only person in the legal entity, and he was sentenced to a conditional sentence (with a parallel fine of 1,000 BAM) (Judgment of the Court of Bosnia and Herzegovina, S1 2 K 019779 16 K, dated December 20, 2016). Similarly, in a case where an LLC was accused of tax evasion or fraud (Art. 210, para. 2 of the CC of BiH), the Court of Bosnia and Herzegovina sentenced the natural person G.V., as the director and responsible person in the legal entity, to a conditional sentence, while imposing a fine on the legal entity in the statutory minimum (5,000 BAM) (Judgment of the Court of Bosnia and Herzegovina, S1 2 K 023781 16 Ko, dated December 28, 2016).

However, there are also judgments in which significantly higher amounts were imposed as fines on legal entities – where, for example, an LLC was fined 2,500,000 BAM for the criminal offense of tax evasion or fraud (Art. 210, para. 4 of the CC of BiH). It is interesting to note that in this case, the legal entity disposed of property obtained by committing a criminal offense in the amount of 468,357 BAM, which is around 20 times more than the value of unlawfully obtained property in the previously analyzed judgments (Judgment of the Court of Bosnia and Herzegovina, S1 2 K 010164 19 Ko, dated March 16, 2023). In this case, the accused individuals V.B. and M.V. were sentenced to prison terms of 2 and 2.5 years, respectively, as well as parallel fines.

In the case of Silver Raspberry, the legal entity was held responsible for the extended criminal offense of abuse of position or authority (Art. 383 of the CC of FBiH), and the Court of Bosnia and Herzegovina imposed a fine of 200,000 BAM. In this case, three individuals were sentenced to prison terms ranging from 4 to 6 years, and the property acquired by committing the criminal offense amounted to 694,747 BAM (Judgment of the Court of Bosnia and Herzegovina, S1 2 K 039029 21 K, dated June 30, 2023), which is more than in the S1 2 K 010164 19 Ko case, dated March 16, 2023. Finally, in the case of KD LLC, the court sentenced the owner and responsible person of the legal entity to 6 months in prison and a parallel fine of 450,000 BAM, while imposing a single fine of 400,000 BAM on the legal entity (Judgment of the Court of Bosnia and Herzegovina, H-K-05/09, dated October 16, 2006). Interestingly, the imposed fines were not in the maximum amount of this penalty. The sentences imposed in most of the illustrated examples, considering the nature of the criminal offenses committed (the protected object being the economy and payment transactions of Bosnia and Herzegovina), could not be considered satisfactory. However, it should be reiterated that the fines, which were oriented towards the minimum (and typically accompanied by a conditional sentence for the individual), resulted from plea agreements between the prosecution and the defendants. It seems that due to the complexity of the cases, the "safe verdict" method was used, which resulted in mutual benefit for the parties in the criminal proceedings. In these cases, the defendants' confessions represented a mitigating circumstance that certainly influenced sentencing.

When it comes to disposing of property benefits representing the result of a criminal offense committed by a natural person, the liability of the legal entity is based on the fact that there is awareness on the part of the legal entity that it involves unlawfully acquired property benefits, thus manifesting agreement with an already committed criminal offense or a criminal offense in progress. Thus, in verdict of the Court of Bosnia and Herzegovina S1 2 K 026470 20 K dated May 5, 2021, by failing to record the income obtained through business books in terms of taxable business turnover, the authorized person representing the legal entity committed the criminal offense of tax evasion or fraud (Art. 210, Par. 3 of the CC of BiH) and unlawfully obtained financial gain in the name and for the account of the legal entity in the total amount of 89,358 BAM. Similarly to the aforementioned case, the failure to record taxes by not reporting the realization by the person authorized to represent the legal entity resulted in the unlawful financial gain in the amount of 250,474 BAM in the name and for the account of the legal entity (S1 2 K 028750 20 K dated May 4, 2022). In addition, in the judgment of the Court of Bosnia and Herzegovina (S1 2 K 032246 21) of March 18, 2022, a legal entity was held responsible for disposing of property benefits obtained through a criminal offense in the amount of 259,181 BAM. Similarly, in the judgment of the Court of Bosnia and Herzegovina (S1 2 K 010164 19 Ko) of

March 16, 2023, a legal entity was held responsible for disposing of property benefits obtained through a criminal offense in the amount of 468,357 BAM.

Security measures are aimed at legal entities to remove circumstances that have contributed to the commission of a criminal offense (Vilks et al., 2024). In this regard, the legislator in the Republic of Srpska has envisaged three security measures: confiscation of specific items of property, publication of the verdict in the mass media, and prohibition of certain business activities (Art. 116 of the CC of RS), unlike the legislation at the level of Bosnia and Herzegovina, where the security measure of confiscation of specific items of property is not observed. When it comes to these measures, the court will order the publication of the verdict (completely or partially in print, on radio or television, in one or more means of public information) in cases where it deems it useful for the public to know about the conviction and when it is beneficial to eliminate danger to the life and health of people, or when it is necessary to ensure the safety of the public. Prohibition of certain activities (production of certain products or performance of certain tasks, prohibition of engaging in certain business activities of commodity turnover, etc.) can be imposed for a period of 1–5 years if engaging in these activities may result in danger to the life and health of people or may harm economic and financial operations or the economy, or in cases of recidivism, i.e., previous punishment of the legal entity for the same or similar criminal offense (within the previous 2 years) (Art. 139 of the CC of BiH, Art. 118 of the CC of RS).

Related to the system of criminal sanctions in BiH, two more questions stand out in terms of their importance. Firstly, both legislations provide for the legal consequences of conviction. They consist of a ban on work based on permits, authorizations or concessions. The difference is that permits, authorizations and concessions can be issued either by competent state authorities or by competent institutions of the Republic of Srpska (Art. 120 of the CC of RS), while the CC of BiH, in its provisions, provides for the possibility of banning work based on permits, authorizations, or concessions issued by Bosnia and Herzegovina or a foreign state (Art. 141 of the CC of BiH). Finally, considering that general provisions apply to the statute of limitations for criminal prosecution, the statute of limitations for the execution of penalties and security measures under the CC of RS (Art. 121) occurs when 5 years have passed since the legal validity of the verdict/decision for the execution of a fine (3 years according to the CC of BiS), and 10 years for the execution of a confiscation of property penalty and a penalty for the cessation of a legal entity (5 years according to the CC of BiH), while the statute of limitations for the execution of security measures occurs three years after the legal validity of the decision by which the security measure was imposed. When it comes to the statute of limitations for security measures, a (qualitative) distinction is also observed, which is reflected in the fact that in the CC of BiH, the statute of limitations for the execution of security measures occurs 6 months after the legal validity of the decision by which the security measure of publication of the verdict was applied and for a time equal to that determined for the duration of the security measure on the prohibition of certain activities (Art. 142, para. 3). Regarding the mentioned provisions, it is questionable whether it is justified to determine the statute of limitations regarding the penalty for cessation of a legal entity. The essence of this penalty lies in the cessation of the existence of the legal entity and the negation of its existence, so it is debatable whether the execution of this penalty should be subject to limitation.

The legal system of Latvia has chosen a solution when the legal person as the subject of criminal liability is not subject to classical punishments, but rather to coercive means of influence. Namely, for the criminal offences provided for in the Special Part of Criminal Law, a court – or, in the cases provided for by the Law, a prosecutor – may apply a coercive measure to a legal person governed by private law, including a State or local government capital company, as well as a partnership, if a natural person has committed the offence in the interests of the legal person, for the benefit of the person or as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person: 1) on the basis of the right to represent the legal person or act on the behalf thereof; 2) on the basis of the right to take a

decision on behalf of the legal person; 3) in implementing control within the scope of the legal person (Criminal Law Section 70.[1]).

The following types of coercive measures applicable to a legal person exist in the Latvian legal system: 1) liquidation (the compulsory termination of activities of a legal person); 2) restriction of rights (the deprivation of specific rights or permits or the determination of such prohibition which prevents a legal person from exercising certain rights, receiving State support or assistance, participating in a State or local government procurement procedure, or performing a specific type of activity for a period of 1 year and up to 10 years); 3) confiscation of property (the compulsory alienation of the property owned by a legal person to the State ownership without compensation); and 4) recovery of money (Criminal Law Section 70.[1]–70.[6]). In determining the type of coercive measure, the nature of the criminal offence and the harm caused shall be taken into account and whether a coercive measure has been previously applied to a legal person (Criminal Law Section 70.[8] (1)). However, in determining the extent of a coercive measure, the following conditions shall be taken into account: 1) the actual action of a legal person; 2) the nature and consequences of the acts of a legal person; 3) measures which a legal person has performed in order to prevent the committing of a criminal offence; 4) the size, type of activities, and financial circumstances of a legal person; 5) measures which a legal person has performed in order to compensate for the losses caused or prevent the harm caused; and 6) whether a legal person has reached a settlement with the victim (Criminal Law Section 70.[8] (2)).

3. Civil liability of legal entities

3.1. Independent liability

Considering the accepted concept of a legal entity as a social reality, in the law of Bosnia and Herzegovina, independent civil liability for actions and obligations undertaken in legal transactions has been accepted. This applies to both tortious (according to the Art. 172, para. 1 of the LO, a legal entity is liable for damage caused by its body to a third party in the performance or in connection with the performance of its functions) and contractual liability. In earlier regulations (laws on enterprises in the former Yugoslavia), this was even emphasized by including the abbreviation "p.o." (full liability) as a mandatory element of the legal entity's firm, in the form of a business entity. Later, this was omitted as it is implied. Accordingly, every legal entity is liable for civil obligations with its entire assets, and only after settling the obligation to the other contractual party or the injured party, depending on the type of liability, is there a possibility of recourse from the responsible natural person. For example, an employee or representative of the legal entity who caused the damage intentionally or with gross negligence (legal entities in Bosnia and Herzegovina can exercise this right within a period of 6 months from the date of the compensation paid to the injured party (Art. 172, para. 3 of the LO)), or a person who has duties towards the business entity such as a director, a member of the management board, or a controlling shareholder with over 50% capital participation in the company, in case of breach of loyalty duties. This right can be exercised directly only by the business entity through its representatives or authorized members of the business entity through derivative action.

Within the framework of civil liability in Latvia, the subject of liability is stipulated in Section 1407 of the Civil Law: "The State, local governments, associations of persons, institutions, establishments, and such aggregations of property as have been granted the rights of a legal person shall be considered to be legal persons." In Latvia, the legislator has also included the state as the prime legal entity under public law and municipalities in this circle of subjects. However, it should be taken into account that ministries or institutions that are not considered autonomous state institutions cannot be subjects of responsibility within the framework of civil liability, but the claim for the actions of the employees of these institutions can be brought against the state as a subject of civil law.

Among private law legal entities, Section 1407 of the Civil Law covers two types of civil law subjects: associations of persons to which the law has granted legal personality (capital companies, cooperative

societies, associations, etc., as well as associations of persons that have not been granted the status of a legal entity, but have a certain legal capacity as for associations of persons founded on the basis of a partnership agreement or partnerships as one of the types of commercial companies); and joint ownership – the only such type of joint ownership is estate.

It is significant that, despite the fact that they are a type of commercial company, personal partnerships are not granted a legal personality in Latvian law. This position of the legislator is related to the fact that in the German Commercial Law, the regulation of which was taken as the basis for the Latvian Commercial Law, partnerships are not considered legal entities. Attention should also be paid to the fact that in special sub-sectors of civil law, within which special legal capacity exists, only legal entities subject to special regulation within the framework of the regulation of these sub-sectors can be subject to civil liability. In the case of liability of special subjects (credit institutions, insurance companies, etc.), the subject of liability can only be legal entities, in respect of which the regulation of liability will apply as subjects subject to supervision.

3.2. Liability for another

The liability of business entities can be triggered for the acts of another person/entity (vicarious liability), in which case a member of the business entity is liable for the entity's obligations. Such a form of liability occurs in Bosnia and Herzegovina in the case of partners and general partners of partnerships (business entities with unlimited joint liability) and limited partnerships (Art. 48 para. 3 and Art. 86 para. 2 of the Law on Business Entities [LBE] of RS; Art. 76 and Art. 94 of the LBE of BiH). Namely, partners of these forms of business entities are jointly and severally liable for all the obligations of the partnership according to the law itself, so creditors or injured parties have the freedom to recover both from the assets of the partnership and from the assets of its partners.

In addition to the aforementioned case, liability for another may also be imposed on any member of any legal form of business entity by a court judgment if piercing the legal personality of the business entity occurs (Art. 15 of the LBE of RS). This concerns situations where members of the company use the company to achieve prohibited goals, to the detriment of creditors, when they manage the assets of the company contrary to the law as if they were their own, thereby creating a misconception among third parties, and when they diminish the assets of the company knowing that it will not be able to meet obligations to third parties thereafter. In the case of such illegal actions by members of business entities, the veil of legal personality is lifted, and their unlimited joint liability arises for all the damage they have caused to third parties. However, the burden of proof of abuse lies on the other side, which is often not a simple task, and courts in Bosnia and Herzegovina rarely decide to apply the mentioned institute in practice. Finally, liability for another can be established based on the law and in some other cases, such as in the case of status changes of business entities (mergers, divisions, and separations) (Vasiljević & Radović, 2023, p. 119).

Contractual liability for another, on the other hand, can be viewed from both an obligational law (including commercial law) perspective and from the perspective of company law. Namely, this form of liability can be established in each individual contractual relationship when the debt of the main debtor is assumed by some third legal entity. For example, one company can guarantee the fulfillment of the debt of another company, or a bank can issue a bank guarantee for the fulfillment of the obligation of the debtor from a specific obligational relationship (Jovanović et al., 2020, p. 135). Such cases of liability for another most commonly occur among related companies that mutually support each other (e.g., parent and subsidiary companies or sister companies) or as a form of the service provided by a company (as in the case of a bank guarantee). Additionally, this approach can be used to cover the entire debt amount or to limit liability only to a portion of it.

However, contractual liability for another can also be assumed on an abstract basis, where it is implied to apply to all future obligations of a business entity. Unlike concrete liability, this form should be registered in the court register (at municipality courts, with territorial jurisdiction according to the seat of the company) within the information about a specific business entity, so that third parties could be informed of such a fact by inspecting the mentioned register. In legal theory, it is considered that this form of liability encompasses both contractual and tortious liability, but it should not extend to obligations outside the activities of the business entity, as the goals of mutual liability of commercial subjects would be "betrayed" in that way (Vasiljević, 2019, pp. 113–114). Additionally, if limited, the limitation of such liability must also be specified in the court register and must be regulated in a way that is understandable to third parties and does not lead them to uncertainty. For example, liability could not be limited by a single total amount of money which, if exhausted, would result in termination, as third parties cannot know when that will happen, but it could be limited to a specific amount of money for each specific case or to a certain percentage of the debtor's obligation.

Finally, contractual liability for another, regardless of whether it is specific or abstract liability, can be divided by type into joint and several liability and subsidiary liability, and by scope into limited and unlimited liability with one's entire own assets. In case of doubt, or when it is not specifically determined in a particular case, it is presumed in business relations that it concerns unlimited joint and several liability, which is the most favorable option for the creditor or the injured party (Vasiljević & Radović, 2023, pp. 119–121). Namely, in the case of joint and several liability, there is the possibility of choice between the main debtor and the joint debtor, while in the case of subsidiary liability, the creditor (injured party) must first address the main debtor, leaving a subsequent deadline for fulfillment. Only if the obligation is not fulfilled can the creditor turn to the subsidiary debtor. However, this is a more favorable regime for creditors than the standpoint that prevailed in the earlier period, according to which the creditor had to attempt to recover from the main debtor in the enforcement proceedings first, and only in case of failure could they turn to the subsidiary debtor. Such an understanding was overcome by the principled stance taken in 1979 at the XI session of the highest commercial courts of the former Yugoslavia (Vasiljević, 2019, p. 116).

It should be noted that there are frequent cases when the same individual is a board member of many legal entities at the same time. Sometimes this situation can be used to the detriment of legal entities or to the detriment of other owners of capital shares. Of course, this is connected with complex cases where the question of causation has been a point of contention. A practical example is the Judgment of the Department of Civil Cases (Supreme Court of the Republic of Latvia) in case No SKC-86/2022 of June 30, 2022, where Limited Liability Company X (hereinafter LLC X) filed a lawsuit against Person A on July 13, 2018, for the recovery of damages in the amount of €259,000. The lawsuit states that the shareholders of LLC X are Person A (99 shares of the share capital) and Swedish company B (101 shares of the share capital). The defendants are LLC X and LLC C, the sole shareholder of which is LLC X, with Person A having the right to represent the companies separately. By the loan agreement of December 20, 2013, LLC C, on whose behalf Person A acted, issued a loan of €125,000 to Person A, setting an interest rate of 0.5% per annum on the outstanding amount and a repayment term of December 20, 2022. Person A and LCC X, on whose behalf Person A acted, on January 6, 2017, concluded an agreement granting a loan of €60,000 to Person A with an interest rate of 0.5% per annum of the outstanding amount and a repayment term of January 5, 2022. By the loan agreement of March 2, 2017, LCC C, on whose behalf Person A acted, issued LCC X, on whose behalf Person A acted, a loan of €74,000 with an interest rate of 0.5% per annum of the outstanding amount. Person A executed these agreements ostensibly in order to document the funds paid to them in accounting. Person A confirmed this fact at the meeting of shareholders of LCC X on April 6, 2018. The agreements were concluded by concealing information from the other shareholder. Person A, being a member of the board of directors of the company, failed to fulfill their duties as a good and diligent manager, thus causing losses to the company in the amount of €259,000.

When considering this case, the court concluded that a board member is a person of trust for the company's shareholders, who is entrusted with the management of other people's property. Accordingly, a board member has a duty to be loyal both to the company as an independent legal entity and to the economic interests of all its shareholders, avoiding a conflict of interest in the performance of their duties. The risk of abuse of rights and the risk of a conflict of interest are increased in self-contracting transactions; therefore, a board member does not have the freedom to self-contract, use the company's transaction opportunities, or gain personal benefit from the performance of their duties, causing harm to the interests of the company. In a situation where a board member is also a shareholder in the company, the scope of business literacy knowledge does not change depending on the status in which they assume their duties.

In Latvian law, the basis of contractual liability according to Civil Law is a breach of a contractual obligation (everyone has a duty to compensate for losses they have caused through their acts or failure to act (CL Section 1779); every delict, that is, every wrongful act per se, as a result of which harm has been caused (also moral injury) shall give the person who suffered the harm therefrom the right to claim satisfaction from the infringer, insofar as they may be held at fault for such act (CL Section 1635)). It is easy to see that the mentioned norms can be applied both in contract law and in tort law. On the other hand, contractual liability as such is regulated by another legal norm: "If the duty to compensate for losses arises from a breach of contractual obligations, then the amount of compensation shall be determined in accordance with the contract" (CL Section 1785). Of course, it should be taken into account that not only natural persons, but also legal persons shall have legal capacity in lawful transactions, unless otherwise provided by law.

Latvian legal doctrine recognizes that the concept of breach of contractual obligation also includes the dimension of fault, and only in exceptional cases is the debtor responsible for an accidental event. In addition, a separate provision provides that a court may also release the debtor from consequential losses due to default in other cases where the debtor cannot be considered at fault due to lack of care, recklessness or negligence, or if performance did not occur due to force majeure. In Latvian contract law, civil liability arises for the debtor's breach of a contractual obligation, which in certain cases requires an assessment of culpability – that is, an analysis of whether the debtor acted in accordance with the standard of necessary action or due care (Brants, 2020). However, the parties can contractually strengthen or soften the liability model established by law, including adjusting the strict liability regime. In general, this is a complex system of responsibility that manifests itself in several dimensions and is difficult to classify. An interesting and debatable issue is the presumption of culpable conduct in contract law – that is, the question of whether such a presumption should reasonably be applied to tort cases as well.

Conclusion

In both Latvia and Bosnia and Herzegovina, both legal and natural persons can be liable under civil law and criminal law. In modern legal theory, they are recognized as having general legal and business capacity, which allows them to enter into all types of legal relationships with other natural and legal persons, except those reserved for natural persons (particularly in family law).

Therefore, legal entities can be held liable for unlawful conduct, whether it arises from a civil or criminal offense or a breach of the rights and obligations established by a specific contractual relationship. However, the nature of offenses in criminal and civil law differs. In criminal law, offenses have a public law character, while in civil law, the primary goal is compensation for harm caused to another person.

In both Bosnia and Herzegovina and Latvia, legal entities are subjects of civil liability, including public (the state, entities, cantons, districts, and local government units) and private law entities. However, there are differences regarding which entities have legal subjectivity. In Latvian law, partnerships do not have subjectivity, and lawsuits cannot be filed against them but against individual partners. Similarly, ministries

and state institutions, although they have subjectivity, do not have autonomy in this sense; the relevant level of public authority (state, entity, canton, or Brčko District in Bosnia and Herzegovina) is liable for damage caused by their employees.

Finally, legal entities can be liable for others, i.e., for another natural or legal person, and this liability can be based on law or contract, either for an indefinite number of cases (common with affiliated companies) or a specific case (e.g., providing a surety or bank guarantee). Here, there are minor differences between Bosnia and Herzegovina and Latvian laws, primarily based on different treatments of certain companies and the fact that partnerships in Latvian law do not have legal subjectivity, so partners are independently liable.

Regarding the liability of legal entities for criminal offenses, both criminal legislations have adopted a model where their liability is regulated within the criminal law provisions, not through lex specialis. Both Latvian and Bosnia and Herzegovina /Republic of Srpska criminal laws prescribe conditions necessary for establishing the liability of legal entities for criminal offenses. The main difference between the legislations lies in the area of (criminal) sanctions. Bosnia and Herzegovina and Republic of Srpska criminal laws foresee penalties and security measures, while Latvian law includes coercive measures that somewhat more broadly restrict the rights of legal entities. Interestingly, in the Republic of Srpska, legal entities account for a small percentage of those involved in criminal offenses compared to the number of registered legal entities; around one in a hundred registered legal entities is held accountable for a criminal offense. Specific suggestions for the improvement of the legal regulation will be developed and described in future articles.

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