

CRIMINAL LIABILITY OF MORAL PERSONS. COMPARATIVE LAW AND INTERNAL LEGISLATION ISSUES

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ABSTRACT: *Considering that no doctrine or the legislation of various states where such a liability has been implemented contains a consensus regarding the collective entities that could be criminally liable, the question whether the implementation of a general liability should be settled or exceptions may exist regarding certain categories of legal persons. Therefore, either on a legislative manner or on a jurisprudential one, the criminal liability of the state and other institutions that exercise public power duties is usually excluded.*

KEY WORDS: *moral persons, criminal liability, legislation, comparative law, internal legislation.*

JEL CLASSIFICATIONS: *K14, K22.*

1. INTRODUCTORY CONCEPT

A first issue raised in connection to the institution of criminal liability of a legal person is the determination of the category of legal persons or collective entities that could become criminally liable.

Considering that no doctrine or the legislation of various states where such a liability has been implemented contains a consensus regarding the collective entities that could be criminally liable, the question whether the implementation of a general liability should be settled or exceptions may exist regarding certain categories of legal persons.

As shown (Pașca V., 2007, p.8), although the equality before the law principle sets forth that there should not be any distinction in terms of their criminal liability between public law legal persons and private law legal persons, and although the general opinion from the doctrine is favourable to the criminal liability of the public

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law persons, the legislative solutions, usually, exclude the criminal liability of certain categories of public law persons.

Therefore, either on a legislative manner or on a jurisprudential one, the criminal liability of the state and other institutions that exercise public power duties is usually excluded, the argument being based on the state monopoly regarding the right to punish, this could not punish itself. However there are legislative systems that admit that the public law legal persons are criminally liable under the same conditions as the private law legal persons (Streteanu & Chiriță, 2002, p.98).

2. PRIVATE LAW LEGAL PERSONS

The doctrine and the jurisprudence of the states whose legislation has implemented the criminal liability of the legal persons have agreed on accepting the capacity of criminal liability subject of the private law legal persons, considering that the criminal liability should be implemented not only in the case of commercial companies, but also in the case of the other private law legal persons (Bacigalupo, 1998, p.370).

Thus, we should notice the fact that, in France and Belgium, upon the implementation of the criminal liability of the legal persons, debates have existed referring to the need to criminally sanction the non-profit legal persons, the most important objection formulated being related to the pre-eminence of the freedom of association (Streteanu & Chiriță, 2007, p.153). Finally, the solution of admitting this liability won, considering that the freedom of association can manifest only within the limits set forth by the law, and the non-profit purpose of the association is not enough to justify the exemption from sanction in case of the commitment of an offence.

As correctly revealed in the specialty legal literature (Streteanu & Chiriță, 2007, p.153), the equality before the criminal law principle must be complied with and the criminal immunity cases, in the case of legal persons, must constitute exceptions and be absolutely necessary for the purpose of the normal assurance of the social life.

Regarding the association and foundations, the acceptance of their criminal liability is based on the fact that these frequently dispose of significant equities for the achievement of their purpose at the moment, and if these resources are used in order to commit an offence, all their members shall thus benefit from the gain.

Moreover, the unions may be aimed by the institution of the criminal liability of the legal person, considering that their activity may determine the commitment of an offence and, although the union's criminal activity is mainly related to the labour law, the commitment of other offences is not excluded.

Regarding the union's criminal liability, the British law comprises a special situation. Thus, although the law from 1871 on the unions did not consider them as entities having a passive capacity to stand trial, the accusations being forwarded against the union's director, the supreme court decided that a union may be criminally liable because if the law has admitted the capacity to possess assets, it must admit the capacity to be liable for the offences committed during the management of its assets (House of Lords, decision *The Taff Vale Ry. Co. vs. The Amalgamated Society of Ry. Servants*, 1901, apud. Streteanu & Chiriță, 2002, p. 155).

The British Parliament issued in 1906, following the powerful protests, a law setting forth the union's immunity against criminal and tort liability, this not being able to be liable for any offence. Although this irresponsibility has been limited by another law on the offences committed within the labour conflict frame, the British unions are the only private law collective entities which are not criminally liable.

In the United States, the supreme court ruled a decision in 1922 (United States Supreme Court, decision *The United Mine Workers of America vs. The Coronado Coal Co.*, 1922, apud. *Streteanu & Chiriță*, 2002, p. 156) setting forth that it is not normal for a union of persons managing high amounts and gathering over 400,000 people to act without any liability, implementing the criminal liability in this matter, the situation remaining unchanged up to the present despite the union protests.

3. LEGAL PERSONS DURING ESTABLISHMENT, LIQUIDATION OR TRANSFORMATION

The issue rose in the case of offences committed by legal persons during establishment or liquidation is influenced by the conception of the law maker regarding the need of the legal person existence as a condition for the enforcement of the criminal liability on collective entities.

Regarding the *legal persons during establishment*, the French doctrine has considered that, in principle, the offences committed by the founding members during their establishment cannot enforce their criminal liability, justifying that the legal person must have own will and real existence in order to enforce its criminal liability. Thus, the literature sets forth (Boulloc, 1994, p. 673) that the criminal liability of a “virtual” entity which may never become a legal person cannot be enforced, as in the case when the establishment formalities are not completed.

The legal person is not necessarily protected from any criminal consequences related to the take-over of the documents and the offences committed by the founding members, this liability not being an “indirect” one, instead one for the own offence, when the fact itself of take-over is an offence.

Considering the fact that the law does not set forth a term for the registration of a company, it is likely that a relatively long time should pass between the establishment and the registration (as the moment of acquiring the legal personality), period when the managers act in the name of the company. Thus, a part of the French doctrine accepts the possibility of assimilating by the criminal judge of the collective entities undergoing the final stage of establishment as legal person (*Streteanu & Chiriță*, p. 188).

Moreover, the Belgian law specifies a similar solution, which does not appear as a jurisprudence creation, but as an explicit option of the law maker, the legal provision considering the companies whose articles of incorporation have not been adopted yet (companies under establishment), as well as the companies for which the internal establishment procedure has been completed, but the articles of incorporation have not been submitted to the record office of the commercial court within the company head office area.

The legislative solution from the Belgian law is applied only to commercial companies undergoing establishment, not to the non-profit legal persons, undergoing establishment, the law maker not specifying the possibility of enforcing the criminal liability of the future association, although its directors and its members may conclude documents in its name prior to the acquirement of the legal personality. This is due to the fact that the doctrine considers the non-profit associations undergoing establishment as “actual associations”, these entities not classifying within the area of the ones aimed by the criminal liability institution of the legal person.

The Spanish doctrine specifies (Bacigalupo, 1998, p. 378) that the future company with legal capacity is the extension, the continuation of the company undergoing establishment, so that the enforcement of the criminal liability of the company for the offences committed during establishment is possible.

As correctly observed (Streteanu & Chiriță, 2007, p. 189), the possibility of criminal sanctions of a company undergoing establishment raises problems whose solution becomes the task of the judicial practice, problems such as the application of the dissolution sanction in the case of a person that has not been established yet, if such a sanction represents in fact an interdiction for establishment, if other sanctions must be adapted according to the manner in which the company has been finally established or not, etc.

Regarding the Romanian criminal law, the doctrine (Pașca, 2007, p. 8) has admitted that legal persons during establishment cannot be criminally liable, such a liability being enforced on the founding members.

Regarding the category of *legal persons undergoing liquidation*, we state that dissolution does not usually lead to the sudden disappearance of the legal person, but to the opening of the liquidation procedure, period in which the legal person enjoys a restricted capacity, acknowledged only for the purposes of the liquidation.

Thus, the French law considers that the enforcement of the criminal liability on the dissolved legal person is possible, according to art. 133-1 Criminal Code on the dissolution of the legal person, except for the case when the criminal court rules a decision to impede or stop the execution of the sanction. It is obvious, however, that the category of the sanctions applicable to the legal person undergoing such a situation is reduced to the fine and the confiscation, without the possibility to apply some sanctions such as dissolution or suspension of activity (Pradel, 1998, p. 165).

Regarding the choice of the liquidation completion moment, the French doctrine has ruled against its formal determination, considering fair the solution of the Commercial Chamber of the Court of Cassation, according to which, even if the company has been deregistered, the legal person survives as long as the rights and the obligations with a social nature have not been liquidated. Therefore, the fine and the confiscation, being considered as obligations with a social nature, may be executed after the formal completion of the liquidation.

Finally, considering that the mandate of the legal bodies of the legal person stop upon the liquidation start, the liquidator is the natural person that enforces the criminal liability of the legal person undergoing this stage.

The opponents of the criminal liability of the legal persons undergoing liquidation solution have justified that, during this period, the collective entity is

limited to what is necessary for the liquidation needs, field which does not include the commitment of an offence. We consider that such an argument cannot be successfully supported, considering the fact that during the normal existence of the legal person, its capacity is not acknowledged for the purpose of the commitment of an offence, which does not exclude the commitment of the offences specified by the criminal law, as well as the fact that the offence committed can be connected to the deeds meant to lead to the liquidation of the legal person.

Generally, in the case of *legal persons undergoing transformation*, the doctrine accepts the possibility to enforce their criminal liability for the offences committed prior to the transformation, based on the going concern of the company, considering that a random or manipulated transformation of a company must not become an immunity cause (Streteanu & Chiriță, 2007, p. 192; Bacigalupo, 1998, p. 377).

The criminal liability enforcement issue on an entity without legal personality, which transforms into a legal person after the commitment of the offence, shall be solved according to the rules that apply to the case of legal persons during establishment.

According to this, art. 1844 from the French Civil Code specifies that the change of the legal person form does not equal to the creation of a new one, thus it shall be liable for the offences committed prior to the change.

In the case of merger or fusion, however, a part of the doctrine (Desportes & Le Gunehec, 2001, p. 531) considers that the legal person resulted following the merger cannot be liable for the offences committed by the persons that have merged, while others (Pradel, 1998, p. 166) consider that the enforcement of the criminal liability of the legal person is possible, especially when the merger or fusion has taken place against the law.

In Finland, the doctrine unanimously considers that the legal persons cannot avoid the criminal liability by declaring bankruptcy, although there is no express provision of the law in this matter.

Article 20 from the Belgian Criminal Code sets forth that the criminal action is completed through the completion of the liquidation, the judicial dissolution or the dissolution without liquidation, the criminal action being committed subsequently as well, if the opening of the liquidation procedure, the judicial dissolution or the dissolution without liquidation has had as purpose the avoidance of the investigation or if the legal person has been accused by the prosecuting attorney before the loss of legal personality.

Moreover, the provisions of art. 86 from the Belgian Criminal Code set forth that the loss of the legal personality of the convicted person does not remove the punishment.

Regarding the reorganisation by division or fusion, the Belgian law maker expressly sets forth that this does not remove the criminal action, when the avoidance of the investigation has been achieved or when the legal person accusation has been performed prior to this operation, the criminal action being exercised against the person resulted as well within these hypotheses.

4. COLLECTIVE ENTITIES LACKING LEGAL PERSONALITY

Regarding the *collective entities lacking legal personality*, we must notice the fact that the area of the entities on which the criminal liability institution may be applied does not necessarily identify with the area of the collective entities that have legal personality from the point of view of the civil law.

The Recommendation R(88) 18 of the Committee of Ministers of the Council of Europe on the liability of the enterprises, legal persons, for the offences committed while exercising their activity, limits the application of the provisions of the criminal law institution on the enterprises with legal personality.

Part of the doctrine, following the same ideas, (Desportes, 2001) considering that the limitation of the criminal liability on the legal persons *stricto sensu* constitutes a source of legal security, taking into account the fact that in the case of criminal liability enforcement on the groups (in fact) raises the issue of determining the natural persons qualified to represent the collective entity before the court, and the application of a criminal sanction would be difficult to settle with the personal nature of the criminal liability in the absence of distinct rights and an own equity of the group in question.

Naturally, this solution leads to significant disadvantages, reaching the fact that the criminal liability depends on the will of the criminals which could avoid the creation of a legal person, in favour of an entity lacking personality, as a frame to carry out their activity. Moreover, we must not neglect the fact that, at the moment, entities lacking legal personality may have great economic force with a significant criminal potential.

As correctly shown (Streteanu & Chiriță R., 2007, p. 178), an optimal solution would be the inclusion in the category of criminal liability of other collective entities, besides the legal persons, showing the nature of an autonomous and organised entity, as well as the individualization of these entities that, according to the criminal law, would be assimilated as legal persons.

Therefore, the existence of the legal personality according to the civil law is not relevant in order to enforce the criminal liability, but rather the existence of an autonomous subject which has an institutional organisation (Bacigalupo, 1998, p. 376).

In the French law, considering the fact that the provisions of art. 121-2 expressly refers to the legal persons, the collective entities for which the law does not acknowledge the legal personality cannot have the quality of active subject of an offence.

A part of the doctrine has shown that the referral to the legal persons from the above-mentioned text does not exclude the possibility to enforce the criminal liability of groups for which the law maker has not acknowledged the legal personality, but which have benefitted from such an acknowledgement by means of jurisprudence, while the concept of "legal person" should receive an autonomous meaning in the criminal law by comprising any group that has an own interest and own means of expression. The opponents of this solution have justified that the criminal law cannot be that strict in interpretation, the extension of the "legal person" concept by means of the jurisprudence creating insecurity situations.

The Belgian law has chosen, however, to extend the applicability of the criminal liability of the legal person for the collective entities for which the civil law does not acknowledge the legal personality, the spontaneous associations and the joint ventures, the commercial companies undergoing establishment and the civil companies not yet commercial companies being assimilated, according to paragraph 3 from art. 5 from the Criminal Code, as the legal persons.

We must notice, however, that this assimilation does not refer to all the entities lacking legal personality, it being limited to the collective entities undergoing an economic activity. Moreover, in fact the law omits the associations, although these may carry out economic activities.

This extension of the criminal liability field of the legal person in the Belgian law is considered as justified by the need to avoid the discrimination between economic entities adopting an organization form conferring legal personality and those adopting another model.

We find the possibility of criminal liability extension in the case of entities lacking criminal personality, these being assimilated to legal persons, in the Swiss, Portuguese and Dutch law as well.

In Great Britain, according to the *Interpretation Act* from 1978, the concept of “person” from the definition of an offence should mean all the legal persons, as well as all the entities lacking personality, so that, usually, the latter are liable under the same conditions as the entities having legal personality.

In the case of entities lacking legal personality, we must reveal the fact that, from a jurisprudential point of view, it has been set forth that these are not criminally liable, because in their case there is no entity distinct from the members to whom the natural persons' deed could be charged (High Court, decision *R. vs. Levy & others* from 1929, apud. Streteanu & Chiriță, 2007, p. 185).

Nevertheless, we must notice the fact that a law (Law no. 56/1955, §381, para. 7) has set forth the presumption of guilt against the association members, others than the ones that have committed the offence, presumption that is relative, being able to prove that the natural person in question has not taken part in the deed commitment and could not have been able to prevent it in a reasonable way.

5. PUBLIC LAW LEGAL PERSONS

Unlike the private law legal persons, the criminal liability of public law legal persons is the subject of numerous debates within the doctrine regarding the admissibility and the limits of such a liability.

The opinion according to which the public law legal persons should be excluded from the criminal liability field has justified that these carry out a public service mission characterized, mainly, through its necessity, these services existing to answer the general interest or to ensure the fulfilment of fundamental rights.

Moreover, referring to the public services, it has been shown (Picard, 1993, p. 272) that, to the extent to which these have functioned improperly, favourising the commitment of offences, the third parties that have had the right to benefit from these have already been affected, so that the enforcement of a criminal sanction on the

respective public service only affects once more the situation of the same guilty persons. Therefore, we consider that the only solution to avoid the situations when the collective entity members are indirectly sanctioned is the implementation of the lack of criminal liability institution of the public law legal persons.

However, the general opinion in the specialty legal literature (Bacigalupo, 1998, p. 374) is in favour of enforcing the criminal liability of the public law legal persons, the main argument being the constitutional principle of the equality of the persons before the law.

The opponents of these solutions have shown that this difference in the legal treatment would not breach the principle of equality before the law, being justified by the principles of necessity and going concern of activity the public law legal persons. Moreover, it has been shown (Streteanu & Chiriță, 2007, p. 158) that this objection could be accepted if it is related only to these activities carried out by the public law legal persons implying the state authority exercise, but because these persons carry out numerous activities with an economic nature, at the moment, in the field of public services, it has been considered that the exclusion of these persons *de plano* from the criminal liability would not be justified.

As a matter of fact, the Resolution of the 15th Criminal Law International Congress from 1994 recommends the establishment of a legal frame allowing the enforcement of the criminal liability on the public law legal persons for the offences against the environment protection law.

The state appears as an exception to the criminal liability of the legal persons in the majority of the legislations that have introduced this criminal law institution and, even in the situation when the law does not state anything in the matter, the doctrine admits that the state must benefit from immunity against criminal jurisdiction.

Among the arguments used to support these solutions, we can state that the state is presumed to act in the public interest in all the circumstances, that the state has a decisive role in the start of a criminal trial and the execution of the sanction, that the declaration of the state immunity avoids a series of issues which are difficult to solve, such as the setting of the court competences or of the applicable sanctions.

In the Belgian law, the law maker has delimited the category of the public law legal persons benefitting from criminal liability immunity similar to that of the state, according to art. 5, para. 4 from the Criminal Code, the federal state, the regions, the communities, the provinces, the Bruxelles community, the communes, the intra-commune territorial bodies, the French Community Commission, the Flemish Community Commission, the Common Community Commission and the social care public centers cannot be considered legal persons with criminal liability.

Regarding the administrative law legal persons, the French law maker has set forth a limitation of their criminal liability, meaning the lack of criminal liability of the territorial collective entities and their groups for the offences committed while exercising the activities considered forming the object of a public assignment convention. According to the French law, the territorial collective entities are represented by the communes, the departments, the extra metropolitan departments and the regions, and groups of these collective entities are the commune unions, the districts, the urban communities, the common communities and the city communities.

This law, limiting the criminal liability field of the territorial collective entities, related to the public service concept, has been criticized, justifying that the activities belonging to the private field of these collective entities must classify in the field of criminal liability of the legal person, although they are not suspected to become the object of an assignment convention.

Therefore, it may be concluded that when a commune, for instance, exploits a common means of transport service, a school cafeteria, a water, electrical or thermal energy supply network, or a waste collection service, it shall be criminally liable for the offences committed upon this activity, as a private company undertaker would have if it has had chosen this means of exploitation.

As shown (Leigh, 1969, p. 18), in Great Britain, the rule on the lack of liability of the Crown, term including the state, the governments and the ministries, but excluding the local collective entities or the public law enterprises, is applied only related to the offences created on a jurisprudential manner, in the case of offences created through acts of the legislative power, the law being able to expressly set forth that these shall apply to the Crown.

6. CRIMINALLY LIABLE LEGAL PERSONS IN THE ROMANIAN LAW

As resulting from the criminal liability conditions of the legal persons set forth in the art. 135 from the New Criminal Code, this liability may be enforced only on a legal person, respectively on an entity whose civil law acknowledges this personality, unlike the Belgian law which assimilates the legal persons and those entities lacking legal personality according to the civil law.

In the case of private law legal persons, the rule is that these are criminally liable, with differences regarding the extension of the criminal liability effects, distinguishing between legal persons which are fully liable and which have a limited liability, meaning that the complementary punishments of dissolution and activity suspension are not applicable to the latter, such as the political parties, the unions, the employers' associations, the religious organizations or the ones belonging to the minorities and the legal persons that carry out activities in the media (Basarab M., Pașca V., Mateuț Gh., Butiuc C. - *op. cit.*, p. 104).

A delicate problem being raised is whether the criminal liability of legal persons controlled or administered by other legal persons may be enforced, given the fact that there are many legal persons which have as majority shareholder other legal persons controlling or administering the activity of the former.

We consider that such a liability may be enforced on these legal persons, considering the fact that the provisions of art. 135 from the New Criminal Code set forth that the legal person, except for the state and the public authorities, is criminally liable for the offences committed while fulfilling the object of activity or in the interest or in the name of the legal person, and the public institutions are not criminally liable for the offences committed while carrying out the activities that cannot become the object of the private field.

This, the more so as our legislation sets forth a direct criminal liability model of the legal person, meaning that this is liable for the own deed, even if the decision of

the commitment of the offence belongs to a natural person, managing the legal person, a managing body or even another legal person controlling or managing the former.

In this situation, the substantive and formal conditions for enforcing the criminal liability of the legal person regarding the controlled legal person, as well as of the one controlling or managing it, should be verified, subsequently each of these legal persons being criminally liable for its own deed, together with the natural persons that have contributed, in any way, to the commitment of the same offence.

Finally, we consider that the rules on the accumulation of the criminal liability of the legal person with the criminal liability of the natural person are applied in this case as well, with the specification that we shall have two legal persons to be criminally liable in this case.

Moreover, a legal person undergoing establishment, although it disposes of a certain capacity, limited to what is strictly necessary for its establishment, cannot classify according to the criminal law if it does not acquire legal personality.

According to this, it is interesting to clarify which are the effects of a nullity cause occurred in the establishment procedure of the legal person and which is discovered only after the commitment of the offence.

Considering that the provisions of art. 58 from Law no. 31/1990 sets forth by derogation that the nullity effects of the commercial company do not act retroactively, as well as the fact that the legal person is criminally liable when it has been established for the purpose of offence commitment (in this case, art. 71² from the Criminal Code sets forth that the complementary punishment of the dissolution shall apply), when, according to the provisions of art. 56, letter c from Law no. 31/1990, it sets forth that the existence of an illegal object of activity represents a nullity cause of a commercial company, we agree without reserves with the opinion (Streteanu & Chiriță, 2007, p. 392) according to which the potential finding of the establishment procedure nullity cannot have any influence on the criminal liability for the deeds committed prior to this finding.

Moreover, regarding the effects of the legal personality loss, art. 16, para. 1, letter f from the New Code of Criminal Proceedings sets forth that the criminal action cannot be set in motion, and, when it has been set in motion, it cannot be exercised if amnesty or prescription, the death of the suspect or of the accused natural person has occurred or the deregistration of the suspect or the accused legal person has been decided.

Regarding the exceptions set forth by the law maker to the category of the criminal liability subjects, art. 135 from the New Criminal Code sets forth that the legal persons, except for the state, the public authorities and the public institutions carrying out an activity that cannot be the object of the private field are criminally liable.

Therefore, the state benefits from general and absolute criminal liability immunity, without the possibility of enforcing the criminal liability in the case of the deeds committed while carrying out the state authority or those deeds that would be committed while exercising activities from the state's private field.

The category of public authorities, benefiting from the criminal liability immunity, comprises the authorities listed under Title III from the Constitution,

respectively the Parliament, the Romanian President, the Government, the central public specialty administration bodies, as well as ministries, inspectorates, agencies, etc., the local public administration bodies, such as commune, town and county authorities, the Prefect's Office, the court bodies, such as the courts, the Prosecutor's Offices, the High Council of Magistrates, but also other public institutions, such as the Constitutional Court, the Court of Auditors, the Ombudsman, etc.

As shown (Basarab M., Pașca V., Mateuț Gh., Butiuc C. - *op. cit.*, p. 105), the public authorities may be organised under the direct or indirect subordination of the Government, indirectly through a minister, or autonomous authorities, such as the Supreme Council of National Defence, the National Audiovisual Council, the Competition Council, the National Council of Real Estate Investment Fiduciaries, the National Council for the Study of Romanian Security Archives, the Insurances Supervisory Commission, the National Council of Academic Evaluation and Accreditation, the Romanian Radio Broadcasting Company, the Romanian Television, the Rompres Agency, the Romanian Foreign Intelligence Service, the Protection and Guard Service, the Romanian Institute for Human Rights and the National Bank.

As rightfully revealed by the doctrine (Streteanu & Chiriță, 2007, p. 394), the criterion considered for the delimitation of the public institution category exempted from the initial regulation of the criminal liability institution of a legal person, has been less frequent, usually considering the nature of the activity within which the offence has been committed, instead of the nature of other activities which a legal person may carry out, without any connection to the committed criminal offence.

Thus, an activity that cannot be classified within the private field, but within the public institution prerogatives, has been sufficient to enforce the general criminal immunity of the respective legal person.

This problem has been solved through the provision in paragraph 2 of art. 135 from the New Criminal Code, of the fact that the public institutions are not criminally liable for the offences committed *while carrying out an activity that cannot be classified within the private field*.

In the Romanian law, a special category of legal persons is formed of the autonomous administrations, these having a mixed legal nature, both public and private law. As revealed before (Streteanu & Chiriță, 2007, p. 396), although the autonomous administrations are, generally, considered as public law legal persons, these cannot be assimilated to the public authorities or institutions, so that they shall be criminally liable regardless of the nature of the activities carried out. The more so as the provisions of art. 136, para. 4 from the Constitution distinctly set forth the public and autonomous institutions, without the possibility of equivalence between them.

We agree with the opinion (Basarab M., Pașca V., Mateuț Gh., Butiuc C.- *op. cit.*, p. 106) according to which the concept of *public institution* is not confused with the concept of *public utility legal person*. Therefore, the associations and foundations may acquire the status of public utility legal persons through Government Decision, according to art. 39 from GO no. 26/2000 on the associations and foundations, these remaining, however, private law legal persons, their criminal liability being enforced according to art. 135 from the New Criminal Code.

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