INTRODUCTION

Criminal liability of corporations became one of the most debated topics especially following the 1990s, when both the US and Europe faced an alarming number of environmental, antitrust, fraud, worker death, bribery, obstruction of justice, and financial crimes involving corporations. The reaction to this criminal phenomenon was the creation of judicial regimes that could deter and punish corporate wrongdoing.

Corporate misconduct has been addressed by civil, administrative and criminal laws. Presently, most countries agree that corporations can be sanctioned under civil and administrative laws. However, the criminal liability of corporations has been more controversial. While several jurisdictions have accepted and applied the concept of CCL under various models, other law systems have not been able or willing to incorporate it. Some critics give arguments against its efficiency and consistency with the principles of criminal law; there are others, at the same time, who vigorously defend CCL.

Different countries have adopted various models of CCL or refused to adopt any due to their particular historical, social, economic and political developments. Based on these developments, each country finds it appropriate to respond to the criminal behavior of companies in different ways. In this paper I distinguish the models of CCL developed in countries of common law systems, like US and UK, and the models in civil law system countries. These models have their advantages and disadvantages, however, some elements of both models should be considered for the purpose of creating a better model.
This paper is organized in four chapters. The first chapter describes the concepts of corporate legal personality. It gives the theoretical basis for corporate criminal liability, as well as some types of corporate crimes. The second chapter develops the importance of CCL. Although CCL is a concept belonging more to criminal law than corporate law, in this research is emphasized its importance towards corporate law. Whereas, the third chapter provides a brief overview of the different traditions in the common law and civil law jurisdictions in relation to the principle and the form of CCL. In the last chapter it is discussed a comparative approach regarding to CCL in common law and civil law countries.

The conclusion provides a summative evaluation for CCL emphasizing the fact that powerful legal entities, such as corporations or companies must accept and abide by rules like natural persons.

I. Corporate Legal Personality

This chapter discusses concepts of CCL in the light of criminal law, such as the criminal mind of a corporation. It then continues with some theoretical basis of criminal liability of corporations explaining why CCL cannot be viewed as an isolated institution in the legal system.

I.1. Criminal Mind of the Corporate Entity

The difficulty to consider corporations, as legal persons subject to criminal sanctions is partially due to the criminal law’s focus on a guilty mind. Traditionally, corporations have been considered unable to form the requisite mental element to commit crimes.  


\[3\] Heine Günter, *New Developments in Corporate Criminal Law Liability in Europe: Can Europeans Learn from*
I.2. Theoretical Basis for Corporate Criminal Liability

The development of corporate legal personality is consistent with the recognition that the corporate entity is more than simply a sum of its constituent parts. Therefore, it poses a type of independent character as an entity.\(^4\) Subsequently, this raises the argument that a corporation is not a person and has no mind\(^5\), emphasizing the view that a corporation is nothing more than a collection of individuals and therefore lacks an independent identity\(^6\).

CCL in both civil and common law jurisdictions evolved from the enforcement of individual criminal responsibility for wrongful acts of the corporation. The directors followed then by the officers and finally the employees of the corporation were held liable for corporate wrongs.\(^7\) As a result, this has brought the extension or the increase of the criminal liability of corporations itself.\(^8\)

Additionally, CCL cannot be considered as an isolated institution in the legal system, but as imbedded in the criminal law system. If individual criminal law demands specific blameworthiness by the individual suffering the imposition of punishment, corporate criminal law should demand the same for corporations.

II. The Importance of Corporate Criminal Liability

Considering the criminal liability of the corporation as a whole, not merely the liability of its constituent members, is important for several reasons. Firstly, as already mentioned, the power of

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a corporation is greater than the power of its members only. Therefore, it is logical to consider corporate accountability to be attributed to the corporate entity as a whole rather than merely its constituent parts. This is particularly important when corporations may structure themselves specifically to avoid legal liability.\(^9\) As a result, the recognition of corporate legal personality, followed by the imposition of criminal liability on the corporate entity, ensures that individuals cannot hide themselves behind corporate activity, nor can the corporate entity as a whole shelter behind the criminal liability of individual members.\(^10\)

Secondly, recognizing that the corporate entity as a whole is criminally liable allows for more effective legal and moral sanctioning of wrongful corporate activity. As such, criminal liability of corporations through the recognition of legal personality directly encourages the adoption of better standards, more responsible corporate behavior and deterrence from future misconduct.\(^11\) The recent developments in the European civil law jurisdictions provide strong arguments for the effectiveness of this kind of reasoning. It has been documented in several European countries that criminal sanctioning of corporate activity plays an important role in reinforcing norms of acceptable corporate conducts.\(^12\)

Thirdly, recognizing the corporate entity as having legal personality for purposes of criminal law ensures the availability of effective means of punishment. For instance, it has been noted that the criminal sanctioning of corporate actors leads to more effective shaming and stigmatizing than legal sanctioning for civil wrongs.\(^13\) Punishments for criminal activities engaged in by a corporation may include fines and, in extreme cases, dissolution.\(^14\) In many cases, such means of punishment may be more effective than imposing tortious liability or imprisoning individual members of the corporation, both of which effectively allow the corporate entity as a


\(^12\) *ibid*

\(^13\) *ibid*

whole to continue its business relatively unimpeded.\textsuperscript{15} Corporations are a part of the community which enjoys a range of similar rights, although certainly not identical, as those accorded to individuals. As a result, corporations can be considered to be bound by the same laws and social norms like any other individual.\textsuperscript{16}

When corporations engage in criminal conduct, the consequences that follow are usually of considerable costs. Therefore, the types of harm inflicted by a corporation are far beyond what any individual could produce, both in terms of the amount of money involved and the impact of the misconduct on broad portions of society. For example, as part of its guilty plea to violating the FCPA, German conglomerate Siemens A.G. admitted to paying approximately $1.4 billion in bribes, over a six-year period, through subsidiaries in France, Turkey, and the Middle East to obtain contracts.\textsuperscript{17} Similarly, pharmaceutical giant Pfizer paid $2.3 billion, including a criminal fine of $1.195 billion, to settle civil and criminal investigations for promoting “off-label” uses of its drugs.\textsuperscript{18} It is obvious that the fines put on the companies, in the above mentioned cases, are of an enormous amount. Corporate unlawful activity is punished considerably, and the company has to pay a lot. The considerable fines make the companies more aware of what they have to pay if they risk acting unlawfully during their activities.

III. Historical Background of Corporate Criminal Liability

There is a broad historical division between common law and civil law jurisdictions on the principle of CCL in modern criminal law. This chapter provides a brief overview of the different

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traditions in the common law and civil law jurisdictions in relation to the principle and the form of CCL. It then concludes with the developments of international instruments that need the adoption of national corporate liability models in relation to several crimes.

III.1. Common Law Traditions - United States and United Kingdom

The majority of common law jurisdictions overcome legislative and judicial reluctance regarding the imposition of criminal liability on corporations much earlier than civil law jurisdictions, probably as a result of their earlier experiences of rapid industrialization and its attendant effects.\(^{19}\) In the USA and UK, CCL first developed in the context of nonfeasance by quasi-public bodies that resulted in public nuisances. By the middle of the 19\(^{th}\) century, CCL extended to all offences not requiring evidence of criminal intent.\(^{20}\) The requirement of proof for a fault element such as intention or recklessness was first recognized in the USA in 1909\(^{21}\) and in Britain in 1917.\(^{22}\) However, despite their common traditions, the current models that have developed across common law jurisdictions are not similar.

The US courts have largely adopted, at a federal level, a vicarious liability approach to attributing criminal liability to corporations for all offences, including those involving intent. US courts follow the principle of \textit{respondent superior}, which means that a corporation is liable for the wrongful acts of any of its employees, provided that such an employee commits the crime within the scope of his or her employment and with the intent to benefit the company.\(^{23}\)

The prevailing approach in UK, for attributing direct criminal liability to corporations for crimes involving a fault element is the identification or the \textit{alter ego} doctrine.\(^{24}\) According to this theory, the criminal liability must fall over those persons who direct and control the company’s activities. On this basis they are considered to be the embodiment of the company. Therefore, ‘their

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\(^{21}\) \textit{New York Central and Hudson River Railroad Co. v. United States} 212 US 481, 1909.

\(^{22}\) Wells identifies the King’s Bench decision of \textit{Mousell Bros v. London and North Western Railway} in 1917 as the first indication in English law that corporate liability might move beyond strict liability or nuisance, although the implications of this decision did not eventuate until some time later. For a detailed description of the development of corporate criminal liability in England and Wales see: Wells C., \textit{Corporations and Criminal Responsibility}, Second Edition, Oxford University Press, 2001, 120-149.


\(^{24}\) The most significant UK decision setting out the identification doctrine is the House of Lords decision of \textit{Tesco Supermarkets Ltd v. Nattrass}, AC 153, 1972.
acts and states of mind are the company’s acts and states of mind’. Subsequently, the criminal conduct of those persons who are considered to embody the company’s ‘directing mind and will’ can form the basis of the company’s criminal liability.

However, presently, this approach has been criticised as unduly restrictive and unrepresentative, as a result of the complexity that today’s modern corporations have related to their horizontal or decentralised decision making structures.

III.1.1. Disputes on Corporate Criminal Liability in the United States

A considerable number of criminal and corporate experts in the US have been opposed to CCL, arguing that it should be eliminated or at least strictly limited. Moreover, experts argue that corporate criminal punishment is a mistake. They also argue that corporate liability is inefficient and should be scrapped in favour of civil liability for the entity or criminal liability for individual corporate officers and agents. In other words, it is supported the idea that CCL must be restricted.

The criticism in the US is relatively strong related to CCL. One of the classic critiques argues that that the corporation is a mere fiction that cannot be punished, and that it is innocent shareholders who are forced-wrongly-to bear the direct burden of criminal sanctions, and there are innocent employees, creditors, customers, and communities who must bear the indirect burdens. However, this argument loses its target in several issues which need to be considered.

Opposite to the latest, there are other arguments against the concept of the corporation being a fictional creature. It is known that the creation of a corporation is the creation of a legal entity that is separate from its shareholders, as well as its employees, creditors and others. Each corporation has its own assets, as well as its own liabilities.

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28 Alschuler Albert W, Two Ways to Think About the Punishment of Corporations, American Criminal Law Review 46, 2009, 1359.
30 Alschuler Albert W, Two Ways to Think About the Punishment of Corporations, American Criminal Law Review 46, 2009, 1366-1367.
Perhaps the most cogent criticism of CCL is that the only real punishment available against a corporation is a fine, which can be much more easily calibrated to redress any harm through a civil proceeding that does not require all the protections usually afforded in a criminal prosecution.

The perception that corporations are persons like any other individual has been further emphasized by the Supreme Court’s decision in *Citizens United versus Federal Election Commission*, which rejected the argument that the political speech of corporations or other associations should be treated differently under the First Amendment simply because such corporations or associations are not natural persons.

### III-1.2. Theories of Corporate Criminal Liability in the United Kingdom

Companies are considered as artificial creations of the law and are subjected to the criminal law in the same way that natural persons are. However, the application of rules that make the companies liable in crime is complicated due to the legal personality of the company, as well as the fact that companies think, make decisions and act through natural persons.

There exist two basic theories which courts have employed to assess and determine the corporate responsibility for crimes.

The *Agency theory*, known as *vicarious liability*, is based on the principle that a company’s employees are its agents. Differently expressed, a company is liable vicariously for those strict liability offences in which the *actus reus* committed by an employee can be attributed to the corporation. Determining the liability of the company according to this theory, there is no difference between the acts or the omissions of the employees and those of high management officers.

According to the *Identification theory*, known also as the ‘directing mind and will’ or ‘*alter ego*’ doctrine, a company cannot be rendered liable for an offence unless the individual in fact responsible can be identified with the company. Such individual is described as the ‘*alter ego*’ of

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31 *The First Amendment* (Amendment I) to the *United States Constitution* is part of the *Bill of Rights*. The amendment prohibits the making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances.

32 *Citizens United versus Federal Election Commission*


The company. This theory determines that the company is directly liable for the individual’s wrongful acts on the basis that its acts or omissions are also the acts and omissions of the company. The fact whether the company can be identified with a natural person, is whether the individual in question is for the purposes of the transaction in question, the directing mind and will of the company.35

III.2. Civil Law Traditions

The civil law jurisdictions have been more reluctant to recognize the possibility of CCL in modern law. This was based on several ideas, however, one of the ideas emphasizes the fact that groups cannot act and be morally blameworthy. Therefore, groups cannot be proper subjects of criminal punishment.36 Despite of this, this approach became weaker, since the 1970s37, as the result of the introduction of CCL schemes in various civil law nations. Nevertheless, CCL forms in most European countries developed after 1990s. For example we see the adoption of forms of CCL in Austria (2006),38 Belgium (1999),39 Denmark (1996),40 Finland (1995),41 the Netherlands (1976),42

35 The famous dictum of Viscount Haldane in Lennard’s Carrying Co Ltd v. Asiatic Petroleum Co Ltd AC 705, 1915: ‘... who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.’
36 The principle of societas delinquere non potest is commonly described as encompassing two assertions contrary to the principle of corporate criminal liability. First, the notion that corporations have the capacity to act willfully or intentionally, as required by criminal law is rejected. Second, corporations are not viewed as the proper subjects of criminal punishment as only human beings are capable of making moral determinations in terms of what is right and wrong. For further see: Weigend T., Societas Delinquere non Potest? A German Perspective, Journal of International Criminal Justice 6, 2008, 927.
38 The Law on the Responsibility of Associations was introduced in 2005 and came into effect on 1st January 2006.
39 Corporate criminal liability was reintroduced after it had been removed in 1934. For further see: Robinson A. A., ‘Corporate Culture’ as a Basis for the Criminal Liability of Corporations, 2008.
40 Denmark first introduced corporate criminal liability for certain offences with the passage of the Butter Act in 1926. The current scheme of corporate criminal liability was introduced in 1996 and is governed by chapter 5 of the Danish Criminal Code. In 2002 corporate criminal liability was extended from specific crimes to all offences within the general Criminal Code by section 306 of the Danish Criminal Code. See also: Beale Sara S. and Safwat Adam G., What Developments in Western Europe Tell us about American Critiques of Corporate Criminal Liability, Buffalo Criminal Law Review 89, 2004, 111-112.
42 ibid, 110-111.
Norway (1991), Spain (2003), and Switzerland (2003), although in some exceptional cases where prevails the position that legal persons are not subject to criminal liability such as Germany.

The developments related to CCL in civil law countries identify an extension of the approach from the liability based on imputing individual behavior towards the liability on companies.

### III-2.1 Introduction to Corporate Criminal Liability in Germany

It has been debated for a long time whether the German Law should be amended to include criminal liability for corporate entities. This is due to the fact that German criminal law only applies to natural persons. A legal entity cannot commit a criminal offence under German Law. Therefore, legal persons lack the capacity to act and the capacity to be criminally liable.

However, it is possible to impose against companies, the criminal law sanctions of forfeiture according to the article 73 of GCC; and sanctions of confiscation according to article 74 of GCC. Forfeiture serves to remove the advantages gained from criminal offences. According to article 73 of GCC, the pre-requisite for ordering forfeiture is that an unlawful act has been committed and that the company has obtained something for or as a result of the participant’s criminal activities. Advantages gained from the act are all the financial assets obtained by the company as a result of the offence, both the material objects gained directly as a result of the act through fraud or deception, as well as other advantages gained from the act, for example, the profits made from unlawful excessive prices. The provisions on forfeiture do not establish the criminal responsibility of corporations under German law, however, forfeiture is supposed to ensure that the corporation is deprived of any illicit profit and does not benefit from the offence. Whereas, according to the

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44. At present, only very limited corporate criminal liability provisions have been introduced in Spain in relation to specific bribery offences. These provisions allow for sanctions to be imposed on a corporation when a relevant individual has been convicted of an offence and are described by the OECD Working Group on Bribery as involving criminal liability.
49. ibid
article 74 of GCC, the objects that are generated by a criminal offence or used or intended for the commission or preparation of an offence, can be confiscated.\textsuperscript{51}

In Germany, however, there are other kinds of sanctions in other fields of law which can be imposed on companies. According to article 30 of the ROA of 1968, an administrative fine may be imposed on a legal person if an organ, a representative, or a person with functions of control within the legal person has committed a criminal or a regulatory offense. In contrast to a criminal sentence, an administrative fine does not imply moral blameworthiness. Furthermore the corporate fine is considered as a ‘collateral consequence’ of the offense by a natural person.\textsuperscript{52} In addition, CCL is deemed incompatible with the concept of personal guilt,\textsuperscript{53} and the principle *nulla poena sine culpa* since innocent people, such as shareholders, may be forced to suffer the consequences of the corporate penalty along with, or instead of, the persons who were guilty of the offense.\textsuperscript{54}

Dissolution of a company as a sanction is not provided for under criminal law or under the law on administrative offenses. It is a measure provided by the civil or the administrative law.\textsuperscript{55} For example, a stock corporation can be dissolved by means of a court judgment according to article 396 of GSCA. If the stock corporation endangers the general public due to the unlawful conduct of the members of its administrative bodies and the supervisory board, as well as the general meeting fail to ensure that such persons are removed from the office. The matter is similarly regulated with regard to limited liability companies in article 62 of ALLC.\textsuperscript{56} One of the reasons is that there should be a clear horizontal division of responsibilities within collegial entities within a company, so that each member is clear about his area of responsibility.\textsuperscript{57} This is due to minimize the risk of criminal liability for the remaining members.

Finally, in Germany it is not that really exist provisions under criminal law on a corporate’s misconduct. This is true only for natural persons.

\textsuperscript{51} ibid, 126.
\textsuperscript{53} Explanatory Memorandum to the Draft of the Federal Government on a Regulatory Offenses Act, 1968, 61.
\textsuperscript{55} *Criminal Liability of Companies Survey*, Lex Mundi Ltd., 2008, 127.
\textsuperscript{56} ibid
\textsuperscript{57} ibid, 135.
III-2.2. Introduction to Corporate Criminal Liability in Italy

In Italy the CCL is regulated by the Legislative Decree No. 231 of June 2001. This decree introduced in the Italian legal system the concept of administrative liability of corporations for crimes committed by their management or representatives, on the assumption that the relevant criminal conducts are committed in the company’s interest. The proceedings against a company do not differ from that against an individual. In the Italian law, there has always prevailed the principle of *societas delinquere non potest*, particularly found in the Italian Constitution itself. ‘Criminal law is created for man.’ This has raised a fundamental principle of criminal policy as a barrier to the criminal responsibility of legal persons. In addition it is said that criminal law is aimed at physical persons, who is in command of a faculty for self-determination, a capacity to choose between good and evil, and a creative and prudent intelligence, which allows him to freely fulfill his potential. Legal persons are legal fictions and so do not enjoy the above mentioned characteristics. Therefore, companies are not legitimate objects of the criminal law. This difference between natural and legal persons is demonstrated by the article 197 of the Italian Criminal Code. This article establishes only a subsidiary civil responsibility of legal persons for crimes committed by their representatives, executives, or employees whether the offense constitutes a violation of the duties related to the professional qualifications of the offender or has been committed in the interest of the legal person.

To admit the principle of CCL, subsequently would violate the principle of the personal nature of the criminal act that is states in article 27 of the Italian Constitution. Therefore, this will not take into account the fact that, by nature, legal persons are incapable of suffering the consequences of the criminal act. Hence, the principle of culpability does not allow the substitution of the subject that commits the crime with the one that suffers the criminal consequences. Moreover, applying a

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60 For further see article 27, paragraph 1 of the Italian Constitution, which establishes the principle that criminal liability is personal in nature and reflects the view that criminal law has an ‘undeniably ethical imprint’.
criminal sanction to the juristic person would negatively and unjustly impact innocent third parties, such as the minor partners who were involved in or even opposed to certain decision makings in the company.\(^6^5\) Due to international motivations, in 2001, in Italy was introduced a model of direct administrative liability for collective entities. It was the OECD Convention on Foreign Bribery\(^6^6\) and the EU’s PIF Convention\(^6^7\), which entered into force in 1997. This international pressure on the Italian legal institutions, which started to introduce CCL rules in their national system. One of the main reasons for such change into the legislation was the necessity to coordinate the Italian Law with other European legal systems.

**III-2.3. Criminal Liability of Legal Entities in Albania**

The dispute whether a company, being a legal entity, may have or not criminal responsibility, is discussed in Albania as well as in many other countries. In 2007, the Albanian Parliament issued Law No. 9754 ‘On the Criminal Liability of Legal Entities’. This law determines the conditions for sanctioning the unlawful actions and activities of companies in Albania. However, though there have passed more than five years, the law lacks the interpretation of its provisions in our doctrine\(^6^8\).

It is noted as well that there are a few cases discussed by the courts.

In addition, it is of great importance to mention that CCL does not exclude the criminal liability of physical persons, in the context of the CC, whose actions have resulted on a criminal offense, for which the company is criminally liable. For example, LCLLE states that criminal liability of legal entity starts when individuals who have the right to represent the legal entity, commit criminal acts intentionally, on the profit of the legal entity.\(^6^9\)

LCLLE clearly determines the conditions that need to be fulfilled in order that a legal person has criminal liability.\(^7^0\) Under the law, legal entities can be held criminally responsible for the conduct of individuals who act on their behalf and to their benefit. The law applies to both

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\(^6^7\) Convention was as a result of the article K.3 of the Treaty on European Union, on the protection of the European Communities’ Financial Interests.  
\(^6^9\) Law No. 9754, date 14.06.2007 ‘On the Criminal Liability of Legal Entities’, Article 27.  
\(^7^0\) *ibid.*, Article 3.
national and foreign legal persons, such as, the joint stock and limited liability companies, non-profit organizations and, with a few exceptions, to local governmental bodies, public legal entities, political parties and labour unions.

A legal entity can be held responsible for a criminal offence committed in its name or for its benefit:

- by its managing body or representatives;
- by a person who is under the authority of the person who runs, represents and administers the legal entity; or
- due to a lack of control or surveillance by the person that runs, represents and administers the legal entity.

According to the law, any individual who, under Albanian legislation and the bylaws of the legal entity, represents, runs, administers or controls the activity and the managing bodies of such entity is considered to be a managing body or a representative of the legal entity.

Two types of penalties are imposed on legal entities: principal penalties and supplementary penalties, which are applicable to the offender in addition to the principal penalties. The principal penalties consist of pecuniary fines or compulsory dissolution of the legal entity, while the supplementary penalties may lead to, for example, the cessation of one or more of the offending company's activities; its temporary receivership; a prohibition on participating in public procurement procedures or the publication of the court decision. The court can order the compulsory dissolution of the offender when the legal entity was founded for the purpose of committing the criminal offence; the legal entity has devoted a significant proportion of its activities to commit the criminal offence; the criminal offence has severe consequences or the legal entity is a recidivist. Another important issue is that LCLLE preserves the concept of the reservation of the criminal liability even in the cases when the legal entity or company ceases to exist.71

Although the law has been in force for more than five years, it is hard to apply and so far little progress has been made in punishing criminal offences committed by legal entities. This should probably be ascribed to that part of the Albanian judiciary system which remains loyal to the

71 Law No. 9754, date 14.06.2007 ‘On the Criminal Liability of Legal Entities’, Articles 5, 6, 22 and 23.
maxim *societas delinquere non potest* and a certain lack of expertise in this particular branch of criminal law.

**IV. Criminal Liability of Legal Entities: Comparative Approach of Common Law and Civil Law Countries**

This chapter provides a comparative approach related to CCL in common law systems and civil law systems. It points several differences characterized by advantages and disadvantages. However, the present approach shows that countries have become more aware of CCL. The same regards to corporations, which in most of the countries, nowadays, enjoy the same rights and obligations as individuals. The majority of countries have agreed that legal entities such as corporations are subject to criminal liability.

Corporations and partnerships going to the process of dissolution, transformation and merger are liable for the crimes committed in most of the countries. This can be seen in many countries such as, Italy, France, as well as Albania. The American law has similar rules. Succession on merger does not extinguish CCL. When a corporation merges with another, the former continues to exist as part of the latter, and is responsible for its crimes. 72

In Germany, under the non-criminal liability model, corporation and other legal status entities are autonomous subjects of law enjoying the same fundamental rights as individuals. 73 The liability of corporations is equally recognized under the administrative and penal system.

The American system compared with English one is more efficient because it clearly enumerates the entities that can be held criminally liable. Moreover, the English model is more restrictive than the American model. The American model needs the goals of deterrence and retribution by giving noticed to all potential corporate criminals and by punishing most of them.

There are three systems of determining for which crimes the corporations can be held liable. Under the first system, the general liability 74, the legal person’s liability is similar to that of individuals, in which corporations are considered to be capable of committing any crime. The second system requires that the legislator mentions for each crime whether corporate criminal

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liability is possible. While, the third system consists of listing all the crimes for which collective entities can be held liable.\textsuperscript{75}

The first system has been adopted by England, Netherlands, and Belgium.\textsuperscript{76} In England, the corporations are liable for almost any type of crimes with the exception of those crimes punished only by imprisonment. The second system has been implemented in France. Hence, under articles 121 to 122 of the French Penal Code, the legal persons are criminally liable only when the law or regulation expressively provides for such liability. Additionally, corporations are sanctioned for specific crimes based on the frequency of the corporations' involvement in such crimes.\textsuperscript{77} This makes this system not a complete one, because by trying to exclude crimes that cannot be committed by corporations. The French legislator has neglected the fact that even the crimes that cannot be committed by corporations as authors can probably be committed by corporations as accomplices.\textsuperscript{78} The third model is reflected by the American Law. The US Sentencing Guidelines include a detailed list of the offences that can be committed by corporations. CCL virtually extends to all crimes that can be committed by individuals.\textsuperscript{79} Therefore, a corporation can be convicted for theft\textsuperscript{80}, bribery\textsuperscript{81}, manslaughter or negligent homicide\textsuperscript{82}.

Under the German model of corporate liability, the corporations are administratively liable for crimes or administrative – penal offenses committed by an organ or a representative.\textsuperscript{83} The German Penal Code does not impose a limit on the list of the offenses for which corporations can be held liable. Corporations are not liable for offenses which by their very nature can be committed only by individuals. The only condition is that the offenses have to be linked with the corporation’s activities. However, it is not required that the offense be within the competences conceded to the corporation.\textsuperscript{84}

\textsuperscript{75} ibid
\textsuperscript{78} ibid
\textsuperscript{80} State v. Christy Pontiac – GMC Incorporation, Minnesota, 1984.
\textsuperscript{81} Commonwealth v. Beneficial Fin. Corporation, Massachusetts, 1971.
\textsuperscript{82} Granite Construction Corporation v. Superior Ct, Texas, 1987.
\textsuperscript{84} ibid, 58.
Finally, it is obvious that the American model is an efficient and consistent one. However, the English and German models are good examples because they do not limit the list of crimes for which corporations can be held criminally liable providing liability similar to that of individuals.

CONCLUSION

Corporate criminal liability is a disputed concept in the legal environment. The approach to CCL has changed over the years from there being no concept of a liability for criminal acts made by corporations, to liability based on the identification of some persons as the *alter ego* of the company. Today, CCL is a subject of concern for a wide range of groups interested in issues including human rights, environment, development and labour. Additionally, it is noticed an increasing motivation of the countries which apply criminal sanctions towards corporations. As crimes involving corporations, such as financial crimes, fraud, bribery, started to considerably increase, the reaction of the government to this criminal phenomenon was the creation of judicial regimes that could deter and punish corporate wrongdoing. It is acknowledged that there are different systems such as the common law and civil law systems, each treating CCL differently. Nevertheless, these systems tend to agree that the crimes of corporations need and must be punished.

CCL is important for corporations because it encourages the adoption of better standards, more responsible corporate behavior and deterrence from future misconduct. Criminal sanctioning of corporate activity plays an important role in reinforcing norms of acceptable corporate behavior.

Most of the legal systems recognize the criminal liability of corporations, although the models followed by these systems are different. It is hardly to deny the fact that corporations are a part of the community which enjoys a range of similar rights, although certainly not identical, as those accorded to individuals. As a result, corporations can be considered to be bound by the same laws and social norms like any other individual.
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Abbreviations

ALLC     Act on Limited Liability Companies
CC       Civil Code
CCL      Corporate Criminal Liability
CFB      OECD Convention on Combating Bribery of Foreign Public
FCPA     Foreign Corrupt Practices Act
GCC      German Criminal Code
GSCA     German Stock Corporation Act
LCLLE    Albanian Law on the Criminal Liability of Legal Entities
OECD     Organisation for Economic Co-operation and Development
PIF Convention European Union’s Convention on the Protection of its
Financial Interests
ROA      Regulatory Offenses Act
US       United States