

# Objection!

December 2018

04

**DOES THE CRIME OF THE COMPANY CAUSE A PENALTY TO THE EXECUTIVES? CRIMES COMMITTED WITHIN THE COMPANY AND CRIMINAL LIABILITY**



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The legal entities, which are indispensable for commercial life, have reached their current legal status by showing huge alteration from the past. However, legal entities' extent of capability to have rights, responsibilities and competencies compared to a real person and the distance between these concepts are still highly controversial, after it entered into our lives with the rise of capitalism. At this point, due to the fact that natural actions can only be performed by real persons, the status of certain real persons, who act under the range of actions of a legal entity which do not have a capacity to act, shall have importance, so the executives of the legal entities as well. This situation comes to the fore in the liability of the company's debts and it is important to determine who will be suffering from the criminal sanctions especially in case the crimes are committed within the company. On the other hand, in some cases, the legal entity itself may be subject to various sanctions.

### **CRIMINAL LIABILITY OF LEGAL ENTITY**

With the Turkish Penal Code No. 5237 (TCK), principle of individual criminal responsibility was adopted and it was stipulated that any penal sanction could not be imposed against legal entities according to Article 20/2. For this reason, it is not possible to impose a criminal sanction against the legal entity related to the crimes committed within the legal entities. However, this does not mean that other criminal law sanctions will not be applicable for the legal entities. According to the same article, it is possible to implement the security measures envisaged in the law due to the crime. Within this scope, as a result of the crime committed within the legal entity, confiscation provisions may be applied, and more importantly, it is even possible to give a ruling on the cancellation of the permission in private law legal entities operating its business on the basis of the permission of a public institution. In case of implementation of such measures, there is no doubt that the brand and commercial reputation of the legal entities will be debased.

### **WHO WILL BE RESPONSIBLE FOR THE CRIMES COMMITTED WITHIN THE COMPANY, AND TO WHAT EXTENT?**

In case of any crime committed within the company whether for the benefit of the company or otherwise associated with the legal entity, the investigating and prosecuting authorities generally consider the members of the managing bodies as suspect/defendant, who are the legal representatives of the company. As a matter of fact, in practice, it is seen that the investigating and prosecuting authorities use their rights against the persons who have the authority of representation after looking at the records of the trade registry newspaper of the related company in the course of the determination of the person to be directed the complaint. For this reason, the allocation of the representation and binding authority should be determined clearly and managing body members' responsibility for particular operations and transactions should be determined specifically in other formal ways, depending on the internal directive and the structure of the company. Therefore, when any act subject to the crime is detected within the body of a legal entity, it



is easily identified which conducive body or bodies are responsible for such act and which members of such bodies involved in the crime with their intentional or negligent actions.

In fact, it is important to detect the responsible member of the responsible managing body in the crimes committed within a legal entity, since it is important to determine whether the act of a real person is a crime. In this context, even if a person declares his/her will in the opposite direction from the act considered as a crime, he/she may not be punished only for the reason of his position, but the managing body in which he/she is performed will not constitute a reason for impunity. Otherwise, it will result in objective liability contrary to the subjective liability (defect) principle which the criminal law is based on.

## **CERTAIN TYPES OF CRIMES AND PUNISHMENTS**

In practice, Fraud, Abuse of Confidence, Threat, and Blackmail are the most common crimes, which are being committed within the company and enable the provisions of safety precautions against the related legal entity. It is seen that the company executives are also trialed for these crimes due to the conflicts between the different executives, not only the third Parties. It is known that many company executives have been charged by the other ones for the abuse of confident, in particular; accusing them for embezzling money due to the disputes in the company or managing the money improperly which is deposited to them. At this point, it is important to determine the managing bodies which have the required authority, whether there is any action requiring criminal law intervention and whether the crime has been committed for the benefit of the legal entity. In this case, which constitutes a special form of abuse of confidence; prison sentence may reach up to 7 years.

In addition to the aforementioned crimes, it is seen that the acts, which often appear in the commercial life, mentioned in the Article 562 of the Turkish Commercial Code (TTK), such as not fulfilling certain obligations, improper lending to shareholders, the absence of commercial books, deliberate unrecorded registration of commercial books, misleading statements about company capital or raising unauthorized money from the public are also punishable by imprisonment under the Turkish Commercial Code. Again, if some of the acts that constitute unfair competition are committed willfully, the punishment of the company executives and the provision of safety precautions against the legal entity come into question.

The crimes committed within the Company or brought criminal responsibility to the company executives are not limited by the abovementioned crimes. The crimes under the scope of personal data protection are also striking in consideration of recent developments. In this respect, the criminal liability of the company executives is brought to the agenda in terms of the types of crimes regulated under the Crimes Against Private Life and the Hidden Area of Life; and specific security measures are also applied against the related legal entity for such crimes. In this regard, "Recording of Personal Data" regulated in the Article 135 of the TCK and "Giving or Receiving Personal Data Unlawfully" regulated in the Article 136 of the TCK are frequently faced. For example, if the personal data collected from company customers or employees are registered unlawfully, the offender is charged a prison sentence of up to 3 years. Again, it is possible to condemn 2 years to 4 years of imprisonment for those who give, transmit, or seize such data unlawfully.

Finally, it should be noted that the occupational accidents occurring in the course of the activities of the companies and the criminal liability arising from such accidents stand out as a very important and technical issue. The issue becomes even more important, since it is seen that many people, from the head worker to the members of the company's board of directors, have criminal liability or all of them might be sanctioned. The most important points to be considered here are (i) determining the legal responsibilities of each person in accordance with the organization of the company and (ii) whether such responsibilities are carried out or not by the relevant persons and (iii) determining the negligent action as mentioned above.

## **ADMINISTRATIVE SANCTIONS**

Although legal entities do not have criminal liability and are subject to the confiscation provisions of the criminal law sanctions with the annulment of the activity permission, heavy administrative sanctions against the companies may also be brought on the agenda. The Law of Misdemeanors regulates one of the most prominent ones. With this regard, in case of the committed crimes such as Bribery, Fraud, Collusive Tendering, Embezzlement arising from the Banking Law, an administrative fine up to two million Turkish Liras might be imposed on the legal entity.

## **CONCLUSION**

In case the act subject to the accusation occurs within the company, the legal entity is not subject to the criminal sanction. However, some different criminal and administrative law sanctions may be faced. In this case, it is possible for the company executives to face a double punishment because of the sanctions imposed on the relevant person and the legal entity.

In order to avoid such negativities and determine the suspects correctly in case of committing a crime; it is often seen in practice that, if the managing bodies of the legal entity and the authorized person of such bodies are not determined in accordance to the internal directive; they are unjustly prosecuted as a suspect / a defendant. On the other hand, it is also possible that the actual perpetrators could not be punished because of the misdemeanors, or they could be penalized less than necessary.

In addition to all above, it is important that the executives of the company are informed about the acts that may occur within the legal entity and be considered as a crime considering the possible economic and reputation losses to be presented. Likewise, it is important for the victims of a crime to be informed about the issue in order to protect their rights. At this point, it is necessary to draw attention to the importance of legal consultancy services. Making interventions after the stages in which events and trials are shaped cannot achieve the expected impact. Also, the risk of exposing the mentioned processes and results may be eliminated by having information about such issues and determining the similar events.



## Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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