

## Szilvia DOBROCSI: The Business Criminal Law in Hungary

### 1. Historical remarks

The criminal liability of legal persons has been a popular topic in Hungarian legal literature in the past decades. The criminal liability of the legal persons has been unknown in Hungarian law for centuries. However, around and after the political changes of 1989 the new laws and new legal environment led to the multiplication of the number of legal persons. In 1994 more than 90,000, in 2006 more than 242,000 thousand legal persons operated in Hungary, compared to the 19,000 of 1990.<sup>1</sup>

The criminal liability of legal persons was introduced into Hungarian law with Act CIV of 2001 on measures applicable on legal persons under criminal law (herein after referred to as Jszt.) which entered into force on 1 May 2004, the day when Hungary joined the European Union. The legislator reasoned the necessity to enact this law by the pressure coming from the European Union. During the accession negotiations preceding the enlargement of 2004 the issues of the harmonization of law were “priority issues” for the European Union. These included the effective sanctioning of legal persons. Some framework decisions and joint actions of the EU urged the establishment of the system invoking the responsibility of legal persons in general, but these did not define the details and did not focus on criminal law solutions. Moreover, they stated that effective sanctioning may take place within the framework of any fields of law. However, contrary to this, Articles 3-4 of the second protocol of the convention on the protection of the financial interest of the European Communities expressly favoured the application of criminal law measures against legal persons in order to reduce the number of financial crimes.<sup>2</sup> The Hungarian legislator tried to comply with international expectations and trends when it established the act on the criminal liability of legal persons.

It is noteworthy though that in Hungary legal persons could already be held liable in other areas of law. Several acts in the area of administrative and civil law contained such provisions and rather severe sanctions.<sup>3</sup> Some experts believed that these administrative and civil sanctions could also be applied in relation to offenses committed within the framework of legal persons, and criminal measures would be unnecessary.

In reality, the Jszt. established the sanctionability of legal persons in criminal procedure. The act and the related literature avoided making statements about the criminal liability of legal persons, rather use a concept of applying measures against legal persons in criminal procedure. The regulated sanctions are not punishments, are not criminal law consequences, because despite the legislative pressure, Hungarian criminal law dogmatic cannot interpret the notion of criminal liability of organisations. Criminal liability requires will, ability to make decisions, culpability, something which is missing from the concept of legal persons. Therefore the act regulates how measures may be applied against legal persons in criminal procedures, but never mentions their criminal liability, their guilt. In principal, the objective criminal liability of

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<sup>1</sup> See: [https://www.ksh.hu/docs/hun/xstadat/xstadat\\_eves/i\\_qvd001a.html](https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_qvd001a.html)

<sup>2</sup> Second Protocol on the liability of legal persons, confiscation, money laundering and cooperation between member states drawn up by Council Act of 19 June 1997 – OJ C22 of 19.7.97

<sup>3</sup> Regulatory fine was introduced by act on the protection of environment and on the protection of consumers; the exclusion of legal persons from public procurement processes and the publication of sanctioning decisions were possible under the act on public procurement, and the winding-up in of entities was allowed by the act on business associations. For the valid rules on business associations see Act V of 2013 on the Civil Code.

organisations does not exist, the organisation is not liable but may be sanctioned due to its relationship with the natural person perpetrator of the crime, and due to its benefits resulting from this crime. The liability, in reality, is not criminal, and it is rather sanctionability.

Before examining the provisions of the Jszt. in details it is necessary to describe the system into which this act was included. The Jszt. follows an unusual regulatory method as it regulates the criminal liability of legal persons as a complete “code”. In the first part it contains the material law rules, while the second, longer section regulates the procedural issues. The rules of the criminal liability of legal persons are all contained in this act. Act C of 2012 on the Criminal Code refers to the Jszt. in its Art. 63 par (1), which regulates the measures<sup>4</sup> applicable in criminal procedure, but does not contain anything else in relation to the legal persons’ sanctioning.

As result of the mentioned regulatory choice the Jszt. established a new special procedure. The rules of act XIX of 1998 on the Code of Criminal Procedure (herein after referred to as CCP) shall be applied with the differences set forth in the Jszt. The method, therefore, is the same as applied in case of any other special procedures regulated in the CCP. The novelty of the Jszt. is that this issue is defined in a separate act, not within the procedural code.

The “code” regulates the sanctioning of the illegal acts of legal persons, defines how these acts may be prosecuted in criminal procedure. Obviously, even if certain acts cannot be prosecuted, they may be sanctioned in procedures defined by other fields of law.

## **2. Background of the legal person’s responsibility and sanctioning**

Obviously, it may happen that the legal person violates the law but its liability is established within the framework of another field of law, not with the means of criminal law. Criminal law measures may be applied only if the preconditions set forth in the Jszt. are met. The main rule, therefore, is that such measures are applicable only if *a natural person accused is convicted and punished for an intentional crime and the relationship between the crime and the legal person required by law can be established by the court.*

The form of liability in Jszt. should be considered within the unified system of criminal law. Its elements are:

- an illegal human act (crime) by a leading person of the legal entity, one of its employees or members, or by a third party;<sup>5</sup>
- benefit that results from the commission of the offense;<sup>6</sup> and
- a blameworthy act on the part of a leading person, including a failure to take necessary steps to prevent criminal conduct by an employee or officer or knowledge of a crime committed by a third party<sup>7</sup>.

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<sup>4</sup> Hungarian criminal law recognizes two forms of sanctions. In the official English version of the Hungarian Criminal Code, one is referred to as “punishment” (e.g., imprisonment or community service) and the other is called a “measure” (e.g. a reprimand or forced medical treatment). The unofficial English text of the Jszt. uses the same terms to translate the name of the sanctions against legal persons.

<sup>5</sup> See Act CIV of 2001, art. 2(1).

<sup>6</sup> See Act CIV of 2001, art. 1(1).

<sup>7</sup> See Act CIV of 2001, art. 2(1)(b).

In principle this liability is indirect because the offense alleged to have been committed by the legal person must actually have been committed by one or more natural persons within or external to the legal entity.<sup>8</sup>

Contrary to several foreign systems Hungarian law requires a natural person accused in the procedure. This means that the authorities have to identify, capture, prosecute and convict the perpetrator. Before 1 July 2013 applying any measures, suspended conviction or any decision other than the application of punishments prevented the sanctioning of the legal person. Moreover, the legal person had to be released from the procedure if the authorities decided to terminate the criminal procedure against the natural person. However, if the procedure was terminated due to the death of the accused or his mental illness, the legal person's investigation could be carried on.

Even though the law changed two years ago, it still requires intentional crime from the perpetrator. The Jszt. does not list the possible crimes (for example financial crimes, or crimes against property) in relation to which the legal person may be sanctioned. Therefore, non-intentional crimes cannot lead to the sanctioning of the legal person. In case of such, for example in case of non-intentional damage to nature only certain measures may be applied. The real problem is that those crimes which are the most frequent in the environment of legal persons, and are usually result of negligence, are not punishable. Other crimes, the nature of which prevents the prosecution of legal persons are also excluded from this scope, obviously (e.g. traffic crimes).

The Jszt. allows the criminal court to apply measures against the legal person in some cases. According to the general rules the basis of sanctioning is a special relationship of the legal person and the crime. However, it is not easy to define the nature of responsibility. It could be stated that in criminal procedure criminal responsibility is established, but in case of the legal person this is not so simple.

According to the reasoning of the Jszt. the court cannot establish the criminal responsibility of the legal person, but may apply sanction against it in line with the act. In this aspect it is important to examine the background of the legal person's responsibility, as sanctioning without responsibility is a rather unique solution. It also states that the special criminal law responsibility of the legal person is not direct, but rather indirect: sanctioning in criminal procedure is allowed only if there is a natural person who may be prosecuted, and the traditional criminal law responsibility of the accused may be the link to the criminal law sanctioning of the legal person.<sup>9</sup>

Based on this explanation the legal person's responsibility is indirect. The criminal procedure aims at prosecuting the natural person accused, and the legal person may be sanctioned only if the legal preconditions are met. The legislator avoided the problem of defining the nature of the legal person's responsibility, which cannot be established directly, only in relation with the "guilty" relationship required by law. The Jszt. never uses the expression "criminal responsibility", it only refers to measures applicable on legal persons under criminal law. It should not be forgotten, though, that sanctioning still requires some kind of responsibility.

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<sup>8</sup> SÁNTHA, Ferenc – DOBROCSI, Szilvia: Corporate criminal liability in Hungary. In: Corporate Criminal Liability, ed. Mark Pieth and Radha Ivory, Springer, 2010

<sup>9</sup> See the general part of the reasoning of act CIV of 2001.

In general, the legal person's responsibility is indirect, it may be interpreted only if the accused is *prosecuted and convicted for intentional crime*. Another precondition is the relationship between the accused (his crime) and the legal person.

However, some regulations of the Jszt. raise concerns about the exclusivity of indirect responsibility. There may be some cases in which the natural person cannot be prosecuted and convicted for certain reasons. The legislator wanted to fill this possible gap when it decided to recognise the objective responsibility of legal persons. If the accused cannot be prosecuted due to his mental state or his death, or the criminal procedure is suspended or terminated for certain reasons, measures may be still applied against the legal person. The guilt of the natural person is not established, but the legal person may be sanctioned. This may raise dogmatic problems. In these cases the Jszt. allows for the direct sanctioning of the legal person, which is the establishment of the legal person's direct responsibility in lack of meeting the legal preconditions, i.e. on objective basis.

All in all, the forms of responsibility are:

1. Indirect responsibility, if the natural person accused's criminal responsibility is established and he is sanctioned, measures may be applied against the legal person too. In this case the legal person has to bear the consequences regardless of its activities and interests. But this also means that its responsibility becomes objective if the preconditions related to the accused are met.

2. Direct/objective responsibility

- 2.1 If the accused cannot be punished due to his mental state the number of preconditions required for the sanctioning of the legal person is reduced. The "criminal act" is examined and evidence is collected, but the intention of the accused cannot be established and he cannot be sanctioned. The subjective conditions are missing and the requirements necessary for sanctioning the legal person are less proven. In such case the responsibility of the natural person is not a prerequisite any more, the existence of the benefit is enough.

- 2.2 This latter factor is more apparent if the accused dies. None of the originally required conditions of the sanctioning of the legal person is required any more. If the accused dies the objective elements of the act cannot be established properly and the procedure shall be terminated in this regard. Everything about the crime is just assumption, and even the most thorough investigation can only lead to possible, not definite evidence. Still, the legal person may be sanctioned merely based on the existence of the benefit. The situation is the same in all cases of Art. 3 par (2)<sup>10</sup>. This is the real objective responsibility.

In summary, the legal person is sanctioned on objective grounds, but sometimes it is preceded by the conviction of the natural person accused. The objective responsibility may be considered a solution to cover the lack of responsibility which would be similar to that of natural persons, an artificial form of responsibility, which leads to the sanctioning of legal persons in lack of any preconditions required by the dogmatic of criminal law. In any way, the legal person, as entity, suffers punishment-like legal consequences, even though its criminal responsibility cannot be established.

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<sup>10</sup> See section 3.1 herein

### **3. Conditions for the sanctioning of legal persons**

The Jszt. starts by defining some important terms. According to its provisions:

- *legal person*: every organisation and its organisational unit bearing individual right of representation, which is recognised as legal person by law, and the organisation which may be independent subject of civil law relationships, has its separate property, including the companies active prior to registration pursuant to the Civil Code.

There are some organisations which are exempt from the scope of the Jszt. It shall not apply to the State of Hungary, foreign states, the institutions listed in the Constitution of the Republic of Hungary, the Office of the National Assembly, the Office of the President of the Republic, the Office of the Ombudsmen, and any bodies which are, according to the law, responsible for tasks of governance, public administration and local government administration, and international organizations established under international agreements

- *benefit* is any object, right with material value, claim, advantage, regardless of whether it is registered under the act on accounting or not, including any exemption from legal or contractual obligation or any expenses considered necessary under reasonable business management.

Before 1 September 2008 the law required *material* benefit. Since the modification any kind of benefit may allow sanctioning. For example, if the legal person saved expenses by failing to comply with environmental regulations, and this led to the damaging of the natural environment, or to more serious consequences, the benefit is the saved amount.

#### **3.1 The relationship between the legal person and the perpetrator**

The relevant crime may be committed by the legal entity's

- executive officer, its member, employee, officer, managing clerk entitled to represent it, its supervisory board member and/or their representatives, within the legal entity's scope of activity. Separate acts defined the executive officers and representatives of the different legal persons.

- its member or employee within the legal entity's scope of activity, and it could have been prevented by the executive officer, the managing clerk or the supervisory board by fulfilling his/her/its supervisory or control obligations. The first form of perpetration requires active participation of the given person in the crime, while in the second case the active or passive omission of the person is enough, provided that he had real opportunity to prevent the crime. It is important that the crime shall aim at or result in providing benefit of any kind for the legal person. The aim is enough, the realisation of the gain is not a condition. The legal person may be sanctioned if this aim may be proven.

Other than the cases defined above the measures defined in the Jszt. shall be applicable if committing the criminal act resulted in the legal entity gaining benefit, and the legal entity's executive officer, its member, employee, officer, managing clerk entitled to represent it, its supervisory board member, had a knowledge on the commission of the criminal act. In such cases there is no necessary organisational relationship between the legal person and the accused, the relevant condition is if the legal person acquired the benefit. The reason for punishability is that this aims at preventing legal persons from using third persons to gain advantage.

Since 1 July 2013, upon wider compliance with international requirements, the Jszt. has stipulated that the measures are applicable also if the criminal act aimed at or resulted in gaining benefit for the legal person, or the legal person was used for the commission of the crime, provided that

- the investigation was suspended because the perpetrator remained unidentified;
- the investigation was terminated because it was not or not necessarily the accused who perpetrated the crime;
- the court acquitted the accused because it was not or not necessarily the accused who perpetrated the crime;
- the perpetrator cannot be punished due to death, mental illness, active repentance, force or threat; or
- the criminal procedure was suspended due to the unknown location, permanent, serious illness of the accused or his mental illness which emerged after the perpetration of the crime.

These cases lead to the real objective responsibility of the legal person described in section 2 herein. Among others, the legal person may be sanctioned even if the procedure was terminated against the accused or if the accused was acquitted, if the facts of the crime were established. Surprisingly, the failure of the procedure against the natural person does not mean its failure against the legal person.

### **3.2 Sanctions available against legal persons<sup>11</sup>**

The Jszt. allows the winding up of the legal person, for limiting its activities and the imposition of fine. According to the reasoning of the act the aim of these measures are the effective prevention of the violations of law and the confiscation of the illegal benefit.

#### **3.2.1. Winding up**

This is the gravest sanction which shall be reserved to the most serious cases. The company may be reorganised afterwards, as the act does not preclude this option. The court may resort to this measure in two cases, regardless of whether they carry on legal or illegal business activities:

- if the legal person was established for covering crime;
- if the activities of the legal person aim at covering the commission of crime(s);

Obviously, this measure stands alone, it would be unreasonable to apply any supplementary measures with it.

The Jszt. also lists those cases when the company cannot be winded up. Any other measure may be applicable though. The list applies only if the legal person conducts legal activities, but falls into one of the two categories listed before. In such cases the social interest in the continued, controlled activities of the legal person is stronger than the one in its winding up

The legal person cannot be dissolved if in such case the performance of state or local governmental tasks would be endangered or the legal person is

- national public service provider
- is of strategic importance regarding the interests of national economy
- performs or serves the aims of national defence or other special tasks.

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<sup>11</sup> See Jszt Article 3 par (1)

### **3.2.1 Limiting the legal person's activities**

The law lists those activities which may be limited by the court. Based on this the legal person shall not:

- collect deposits based on a public invitation,
- participate in public procurement procedures,
- enter into concession contracts,
- be classified as a public benefit organization,
- receive funding from central or local government budgets, earmarked state funds or targeted support from foreign states, the European Community or other international organizations,
- pursue any other activities, which have been prohibited by the court.

The last item on the list means that depending on the nature of the crime the court may suspend other activities of the legal person as well. The list contains those activities which assume increased reliability (e.g. collection of deposits) and also names those which ensure business advantage provided by the state (e.g. the status of public benefit organisation). The restriction may cover the combination of certain activities. It is needless to stress that the restriction may concern only certain activities of the legal person, because if it covered all it would lead to the dissolution of the business organisation. The selected activities may be suspended for one to three years, defined in years. In case of public procurement contract and concession contract the consequences of immediate termination shall be applied. However, neither of the related acts contain any regulations about this, therefore the rules of the Civil Code shall be applicable.

### **3.2.3 Fine**

The imposition of fine may not only aim at compensating the benefit resulting from crime, but the legislator also tries to prevent further crimes related to the activities of the legal person. The Jsz. defines a minimum fine of 500,000 HUF and states that the maximum fine may be three times the gained or targeted benefit. Defining a relative maximum is reasonable because the financial background of legal persons may be diverse. However, the legislator also aims at achieving a general deterring effect through repressive sanctions which may help in preventing further crimes. The court is free to define the rate of the fine, which means that it may remain below the amount of the benefit. If the gained or targeted benefit is difficult to define or its definition would cause unreasonably high costs, the court may make an estimate on its own. If the benefit is of non-pecuniary nature, the court may base its decision on the financial situation of the company. The minimum amount of fine is 500,000 HUF also in this case. In lack of voluntary compliance the fine may be enforced in line with the general rules of court enforcement.

These sanctions may be very serious. The company's activities may be banned, the fine may be as high as three times the benefit, the procedure is registered in the company registry, and the company's reorganisation or liquidation is prohibited. The stricter rules are probably results of the implementation of EU norms, which show the EU's strict policies against financial crimes. It shall not be forgotten though that these may be applied against the legal person even though

its procedural position, its rights and obligations are not clear, as it is described in section 4 herein.

## **4. Procedure**

### **4.1 Some procedural issues**

With reference to the before written it is necessary to examine the basic procedural features before describing the detailed procedural rules of the Jszt. The first and most important problem is the position of the legal person in the procedure. The legal person is not accused, as this position is reserved to natural persons. The Jszt. stipulates that it cannot be in any other position defined by the CCP either. This raises the question of who the legal person is in the procedure, especially when there is no accused, but the criminal procedure is conducted merely for sanctioning the legal person. It also raises the question of what the rights and obligations of the legal person are, because in lack of a defined position these are difficult to determine.

Even though the Jszt's background law is the CCP, criminal law does not use analogy, which means that the rules about the accused cannot be used for the legal person. In case of the representative of the legal person the Jszt. stipulates that it is in a position very similar to that of the accused's defence lawyer, but later it lists exceptions and special regulations, which means that this analogy cannot be used for this position either. The lack of the definition of the legal person's position leads to uncertainty and to unfairness, because it is subject to criminal procedure (regardless of the lack of criminal responsibility), but it is not entitled to resort to all rights which are available for the other subject, the accused.

One of the main problems arising from this is the lack of the right to remain silent and to withhold evidence. A basic right of the accused is not to provide evidence against himself. The legal person awaiting sanctioning shall have the same opportunity, but the law does not provide so. The representative (as he acts under the rules about the defence lawyer) cannot be heard as witness, but for example the witnesses cannot refuse giving statement based on the interests of the legal person (but they may do so in their own or their relative's interest). The legal person's legal representative (in this position, not as accused) may be ordered to provide documents, data, other information to the investigation authority about the legal person and its possible involvement in the criminal act.

The failure of the Jszt. to provide clear regulations about the legal person's position and right leads to a rather limited scope of use in practice. Since 2004 the Jszt. has been used only in few cases, which shows that law enforcers favour and trust the "old-fashioned" and well detailed procedures regulated by other fields of law.

### **4.2 Rules of procedure**

If it seems to be necessary to apply sanctions against legal persons in criminal procedure, the authorities should do so in the procedure conducted against the accused. This means that it is not necessary to initiate a separate civil procedure, but the criminal court will decide about the claims against the legal person. The court which proceeds in the case of the natural person will have jurisdiction to proceed against the legal person.

It is an important rule that the legal person is entitled to the legal assistance of a lawyer throughout the procedure (herein after referred to as representative. Confusion may arise from

the terms legal representative and representative. The former one is used for the representative of the legal person defined by law [CEO, manager, etc.], who may easily be accused in the criminal procedure. Representative refers to the lawyer acting in favour of the legal person.). The lawyer shall act in favour of the legal person, as its representative, based on authorization by the legal person's legal representative or appointment by the authorities. However, the accused, its relative or defence lawyer cannot give authorization for the representation of the legal person, and the accused's lawyer cannot act as representative. The reason for this is the before mentioned circumstance that it is often the legal person's legal representative who sits on the accused's bench, therefore there might be a conflict of interest between him and the legal person. The representative shall have similar rights and obligations as the defence lawyer, regulated by the CCP, unless the law provides otherwise. In general it may be pointed out that the representative shall prove interest to be present at certain investigative acts and to have access to certain documents.

Within this scope, the representative

- may be present at investigative acts if the witness statement, the expert opinion, or the investigative actions aims at the clarification of the legal person's relationship with the case, or if the house search is conducted on a property used by the legal person
- may have access to documents concerning the legal person after the closure of the investigation
- may be present at hearings, may submit proposals and remarks if they are related to the legal person, may speak and ask questions from those questioned by the court. The latter rights may be exercised also by the legal representative of the legal person.

It is important to add that the legal person cannot act as "interested third party" in the criminal procedure. Such position is reserved for those persons, who suffer damage due to the criminal procedure, but are not involved in the commission of the crime in any way. The legislator considered it necessary to add this rule and to exclude the legal person from falling into this position. However, the CCP and the Jszt. have not established a new, separate position for the legal person.

#### **4.3 Notification about the criminal procedure**

If the legal person is involved in the procedure, the prosecutor shall immediately notify the court of registration. The prosecutor shall inform the court about

- the initiation and continuation of investigation;
- the termination or suspension of the investigation, also if despite this fact the sanctioning of the legal person is expected;
- about the decision according to which the legal conditions of the application of sanctions are not met; and
- in case of filing charges at court about the proposal for sanctioning the legal person.

The criminal court with jurisdiction shall also notify the court of registration about the final termination of the procedure and about the applied measures. Such notification shall be registered into the files of the legal person managed at the court of registration. If the legal person's activity is supervised by another institution, it shall also be notified. It is possible to seize the property of the legal person in order to ensure the payment of the expected fine. The authorities may seize objects, rights with material value, claims or contractual amounts.

#### **4.4 Investigation**

The legal person usually gets involved in the criminal procedure during the investigation phase. It is possible to expand the procedure also during the court phase, but it is rather rare. If during investigation information emerge which assume the application of any measure against the legal person, the investigation authority may expand the investigation to the relationship of the crime and the legal person. In such case the legal person shall be notified about it at least 8 days before the presentation of the case files, and should ensure its legal representation. If it fails to authorize a lawyer the investigation authority will do so ex officio. If later the investigation authority concludes that it is not necessary to apply any sanctions against the legal person, it shall notify the legal person and the court of registration. The representative shall be notified about the day when the case files are presented.

If based on the results of the investigation the prosecutor considers it necessary to sanction the legal person, he shall include this proposal into the indictment. Next to all other necessary information the indictment shall contain the identification data of the legal person, the data of its legal representative(s) and the prosecutor's proposal about the applicable sanction. The representative is entitled to a copy of the indictment.

Contrary to the general rule, the participation of private prosecutor (the victim) is not allowed if a legal person is involved in the procedure.

The general rules of the court proceedings are applicable, which means that the prosecutor shall be present at all hearings, and the court in its judgment shall fully decide about the charges against the legal person.

#### **4.5 Termination of the procedure during the pre-trial activities of the court**

The court may terminate the procedure against the legal person during the pre-trial phase (the preparations of the hearing) if the prosecutor withdrew the charges or the legal person is terminated. The court shall act similarly if the termination concerns the accused in relation to whom the prosecutor proposed the application of measures against the legal person, unless the special conditions of objective responsibility are met. It should be noted, however, that if the notification about the involvement of the legal person in the procedure has already happened, the legal person cannot initiate its own termination in any procedure. During the trial phase the legal person's representative is entitled to act like a defence lawyer. This means that it may submit proposals and remarks right after the defence lawyer and may impose questions to those questioned by the court. If the necessity to involve a legal person into the procedure emerges in the trial phase, the hearing shall be postponed, the legal person notified and shall be allowed to participate at the next hearing. In his final speech the prosecutor requests the court to apply sanctions against the legal person, gives his reasons, but shall not specify the details of such sanctions.

Obviously, after the defence lawyer's final speech the representative of the legal person may speak and submit proposals and remarks concerning the legal person. After the delivery of the judgment he may also exercise his right to appeal after the statement of the defence lawyer. If the legal person's property was seized during the procedure the seizure shall be dealt with by the court, even if the first instance judgment is not final. If the prosecutor proposes the application of sanctions against the legal person, the court may apply sanction in its decision,

or may reject the proposal, or may decide to reject the application of the measure if it was unfair for the legal person.

It is a strange regulation that if the prosecutor proposed the application of a measure, but the court acquits the accused or terminates the procedure, the court does not have to deliver separate decision about the termination of the procedure in relation with the legal person, nor it has to mention this fact in the terminating decision or its judgment. This regulation is worrisome because in this case the legal person is not sanctioned, but its situation is not clarified towards the court of registration and the outside world.

However, if based on this act the legal person shall be sanctioned regardless of the participation of the accused, the procedure cannot be terminated in the mentioned situation.

If the legal person is sanctioned, it shall bear part of the costs of the procedure. Those expenses and costs shall be borne by the legal person which emerged in relation with the investigation of the legal person's relationship with the crime.

#### **4.6 Appeal**

The rules of procedure for the court of second instance are very similar to the general rules. The prosecutor, and the two representatives of the legal person shall be entitled to appeal against the judgement. Obviously, the latter ones may appeal only against the parts which concern the legal person, and in favour of the legal person. The prosecutor may appeal in favour of and against the legal person. This latter is the condition of any kind of aggravation by the court of second instance, and it shall aim at the application of measure or graver measure. It is a procedural regulation that if there is no other appeal than the one concerning the legal person, the court of second instance shall not examine the other parts of the judgment. If it finds the facts unfounded it may establish different facts. If the court of second instance modifies the part of the judgment which concerns the legal person, it may apply measure(s) or may reject the application of any measures.

The court of second instance annuls the judgment of the court of first instance if there was no proposal from the prosecutor for the application of measures; or if the judgment of the court of first instance is unfounded and the court of second instance is unable to correct the decision, it shall send the case back to the court of first instance. It is a very important regulation that if the natural person in relation to whom the legal person was sanctioned is acquitted, or the court of second instance terminated the procedure or annulled the judgment of the court of first instance, the court of second instance shall annul the part which concerns the legal person and shall send the case back to the court of first instance. However, if the acquittal or termination was based on reasons like the death, mental illness, etc. of the accused, the part of the judgment concerning the legal person cannot be annulled.

The court of second instance shall also decide about the already or newly applied seizure if the before mentioned judgment part is annulled and repeated procedure is ordered. The procedure of the court of third instance is similar. It cannot be initiated by the representatives of the legal person, but if a third instance procedure is initiated in line with the law, the court shall review the part of the judgment concerning the legal person *ex officio*.

#### **4.7 Extraordinary review of the final judgment**

New procedure may be initiated against the final judgment in line with the general rules, as they are applicable also for the legal person. This means that the request for new procedure may be submitted if new evidence, new facts emerged, due to which the original decision about the legal person shall be changed materially. It may be also initiated if more than one judgments ordered to sanction the legal person for the same act. Besides, if the request for new procedure concerns the accused in relation with whom the legal person was sanctioned, the provisions of the judgment concerning the legal person shall be reviewed ex officio. Only the representatives of the legal person are entitled to initiate review merely against the provisions concerning the legal person.

The review of the part of the judgment concerning the legal person may be initiated if the measure was applied or ignored in violation of the material or procedural rules of criminal law. The rules of procedure are similar to the rules described in the CCP, but each provision should be interpreted in relation to the legal person. If the accused in relation to whom the legal person was sanctioned is concerned in the review process, the part of the judgment relevant for the legal person will be reviewed ex officio. Only the prosecutor and the representative of the legal person are entitled to initiate review merely against the provisions concerning the legal person. If the prosecutor initiates review against the legal person, the deadline is six months. The Curia may correct the wrong judgment or may return the case to a lower court. The final decision of the Curia cannot be reviewed in such procedure.

#### **4.8 Miscellaneous procedural rules**

Some of the special procedures regulated by the CCP may be applied also if a legal person is concerned, while others are not available in this case. In general, the special procedures which aim at speeding up or shortening down the procedure are not available. However, if the accused's location is unknown, the prosecutor may initiate court proceedings against the legal person based on the regulations of this act.

When the final decision is delivered and the legal person is sanctioned, the court of registration will act in order to enforce the sanction.

The act regulates one more interesting situation: if the investigation is suspended or terminated due to any reasons listed in Art. 3 par (2) of Jszt. (objective responsibility), but data show that the legal person shall be sanctioned, the prosecutor shall submit his proposal to the court which would have had jurisdiction over the crime in question. If such court cannot be determined, the court which has territorial jurisdiction at the seat of the legal person shall proceed. This invokes a new rule of jurisdiction. In such cases the investigation aims at revealing the details of the relationship of the crime and the legal person. The legal person shall be notified about such actions during or before the end of the investigation, shall have to right to representative and may observe the files. There is no appeal against the court's decision, but the prosecutor, the legal person's representative and other concerned persons may request a hearing. After this the procedure returns to the general course.