

# Criminal Responsibility of Legal Persons Introduced by the Special Tribunal for Lebanon

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*In the first part of the paper, the author introduces decisions of the Special Tribunal for Lebanon, which, in the end, led to acknowledging the criminal responsibility of legal person for the first time in history of international criminal law. In the second part, the author comments on distinct decision and he considers whether this decision was abrupt and arbitrary or not. Finally, the paper suggests possible implications of the judgement for further development of international criminal law and judiciary.*

*Keywords: criminal responsibility of legal persons; criminal responsibility of corporations; judicial creativity; Special Tribunal for Lebanon; development of international criminal law*

## 1. Introduction

The Special Tribunal for Lebanon (hereinafter only “STL”) was created upon an agreement between the United Nations and the Lebanese Republic. According to art. 1 of STL’s Statute, jurisdiction (*ratione personae*) of STL is only over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafik Hariri and in the death or injury of other persons (crime of terrorism).<sup>1</sup> However, according to art. 60bis of Rules of Procedure and Evidence (adopted by judges of STL themselves, hereinafter only “Rules”) STL, in addition to the jurisdiction given to it by its Statute, STL has also jurisdiction over contempt and obstruction of justice. This extension of jurisdiction has arisen from common law system doctrine of inherent powers where a court may or-in some cases-even must exercise jurisdiction that is ancillary or incidental to its primary jurisdiction and is necessary to ensure a good and fair administration of justice.<sup>2</sup>

On 31 January 2014, Ms Karma Mohamed Tahsin Al Khayat and Al Jadeed S. A. L. (TV Station)<sup>3</sup> as well as Mr Ibrahim Mohamed Ali Al Amin and Akhbar Beirut S. A. L. (TV Station)<sup>4</sup> were charged, in sum with three counts, of contempt and obstruction of justice.

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<sup>1</sup> See more *e.g.* Gillett & M. Schuster, *Fast-track Justice: The Special Tribunal for Lebanon Defines Terrorism* In *Journal of International Criminal Justice.*, vol. 9, no 5, 2011; B. Saul: *Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism* In *Leiden Journal of International Law.* 2011. Available online: <https://ssrn.com/abstract=1865564> (09 October 2017); or L. Mareček: *Terrorism as a crime under international customary law?* In: *The Lawyer Quarterly.* vol 7, no 2., 2017, pp. 73-86. Available online: <https://tlq.ilaw.cas.cz/index.php/tlq/article/view/231> (09 October 2017).

<sup>2</sup> Case no. STL-14-05/PT/CJ/F0054/20140724/R001208-R001242/EN/dm. Decision of Contempt Judge, 24. July 2014. paras. 29-30.

<sup>3</sup> Case no. STL-14-05.

<sup>4</sup> Case no. STL-14-06.

These TV stations were informing public about facts that were not supposed to become publicly known (*in concreto* - information regarding the identities of individuals alleged to be witnesses before the Tribunal). As the Tribunal stated, the freedom of expression, which carries special duties and responsibilities, is not without restrictions. There is a need to safeguard the integrity of STL's proceedings (which includes protecting its witnesses) and so the Tribunal has inherent jurisdiction over contempt and obstruction of justice, whether or not Rules cover such (secondary but inherent) jurisdiction. In other words, "its substance and legitimacy is not derived from Rule 60 bis *per se* but rather Rule 60 bis is a manifestation of this power and not its source."<sup>5</sup>

On the other hand, the Contempt Judge (in case no. STL-14-05) held that Rule 60 bis applies to natural persons only. The Contempt Judge considers that the wording of the Statute makes clear that the Statute does not apply to legal persons (corporate entities), due to the *societas delinquere non potest* principle, for which an explicit expression of such intent of the drafter of the Statute would be required for legal persons to be criminal responsible. Moreover, Statute at several places is using masculine (he/his) or feminine (she/her) gender, but it is not using neutral gender (it/its) anywhere.<sup>6</sup> As STL's Contempt Judge said, "however preferable *de lege ferenda* it might be to have corporations answer to charges of contempt, this preference does not suffice to solidly ground the Tribunal's jurisdiction *de lege lata*."<sup>7</sup>

Rules of Procedure and Evidence dictates that the rules shall be interpreted in a manner consonant with the spirit of the Statute and, in order of precedence:

- a) the principles of interpretation laid down in customary international law as codified in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties (1969),
- b) international standards on human rights,
- c) the general principles of international criminal law and procedure, and, as appropriate,
- d) the Lebanese Code of Criminal Procedure.<sup>8</sup>

Therefore, the Contempt Judge was also analysing the issue according to these rules of interpretation and was examining if STL does not have such power implicitly, because (as he noted) such explicit power could not be found in Statute of STL.

The Contempt Judge said that according to the Vienna Convention (1969), the rules must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".<sup>9</sup>

There are situations where a judge must overcome silence of a legislator (in this case Lebanon government and the UN), but this is a situation, where such a broader interpretation would be against common meaning of a term "person" in international as well as in a domestic criminal law usage. No institution of international criminal justice ever decided to sentence a legal person. Although international criminal law neither consists of a rule that explicitly excludes such criminal responsibility of a legal person.

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<sup>5</sup> *New TV S.A.L., Karma Mohamed Tahsin Al Khayat* Case no. STL-14-05/PT/AP/AR126.1 Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, Appeals Panel, 02. October 2014. para. 32.

<sup>6</sup> *New TV S.A.L., Karma Mohamed Tahsin Al Khayat* Case no. STL-14-05/PT/CJ/F0054/20140724/R001208-R001242/EN/dm. Decision of Contempt Judge, 24. July 2014. para. 63.

<sup>7</sup> *Ibidem*, par. 68.

<sup>8</sup> Rule 3 (A) STL RPE.

<sup>9</sup> *Ibidem*, paras. 70-71.

With respect to domestic legal systems, it is true that there is a trend towards bringing corporate entities to criminal justice, but on the other hand, this trend is not world widely common and many of important legal systems do not hold this attitude (the Contempt Judge used examples of Italy and Germany).<sup>10</sup> A strong argument in favour of a criminal responsibility of legal persons is that they might be responsible also under Lebanese criminal law, so its responsibility is foreseeable for them. The Contempt Judge had certified the issue for an appellate resolution, despite of that he was clearly of mind that: “the express language of Articles 3 and 16, and the lack of reference to an “it” with respect to an accused, in light of the lack of consensus in the international system and among domestic systems on corporate criminal liability, compel a finding that corporate liability under Lebanese law is inapplicable here.”<sup>11</sup> It should also be noted that in case of two possible interpretations an issue should be solved according to the principle *in dubio pro reo*, as a one of general principles of criminal justice.<sup>12</sup>

## 2. Opinion of Appeals Panel in its Interlocutory Decision

Appeals Panel issued a different legal opinion about a legal responsibility of legal persons in its decision on an interlocutory appeal, which was certified by the contempt judge. The aim of second part of the article is to present its arguments.

It is necessary to interpret law in a such manner as to render them effective and operational. Appeals Panel distinguished interpretation in a spirit of the law and in a letter of the law. The first one is prescribed by Rule 3 (A) of Rules of Evidence and Procedure and by art. 31 and 32 of Vienna Convention (1969). Rule 3 (B) prescribes the second one and it should be applied only when a usage of previous interpretation had no satisfying outcome. Appeals Panel used teleological interpretation of distinct provisions of the Statute of STL. Hence, there was no need for rule 3 (B) to be applied and that resulted to the principle of effectiveness overriding the principle *in dubio mitius* in such case.<sup>13</sup>

As was noted above, there are, in total, four partial rules for an interpretation of distinct provisions before principle *in dubio mitius* (*in dubio pro reo* or *in favour rei*), expressed in the rule 3 (B), might be applied.

a) Interpretation according to the Vienna Convention on Law of Treaties (1969). Rules are using mere word “person” and there is nothing in Rules that limits ordinary meaning of person only to natural persons. On contrary, ordinary meaning of a term “person” in the legal context consists of both natural and legal persons. If drafters of the Rules wanted to exclude legal persons, they would do it explicitly, as they did so in case of victims in Rule 2 of the Rules. Narrower interpretation of the term “person”, due to the usage of word like him or her in the Statute, is erroneous interpretation in a letter of the law, rather than adequate interpretation in a spirit of the law. Furthermore, Arabic and French language version of the Statute is genderless. The fact that other bodies of international criminal justice constituted by UN Security Council have not prosecuted any of legal persons just means nothing more than that there was no need to adjudicate such issue before. Appeals Panel also disagreed with Contempt Judge on that the maxim *societas delinquere non potest* is still actual regarding comparison of domestic criminal systems.<sup>14</sup>

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<sup>10</sup> *Ibidem*, paras. 74-75.

<sup>11</sup> *Ibidem*, para. 83.

<sup>12</sup> Rule 3 (B) STL RPE.

<sup>13</sup> *New TV S.A.L., Karma Mohamed Tahsin Al Khayat* Case no. STL-14-05/PT/AP/AR126.1 Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, Appeals Panel, 02. October 2014. paras. 27-29.

<sup>14</sup> *Ibidem*, paras. 36-44.

- b) Interpretation according to the International Standards on Human Rights. There is a trend of extension of human rights standards and positive obligations applicable to legal entities. Appeals Panel is cognizing efforts in this area and that is an indicator of an evolving practice in relation to corporations at the global level, with respect, in particular, to remedies for their transgressions. These judicial remedies might have also character of a criminal prosecution. So Appeals Panel concluded, that “judicial remedies are not barred against a legal person on account that some national laws limit the applicability of criminal law to legal persons”,<sup>15</sup> but on contrary, “...most jurisdictions appear to recognise the possibility of corporate criminal responsibility...”<sup>16</sup> Appeals Panel even disagrees with examples of Italy and German referred by Contempt Judge. In case of Germany, it is possible to impose sanctions on companies even though it is not a direct criminal responsibility. In addition, also in Germany such trend could be observed as federal state of North Rhine-Westphalia drafted a law on criminal responsibility of corporate entities. In Italy, proceedings against companies (even though not criminal in *stricto sensu*, e.g. administrative vicarious liability or administrative sanctions) might have similar practical effects.<sup>17</sup>
- c) Interpretation according to the General Principles of International Criminal Law and Procedure. IMT in its obiter dictum dismissed a notion of criminal responsibility of legal entities; nevertheless, this finding was only in its obiter dictum. Whereupon Appeals Panel recognized that, there is no decision of the international criminal body that imposed a criminal responsibility on a legal subject. Appeals Chamber is respecting also the Rome Statute of International Criminal Court that explicitly excludes legal persons in art. 25 par. 1 from *ratione personae* of International Criminal Court. However, the intend of drafters was not to codify an existing customary international law (art. 10 of Rome Statute). This narrower expression of *ratione personae* should be considered as a lack of rather political than a legal consensus. In summary, there was no decision of body of international criminal justice that was imposing the criminal responsibility, but this fact itself does not mean that STL has no authority to prosecute legal persons, as any international tribunal did not decide otherwise.<sup>18</sup>
- d) Interpretation according to the Lebanese Code of Procedure. This source of interpretation derives from a specific, hybrid character of STL. Despite of that the Rules are referring only to the Lebanese Code of Procedure (which is not actual for this issue as a source of domestic procedural law) the Appeals Panel was examining the Lebanese Criminal Code (as a source of a domestic substantive law). It is doing so regarding the art. 2 of the Statute, that stipulates Lebanese Criminal Code is applicable law, but only in a restricted manner and this article does not cover a crime of contempt. However, Appeals Panel used it in its interpretative considerations, as legal persons might be held responsible under Lebanese criminal law. Therefore, such criminal liability for contempt and obstruction of justice is foreseeable for corporations (*et ide* TV Stations) under Lebanese law.<sup>19</sup>

As was stated before, STL had have some inherent powers, in other word powers that had arisen from requirements of an effective justice. In spite of previous analysis there was no need for solving the issue with regard to the *in favour rei* principle as the issue could be solved with regard to interpretation methods that were (according to the Rules) supposed to be used. Furthermore, previous analysis had shown that neither Statute nor international law was prohibiting interpretation that concluded that legal

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<sup>15</sup> *Ibidem*, para. 48.

<sup>16</sup> J. Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 2014, p. 32.

<sup>17</sup> *New TV S.A.L., Karma Mohamed Tahsin Al Khayat* Case no. STL-14-05/PT/AP/AR126.1 Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, Appeals Panel, 02. October 2014. paras. 45-60.

<sup>18</sup> *Ibidem*, paras. 61-67.

<sup>19</sup> *Ibidem*, paras. 68-71.

persons might be held responsible in criminal manner. Hence, if such prosecution should be carried out, the STL has inherent power to do so.

This decision was not taken unanimously but in the ratio two against one with appended dissenting opinion. Dissenting Judge agrees with majority, that STL indeed had jurisdiction over contempt (extension of *ratione materiae*) due to the needs of an effective justice (doctrine of inherent powers). However, it doesn't agree that it has also jurisdiction over legal persons (extension of *ratione personae*). Such interpretation would be breach of several fundamental principles of criminal justice, namely *nullum crimen sine lege scripta, stricta* and *in dubio pro reo*.<sup>20</sup> STL is obliged to fulfil its objectives with regard to the highest standards of international criminal justice.<sup>21</sup> These standards must be understood as aimed mainly at protecting the rights of accused, in other words to ensure a fair trial. "This means that in considering the spirit of the Statute we must not only act so as not to frustrate ... the fight against impunity, but we must do so in the spirit and under the guiding light of international standards of human rights."<sup>22</sup>

Potential exclusion of legal persons from *ratione personae* does not mean that STL has no power to punish (and therefore to prevent) contempt, as there is no legal obstacle in prosecuting its employees or directors. The cases at STL are example of such case where, beside of legal persons, natural persons were prosecuted too. Therefore, suspension of the proceedings against legal persons does not supposed to mean also suspension of the proceedings in distinct cases as such.

As dissenting Judge stated, even in examples of domestic legal systems where the criminal responsibility of legal persons was actual, an explicit expression of intend of legislator to cover legal persons into field of criminal responsibility was present. According to the field of international law, the international criminal law was closest to developing a criminal responsibility for legal persons with issue of so-called criminal organizations at IMT. Even then, only natural persons could have been held criminal responsible, not organization per se.<sup>23</sup>

Dissenting judge ended with following statement:

"There is a fine line, but a line nevertheless, between a creative interpretation of the law and a violation of the rights of the accused. In the circumstances of the present case, I believe that line has been impermissibly crossed."<sup>24</sup>

The Special Tribunal for Lebanon also determined *conditions for criminal responsibility* of a legal person as the prosecutor must:

- a) „establish the criminal responsibility of a specific natural person;
- b) demonstrate that, at the relevant time, such natural person was a director, member of the administration, representative (someone authorized by the legal person to act in its name) or an employee/worker (who must have been provided by the legal body with explicit authorization to act in its name) of the corporate Accused; and

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<sup>20</sup> *Ibidem*, dissent para. 2.

<sup>21</sup> UN Secretary-General Report, UN Doc. S/2006/893, 15 November 2006, paras. 2, 7, 31, 36.

<sup>22</sup> *New TV S.A.L., Karma Mohamed Tahsin Al Khayat* Case no. STL-14-05/PT/AP/AR126.1 Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, Appeals Panel, 02. October 2014. dissent para. 7.

<sup>23</sup> *Ibidem*, dissent paras. 17, 19.

<sup>24</sup> *Ibidem*, dissent para. 29.

- c) prove that the natural person's criminal conduct was done either (a) on behalf of or (b) using the means of the corporate Accused.<sup>25</sup>

In case in which an interlocutory appeal was filed a legal person was not after all sentenced, as the TV station (Al Jadeed) was not found guilty under above-mentioned conditions.<sup>26</sup> However in second case of contempt, with regard to such decision on interlocutory appeal, the TV station (Akhbar Beirut) was sentenced for a fine of 6000 € (alongside with fine to journalist), with taking in account the fact, that this is the first case of sentencing of legal person and therefore its level of foreseeability.<sup>27</sup>

### 3. Discussion

STL extended its jurisdiction (*ratione personae*) also over legal persons because of the necessity of effective justice. It is doubtful if such extension in this case was proportional in comparison to the principle of legality (*nullum crimen sine lege*). In a distinct case letting legal person unpunished would not mean, that offence of contempt had to be unpunished as such. Also in the analysed case, there was also a natural person, which was punished beside TV station.

A significant importance for the issue of the responsibility of members of corporations has a doctrine of a superior responsibility, which could be used to punish not only concrete perpetrators but also their superiors (such as managers of corporations, if of course, criteria are met).<sup>28</sup> Prosecutor of ICC in its report said, that „those who direct mining operations, sell diamond or gold, extracted in the conditions ... could also be authors of the crimes, even if they are based in other countries,<sup>29</sup> hence, ICC indeed cannot condemn corporation as such (as its *ratione personae* its explicitly formulated in narrower scope, to natural persons only) but among accused could be also e.g. managers of such corporation. Such attitude was applied in so called Media Case (International Criminal Tribunal for Rwanda), where „hate radio and hate-spewing magazine ... helped incite the Rwandan genocide ... and it is significant that the ICTR brought the executives of these media outlets – but not the corporate entities themselves – to justice on ground of superior responsibility.<sup>30</sup>

Traditional argument against it is that legal persons have “neither bodies to be punished, nor souls to be condemned.”<sup>31</sup> Among other arguments (more modern ones), fact that fining the legal persons responsible could lead to commoditizing of moral values (*e. g.* economic reasoning between fines and benefits from crimes) is pointed out. On the other hand, there are also reasons for which it would be

<sup>25</sup> Case no. STL-14-05/T/CJ/F0176/PRV/20150918/R005223-R005280/EN/dm, Public redacted version of Judgement of Contempt Judge, 18. September 2015. par. 72.

<sup>26</sup> Case no. STL-14-05.

<sup>27</sup> Case no. STL-14-06/S/CJ/F0265/20160905/R008239-R008247/EN/dm, Reasons for sentencing Judgement of Contempt Judge, 05. September 2016.

<sup>28</sup> That means managers shall be criminal responsible beside of corporation if following criteria will be met: a crimes were committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where a) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; b) the crimes concerned activities that were within the effective responsibility and control of the superior; and c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

<sup>29</sup> Second Assembly of States Parties to the Rome Statute of the International Criminal Court Report of the Prosecutor of the ICC, Mr Luis Moreno-Ocampo 8 September 2003. Available online: [https://www.icc-cpi.int/NR/rdonlyres/C073586C-7D46-4CBE-B901-0672908E8639/143656/LMO\\_20030908\\_En.pdf](https://www.icc-cpi.int/NR/rdonlyres/C073586C-7D46-4CBE-B901-0672908E8639/143656/LMO_20030908_En.pdf) (09 October 2017).

<sup>30</sup> C. Kaeb, The Shifting Sands of Corporate Liability under International Criminal Law In: *George Washington International Law Review*, vol. 49, no. 2, 2016. pp. 375-376.

<sup>31</sup> Baron Edward Thurlow (1844) cited in *Ibidem*, pp. 352-353.

beneficial to punish legal person beside of natural one. „Imposing criminal penalties on the corporate entity itself achieves retribution for the collective action and provides incentives for structural change at the firm level, “<sup>32</sup> since prosecuting only the responsible individuals might fail to change corporate culture that in some cases even encourage illegal behaviour.<sup>33</sup>

It is indeed true, that there is a trend of criminalizing of legal persons behaviour, so the society of states (or at least not marginal part of it) is concerning such attitude as beneficial. Nevertheless, such trend is not overwhelming yet. *Constatation* that punishing of legal persons has its reason and is therefore desirable is opinion about how the law should be (opinion *de lege ferenda*) and it should not be confused with a duty of judge to decide upon the law, as it is (to form an opinion *de lege lata*). In an area of criminal justice, it is necessary to have a strict approach to the issue of judicial creativity, regarding a specific function of criminal law, hence its methods. The methods which criminal law uses for achieving its aims are of the most serious ones and for that very reason, they had its form of *ultima ratio*.

Such arguments, as had the defendants, could also be found in the United States Court of Appeals decision, as it decided that it cannot punish company Royal Dutch Petroleum, as (in its words) such rule of international law is not only absent, but such concept was even refused.<sup>34</sup> As the Second circuit Appeals Court of USA said, there is no explicit notion in international law about rules that are imposing criminal responsibility to a legal person, rather otherwise.

Closest to drawing of such responsibility was the IMT but it did not do that. It is possible to allege, that at least at time of its decision, such rule was absent in international criminal law. It is true, that in times when IMT was deciding its cases, there was no such trend of imposing criminal responsibility to legal persons. This leads to question – “when such rule was formulated?” In none of international treaties was such explicit notion, although such rule might have customary form. Where one could find its essential elements (opinion *iuris necessitates* and *usus longaeus*) if there was no trend on international level and praxis on national level is not still overwhelming and unanimous (it is rather a mixture of criminal, civil or administrative responsibility systems from one to another legal system)? Answer to this question is not to be found in STL’s decision. Author of this paper suppose, that in case of criminal responsibility of distinct TV stations it is rather a matter of judicial creativity than a matter of finding of customary rule and that is (in criminal context) necessarily in conflict with principle of legality.

Attitude that argue in favour to sentencing the legal persons on grounds that in others branches of international law responsibility of these is drawn (in particular in international human rights law) is not sound, forasmuch as it results in legal syncretism, where takes place mixing of methods of different branches of law. This does not take into an account that different branches have a different purpose, historical context, basis and nature of remedies. International law jurist should take into account that international law is not a monolith but (similarly to national law) rather a complex system of rules and its connections and so he/she should approach to it accordingly.

Aforesaid results into two comments. Whether decision of STL was just or not it is effective, it is contribution to the mosaic of international criminal judiciary, and as such, it will be likely important for resolving the issue of the criminal responsibility of legal persons on international level in the future.

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<sup>32</sup> C. Kaeb, A New Penalty Structure for Corporate Involvement in Atrocity Crimes: About Prosecutors and Monitors In: *Harvard International Law Journal*, vol 57, 2016. pp. 21.

<sup>33</sup> C. Kaeb, The Shifting Sands of Corporate Liability under International Criminal Law In: *George Washington International Law Review*, vol. 49, no. 2, 2016. p. 370-371.

<sup>34</sup> Customary international law has steadfastly rejected the notion of corporate liability for international crimes, and no international [criminal] tribunal has ever held a corporation liable for a violation of the law of nations.“ *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 120 (2d Cir. 2010). For sake of completeness it is necessary to add, that this rejecting attitude was not adapted by other circuits and the Supreme court did not considered this issue at all.

Such prediction is not a mere opinion of the author, but its decisions are to be found also in actual activities of International Law Commission.<sup>35</sup> It is likely that it might be used as one of arguments for predictability, hence justness, in next cases of the criminal responsibility of legal persons in the future. Either by STL or by other institutions of the international criminal justice.

Secondly, if a distinct decision was not only a matter of admissible judicial creativity, but it was the case of arbitrariness, then this decision (presumably) will not be respected by the international society, respectively it will be rejected by other international criminal tribunals as a dead-end that violated the principle of legality.<sup>36</sup> There is a trend of rooting of the principle of legality also in international criminal law, even though it is still more flexible, than it is typical on national level (mainly in continental legal family).<sup>37</sup> This principle dictates that an explicit expression of the criminal legal responsibility of legal persons is required, as its presence is not without further natural for criminal law in general. Such explicit expression is also typical for countries that included such concept in their legal systems.

If the international society will depart to course towards drawing not only a civil, but also a criminal responsibility of legal persons, it will gain a powerful tool for influence on supranational corporations, which affects international course of events. Even currently, it is possible to see that responsibility of legal persons for breaching of rules of international human rights law is already present.<sup>38</sup> Disregarding of human rights, may fulfil (in serious cases as part of systematic or widespread attack against civilian population) definition of the crime against humanity. Therefore, the criminal responsibility of corporation might be viewed as a sequenced extension of their responsibility system.

It is only desirable if supranational corporations would be aware of possibility of an eventual criminal responsibility for such behaviour, hence, effects that results from criminal responsibility under international law, among other application of a principle of universality. The principle of universality dictates the obligation (and either authorisation as well) to prosecute perpetrator of crimes under international law.

Common penalty for legal persons is e.g. the confiscation of its property (as a whole or partially), or the dissolving of legal person as such. According to the previously mentioned principle, any state has an obligation to prosecute and if appropriate to punish them, including state of their domicile or state in which they have property. In other words, they should stop counting on drawing only of a civil responsibility on the national level, which is firstly appropriate to caused damages (*i.e.* compensation, whereas punishment has different function – retribution *a. o.*, hence, in terms of financial expenses for corporations, total sum of expenses for a criminal behaviour arises rapidly, not mentioning aforesaid possibility of dissolving of company). Secondly, drawing of the responsibility from national level onto

<sup>35</sup> Its analysis is beyond the scope of this paper, but ILC takes and moderate approach and is not acknowledges only criminal responsibility of legal person, but rather on contrary, it is creating a place for discretion for states to choose its own attitude (criminal, civil or administrative). From that is could be concluded, that criminal responsibility is still not part of international criminal law, even after STL's decision. For links to STL's decisions see *Report on the work of the sixty-eighth session (2016)*, 2 May-10 June and 4 July-12 August 2016. General Assembly Official Records Seventy-first session Supplement No. 10 (A/71/10), pp. 262, 265. Available online <http://legal.un.org/docs/?path=../ilc/reports/2016/english/chp7.pdf&lang=EFSRAC> (09 October 2017), see also Draft Articles on Crimes Against Humanity *Report of the International Law Commission Sixty-ninth session*, 1 May-2 June and 3 July-4 August 2017. General Assembly Official Records Seventy-second Session Supplement No. 10 (A/72/10). Available online: [http://legal.un.org/docs/?path=../ilc/reports/2017/english/a\\_72\\_10.pdf&lang=EFSRAC](http://legal.un.org/docs/?path=../ilc/reports/2017/english/a_72_10.pdf&lang=EFSRAC) (09 October 2017).

<sup>36</sup> As was noted in citation above, there was no consensus of international society on this issue not only before STL's decision, but it is not present alike nowadays. See *ibidem*.

<sup>37</sup> Also O. Svaček, *International Criminal Law*. Olomouc: Univerzita Palavckého v Olomouci, 2012. p. 32.

<sup>38</sup> E. g. also in cited case *Kiobel v. Dutch Petroleum* the corporate liability concerned Royal Dutch Petroleum's alleged complicity in human rights violations in their extractive operations in Nigeria. See C. Kaeb, *The Shifting Sands of Corporate Liability under International Criminal Law In: George Washington International Law Review*, vol. 49, no. 2, 2016. p. 360.



supranational corporation might encounter with factual problems, even more in cases of less influential members of the international society, where the principle of universality is able to overcome also this issue.

For these reasons, they should start accounting also with the principle of universal criminal responsibility, which is (unlike of civil sanctions) not based on grounds of restitution, compensation or satisfaction, but on grounds of repression, prevention and of retribution. Severity of criminal sanction, therefore, is not necessarily appropriate to a caused damage or injury, as its proportionality is compared with functions of criminal law, achievement of which also justifies the imposition of significantly stricter sanctions.

## 4. Conclusion

In the contemporary international law, a legal subjectivity of individual is widely accepted, where in a field of human rights a tendency of its extension towards legal persons is to be seen. Similar tendency was not possible to be identified in branch of the international criminal law.

Legal persons (or their units) were subjects of interest of IMT, but not in a sense of taking them criminal responsible under international law. Hence, it is not possible to suggest that IMT constituted such individual criminal responsibility of legal persons; rather it is an example of breaching of *nulla poena sine culpa* principle, as a result of application of IMT's Charter in a connection with a subsequent national legislation that was reflected in its judgement.

Milestone can be dated not sooner than to autumn 2016, when a sentencing judgement of STL came into force. STL was first institution of international criminal justice (of hybrid character) that acknowledged its jurisdiction over legal persons.

STL formerly hesitated to extend its *ratione personae* also to legal persons, even though it had no such problem in matter of its *ratione materiae* extension to offences of contempt and obstruction of justice.<sup>39</sup> Different attitude is brought by Appeals panel, that with a reference to Lebanese law, as well as to general rules of interpretation of international law, brings a different and more extensive interpretation of distinct provisions of STL's Statute.

Whether the legal situation before STL's judgement was different or not, this might become an important impulse for further development of international criminal law, a base stone, even if at the beginning of that would be decision that was not in a conformity with the law. STL's judgement is indeed the breaking point in development of the international criminal law as this judgement was already reflected in an actual work of International Law Commission, but description and analysis this activity is beyond the scope of this paper. Other institutions of international criminal justice will be in front of a choice either to refuse concept of the criminal responsibility of legal persons under international law or to accept it and argue in favour to existence of such rule in the international criminal law (possibly also) with a reference to this decision.

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<sup>39</sup> Case no. STL-14-05/PT/CJ - F0054/20 140724/ROO 1208-ROO 1242/EN/dm. para. 65.