



The Role of Compliance in Preventing Corporate Criminal Liability in Albania

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Abstract: *Recent years have seen digital transformation and market globalization significantly impact the nature of crime, leading to a rise in economic crime and increased involvement of legal entities in these activities. To address and reduce these forms of misconduct, many organizations are investing resources in developing risk management strategies and implementing strong compliance programs, which act as safeguards against corporate criminal liability.*

Currently, criminal compliance is gaining increasing importance in corporate governance policies, serving as an internal prevention tool to avoid involvement in crimes, financial sanctions, or other unlawful situations that could damage the company's reputation and destabilize its market position. In Albania, a thorough legal framework exists to deter and penalize criminal conduct among corporations. In conjunction with governmental initiatives and regulations, Albanian enterprises, motivated by international corporate governance practices, are increasingly emphasizing the establishment of compliance programs to mitigate the risk of potential corporate criminal liability.

1. INTRODUCTION

In Albania, over the years, little has been said, if anything at all, about the connection between the criminal liability of legal entities and compliance; without recognizing that the relationship between corporate criminal liability and compliance is jointly supportive and complementary, rather than two opposing elements that require a corporation to split its resources. This is most clearly seen when considering their purpose, as compliance is one of the mechanisms for protection against corporate criminal liability (Teichmann et al., 2023). That's why compliance is an important tool within economic criminal law because its main objective is the same as that of criminal law: **prevention** (Torres-García & Caicedo-Bastidas, 2023).

Different authors consider compliance to be an integrated model used to meet regulatory requirements, thus also preventing crime in the criminal realm (Casanovas, 2017). In other words, it involves the development of a set of policies and business methods to avoid violations of law and corruption within companies (Torres-García & Caicedo-Bastidas, 2023). As the name itself indicates, compliance, as a risk management and prevention model, aims to prevent, detect, and significantly reduce the likelihood of committing crimes or any other violations of the law within business activities (Bacigalupo, 2021). Given this objective, it is clarified that the effectiveness of the approach and the management system is crucial for the exemption of criminal liability of the legal entity (González, 2016).

Among other types of compliance, criminal compliance has recently gained greater importance as a mechanism to prevent criminal risks for legal entities. In fact, criminal compliance is a

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specific and distinct area within economic criminal law, representing the highest level of prevention and reduction of serious risks that expose business activities to potential criminal liability (Bacigalupo, 2021). Therefore, as in many other countries, at the core of national strategies and policies in Albania too, the emphasis has been placed more on the prevention of criminal acts by both natural and legal persons than on punishment (National Strategy for the Prevention of ML & TF, 2024). As many other legal systems, in Albania, we are witnessing a shift from repressive criminal law to a preventive criminal law, where the legal interest is supra-individual, including economic crime, to follow social development, ensure public security, and respond to protection demands (Pereira & Mayrink, 2020).

This way, criminal compliance policies and programs are built as a form of mutual support between private entities and the government, with the aim of preventing the increase of economic crimes by using methods that ensure the improvement of overall internal controls, as well as the capacity to prevent and pursue any illicit actions (Pereira & Mayrink, 2020). This creates the need to develop a risk plan to identify, assess, and minimize the criminal risks of the company as a prerequisite for the effective operation and advancement of a useful compliance program (Bulnes, 2019).

2. CORPORATE CRIMINAL LIABILITY IN ALBANIA

The criminal liability of legal entities is initially outlined in Article 45 of the Criminal Code of the Republic of Albania, which states, among others that: “Legal entities, with the exception of state institutions, are criminally responsible for criminal offenses committed in their name or for their benefit by their bodies and representatives” (Criminal Code, 1995). Based on this provision, which establishes in the second paragraph that criminal acts, punitive measures, and the procedures for their imposition and execution are regulated by a special law, Albania adopted Law No. 9754 “On the Criminal Liability of Legal Entities” in 2007.

In this regard, it should be emphasized that, under the current Albanian legislation, the special law only sets out the rules for liability, criminal proceedings, and the types of punitive measures that may be applied to legal entities for the commission of a criminal offense (Law no.9754, 2007). Unlike the legislation in other countries, this law does not specify the criminal acts for which an entity should be held liable, leaving open the possibility of the entity committing any potential criminal offense (Albanian School of Magistrates, 2024). The core of the criminal liability of legal entities in Albania is established in the Criminal Code, and the special law only specifies specific aspects related to the application and interpretation of the emergence and maintenance of criminal liability (Bozheku & Elezi, 2012).

In this context, the Constitutional Court of the Republic of Albania has stated that the special law is limited to regulating the type and extent of the punishment to be applied to legal entities, without creating any new criminal offense to be applied to these entities or interfering with the determination of their criminal liability as established by the Criminal Code (Case no. 38, CC, 2013).

According to the provisions of domestic legislation, for a legal entity to bear responsibility for a criminal act, two conditions must be met cumulatively:

- Firstly, the criminal act must have been committed by individuals within the circle of persons who hold high administrative, representative, or managerial positions, or by individuals under their authority, i.e., executive-level employees.
- Secondly, it must be proven that the criminal act was committed “on behalf of” or “for the benefit of” (either directly or indirectly) the legal entity (Law no.9754, 2007). Thus, the key condition

for criminal liability, under Albanian law, is that the act must be committed on behalf of or for the benefit of the legal entity. Equally essential for holding the legal entity liable is the authority of the person committing the criminal offense (Albanian School of Magistrates, 2024).

Based on the specific law, the Supreme Court of the Republic of Albania has affirmed that: “for the criminal act to have been committed ‘on behalf of’ the legal entity, it is not enough to prove that a natural person within the structure of the legal entity committed the criminal act; it must also be proven that, in the specific case, they acted on behalf of the entity and had authorization for such an act. Otherwise, the legal entity cannot be declared guilty” (Case no.154, SC, 2023). Furthermore, in the same landmark decision, the Court has stated that: “Thus, to prove the criminal act from the subjective aspect, the criminal liability of the legal entity must be based on its internal organization, the existence and implementation of a model to prevent criminal acts, or the lack thereof, or any other act for this purpose. In practice, criminal acts committed on behalf of and for the benefit of the legal entity are often a direct consequence of the entity’s weak organization to prevent such acts.” (Case no.154, SC, 2023). In making this statement, the Court highlights the importance of compliance programs in preventing criminal liability in all legal entities.

This decision serves to understand that for legal entities to bear criminal liability in Albania, the principle of fault must shift from the traditional psychological concept to the normative concept of fault (Bozheku, 2010). In this regard, the normative concept of fault is considered the “key” to the emergence of corporate criminal liability, which is proven if the act committed on behalf of the legal entity is in its direct or indirect interest, or if the act is a result of the legal entity’s negligence in taking the necessary measures to prevent it (Puka, 2015).

Alongside this concept, the determination of fault or innocence of a legal entity for acts committed by its directors or representatives is often influenced by the existence or lack of an organizational and control model (compliance program) aimed at identifying and preventing criminal acts (Puka, 2015). In fact, unlike natural persons, the subjective criterion for the emergence of criminal liability in the case of legal entities is precisely based on whether a policy for preventing criminal acts has been designed. This concept, known in Albania and many other countries worldwide as the “compliance program,” is central to the essence of the legal entity (Most commonly encountered in practice as corporates/companies). Its establishment and support are direct indicators of the entity’s willingness to respect the values and norms protected by the legal acts in force (Lora, 2022). Often, the absence of this model results in the opposite effect, making the legal entity more prone to criminal liability (Puka, 2015).

As mentioned in the introduction, compliance programs constitute an internal system of inspection and control over the regular activities of a legal entity, through which the entity’s behavior and the harmonious functioning of its organs in compliance with applicable law are ensured (Hauschka et al., 2016). This system is based on a defined and exclusive area of self-regulation of internal rules aimed at preventing, identifying, and reducing the criminal risks of business activities, thereby also protecting against potential criminal liability (Bacigalupo, 2021).

In this way, compliance programs serve primarily as “concrete measures for the prevention of criminal offenses within the corporate sector or other forms of legal entities.” They help prevent criminal conduct by companies and, in many cases, protect subsequent indictments, thanks to the measures taken and implemented (Bulnes, 2019). Their role in the field is to design and establish current compliance policies to identify, prevent, and address violations that increase the likelihood of criminal offenses being committed (Torres-García & Caicedo-Bastidas, 2023).

3. COMPLIANCE AS A TOOL AGAINST CRIMINAL LIABILITY

The concept of compliance within corporate governance arises from the understanding that the State's formal control mechanisms cannot oversee and directly regulate every business, legal entity, or private venture. This makes compliance programs a key component of good corporate governance, serving as an essential support for its maintenance and long-term viability (Anzola & Teixeira dos Santos, 2022).

ISO guidelines were the first to enhance the role of compliance systems in organizations to ensure they meet their legal, regulatory, and ethical obligations. These guidelines served as a general framework in 2014, developing organizational standards for compliance policies (Silverman, 2008). They provided a list of recommendations for creating, developing, and continuously improving compliance systems that ensure effectiveness in designing, developing, implementing, and sustaining preventive measures against criminal offenses within a legal entity (ISO, 2014).

These guidelines emphasize that legal entities must prioritize their compliance programs and ethics codes to address potential criminal activities that pose a real threat, based on identified risks (Silverman, 2008). Furthermore, they state that the goal of classifying and prioritizing compliance risks helps to: assess each risk and its impact on the entity's activities; classify the magnitude and importance of the risk (minor/major); evaluate the level and effectiveness of internal controls and their frequency; and finally, determine the resources and tools required to manage and mitigate the risk (Bognár & Benedek, 2021).

From the principles mentioned above, it is clear that one of the initial steps to ensure preventive measures within a legal entity is the adoption of a code of ethics (Kotlan et al., 2023). In these codes, the compliance program and the "business corporate culture" are generally two essential pillars for the organization and functioning of corporate governance (Bacigalupo, 2021). This approach is also reflected in The Code of Internal Management of Commercial Entities in Albania.

The second part of the Code, titled "Principles of Internal Management for All Companies Not Registered on the Stock Exchange," provides in Principle 6 that: "The Board is responsible for overseeing risk management and must maintain an effective internal control system to protect the interests of the company and the investments of the shareholders" (The Code of Internal Management of Commercial Entities in Albania, n.d.).

In this regard, Principle 6 is elaborated in the code by emphasizing that: The Board should make efforts to identify the main strategic and operational risks that the commercial entity faces; it should establish official and transparent measures for implementing financial reporting policies and internal control systems; and, most importantly, the Board should periodically assess the need to establish or reorganize the internal control system and risk management functions (The Code of Internal Management of Commercial Entities in Albania). From these provisions, it is clear that compliance programs are deeply connected to organizational governance by implementing the best principles and practices that apply (Díaz, 2022).

On the other hand, alongside The Code of Internal Management of Commercial Entities in Albania, private companies and other legal entities in general, as subjects of the law for preventing money laundering and the financing of terrorism, must implement a series of compliance measures to prevent criminal liability arising from the commission of these offenses (Law no. 9917, 2008).

To prevent the commission of money laundering and terrorism financing offenses, Albanian law outlines several compliance measures that legal entities must adopt, such as "Know Your Client" procedures and the application of enhanced due diligence (Law no. 9917, 2008). In this context, entities must conduct

checks and analyses of the effectiveness of their preventive system in line with the regulations and procedures developed and approved for this purpose. The entity's internal control should, among other things, assess the continuous monitoring of the business relationship and ensure that this relationship remains in compliance with the client's profile (Instruction no.28, 2012).

Specifically, the obligation to implement compliance measures under this law is outlined in Article 11, which stipulates that, in accordance with the law and the sublegal acts issued for its enforcement, entities are required to: appoint a person responsible for preventing money laundering and the financing of terrorism; assign internal control to monitor compliance with the obligations of this law and the relevant sublegal acts; depending on the nature and size of the business, implement appropriate procedures for reporting violations within the entity by employees at all levels, through a specific, independent, and anonymous system. (Law no. 9917, 2008)

These provisions clearly outline how a compliance policy should be developed and highlight the need for a specialized individual in the role of compliance officer, who will oversee the measures taken in this context and ensure the legality of the companies's activities in preventing the commission of crimes (Bereziartua, 2024).

This approach is also supported by the Guidelines on the Implementation of Obligations for the Prevention of Money Laundering and the Prevention of Terrorism Financing Based on Risk (PP/FT), which stipulate that when an entity identifies high risks for money laundering or terrorism financing in its risk assessment, it must develop and document a strategy for managing these risks, accompanied by specific preventive measures (e.g., policies and procedures aimed at reducing the risk) (AFI, 2022). For these policies, which clearly fall under compliance policies, entities must also define review timelines, the frequency of transaction monitoring and business relationship assessments, and the effectiveness of their implementation (AFI, 2022).

From this legal perspective, it is clear that the first step in formulating a compliance model is identifying the legal risks faced by a legal entity and, based on this, adopting systems and risk mitigation measures. In general, these risks depend on factors such as the industry, geographic location, size, products or services offered, and the legal form adopted, meaning that in practice no compliance model is identical to another (Díaz, 2022).

Regarding the effectiveness and purpose of the compliance system, every compliance program has three essential objectives: prevention (to avoid illegal behaviors that could expose the entities to criminal liability); detection (to identify and address issues in a timely manner); and mitigation (so that once an offense has been committed, the program helps reduce criminal liability and lower potential penalties/fines) (Lora, 2022). In this way, if an entity consistently demonstrates thorough and effective practices in its procedures—implementing measures and protocols to prevent liability as part of its internal defense strategy—it can avoid corporate criminal liability. (Roso, 2020)

4. FUTURE RESEARCH DIRECTIONS

The future of criminal compliance is expected to be fully dynamic and highly adaptive, as businesses, corporations, and other legal entities continue to evolve in response to emerging challenges, such as global interconnectedness, digitalization, artificial intelligence, evolving regulatory frameworks, and increasingly sophisticated financial crimes. These challenges demonstrate that, today, the effective application of compliance programs is influenced not only by internal factors but also by external factors, (Departamento de Documentación de Iberly,2024) which equally shape the policies and strategies of an entity.

Considering these factors, the trend of digitalization is becoming more relevant and influential, especially in the context of compliance (Frommelt, 2024). As research shows, data collection and information technology hold the potential to significantly transform and impact financial crime compliance (KPMG, 2024). Legal entities, particularly corporations, are placing greater emphasis on developing policies and implementing mechanisms to address issues such as data theft, digital tax evasion, cyber fraud, phishing and ransomware attacks, account takeovers, and digital fraud. This has highlighted the need for robust security policies and processes to ensure the organization's compliance with relevant laws, regulations, or industry standards to manage potential cybersecurity risks (Syafrizal et al., 2020). This, in turn, has led to the development of security compliance as a precursor to criminal compliance, ensuring that companies adhere to cybersecurity laws and regulations (Folorunso et al., 2024).

This emerging trend has been observed in Albania as well, where the rise in digital and cybercrimes poses an increasing threat to the security and operations of legal entities, particularly corporations. In response, the Albanian government's national strategies emphasize the importance of adopting a "Cybersecurity Law," a "Law on Electronic Identification and Trusted Services," as well as regular amendments to the legislation on electronic whistleblowing (National Strategy for the Prevention of ML & TF, 2024). On an organizational level, alongside the expected benefits of these legal frameworks, private companies in Albania are striving to develop automated monitoring systems and predictive analytics policies. These initiatives help proactively identify risks that may lead to criminal behavior or regulatory violations, thus reducing the potential for corporate criminal liability.

5. CONCLUSION

The objective of compliance is to ensure that the entity adheres to applicable legislation by adopting the necessary measures to prevent from engaging in criminal activities, incurring penalties, or facing situations that could negatively impact its reputation (Departamento de Documentación de Iberly, 2024). Frequently, the lack of proper control and internal organizational deficiencies create gaps in the compliance system, which can lead to corporate criminal liability (Departamento de Documentación de Iberly, 2024). In Albanian legislation, this responsibility is regulated not only by the Criminal Code but also by the specific law on the criminal liability of legal entities, the law on the prevention of money laundering and the financing of terrorism, and the law on international sanctions in the Republic of Albania (Law no.72, 2019), among others.

In alignment with the standards set in national legislation, best practices in the EU, and international agreements, legal entities in Albania—particularly corporations—are becoming increasingly aware of the importance of compliance programs. They are incorporating the role of a compliance officer within their legal departments, who acts as the guarantor for the effective implementation of compliance policies and is responsible for overseeing internal controls to prevent corporate crimes (Bereziartua, 2024).

At a time when the activities of these entities are impacted by issues such as money laundering, cyber fraud, and other dangerous phenomena related to digitalization and data breaches, these entities view the implementation of compliance measures as essential to reducing legal violations and as a critical step in preventing criminal liability. The significance of compliance programs in the Albanian context is driven not only by the individual initiatives of legal entities but also by the standards and criteria established by local legislation, which require the development of policies to mitigate risks and enhance internal systems for secure transactions and relationships. Therefore, to ensure more sustainable operations overall, corporations are proactively implementing compliance management (Guo Liang & Belayet Hossain, 2024), which ensures accountability, greater protection, and improved organizational liability.

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