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COMPLIANCE – COMPANY LAW AND CRIMINAL LAW PERSPECTIVES

Abstract

Compliance is an important topic from both company law and criminal law perspectives. However, it is generally not sufficiently discussed in Serbian legal literature. This is true to an even greater extent regarding the intersection between company law and criminal law. It this paper, the authors provide an overview of the rules referencing compliance function in Serbian laws which govern companies and their organization, as well as in codes applicable to both the public and private sectors. Because new laws are often adopted or the laws in force are amended in Serbia, it is not easy to interpret and comply with laws. Serbian legal system recognizes liability of legal persons for criminal offences, but the Law of Liability of Legal Persons for Criminal Offences is rarely applied in practice. On the other hand, liability for economic offences is much more common. Therefore, compliance system is also a crime prevention measure that could lead to reduction of costs for companies, but specific conditions as, for example, law application, must be taken into account in order to understand the compliance system effects on company behaviour. After outlining the relevant rules, the authors present the findings of their research which was carried out by analysing the codes of ethics and corporate governance codes of several Serbian companies and their approaches to compliance. Specifically, the authors examined the compliance programs of the 40 most successful companies in Serbia in 2023. The authors conclude that more than half of the companies in the sample acknowledge and publish some elements of their compliance programs on their websites. The most common elements are the whistle-blowing procedure and the code of ethics. Compared to other research conducted abroad, it can be concluded that while companies in Serbia recognize the importance of compliance, there is still room for improvement in terms of the number of companies that publicly share their compliance efforts, as well as the content and quality of these reports.

Key words: compliance, companies, code of ethics, corporate governance code, criminal offences, crime prevention.

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I. Introduction

Companies must comply with laws, regulations, and their internal acts. Compliance can be defined as "the set of internal processes used by firms to adapt behaviour to applicable norms."[1] Furthermore, the modern concept of compliance extends beyond legal norms and regulations to include adherence to social norms.[2] This understanding of compliance function aligns with the growing importance of corporate social responsibility and environmental, social and governance – ESG issues. The risk of non-compliance with laws is a serious concern for companies operating in Serbia. Namely, Serbian laws are often amended because of at least two valid reasons – an obligation to harmonize the law with the EU law since Serbia is an EU candidate country and an effort to improve business climate in order to attract foreign investments. The frequent amendments and rapid expansion of regulations incentivize companies to employ compliance officers, whose role is to ensure the company's adherence to legal requirements. Furthermore, an important aspect of compliance monitoring is ensuring adherence to the codes that companies have adopted, chosen to implement, or are required to apply. There are two types of codes which are relevant for this paper – codes of ethics and corporate governance codes.

In general, companies pay large sums of money in order to establish compliance programs with the aim of prevention and detection of wrongdoing but it is questionable whether this investment fulfil this purpose.[3] Specifically, most compliance programs are twofold – they include prevention and detection.[4] For example, codes of conduct are part of the prevention sphere and data analytics is among the detection mechanisms.[5] The most important reason why companies pay great attention to compliance function is not related to corporate insiders nor the consumers but it is a result of various tactics, incentives and efforts made by the government.[6]

A compliance program is also significant when it comes to corporate responsibility for criminal offences. A prerequisite for encouraging companies to adopt such programs is that there is a legal possibility of avoiding criminal proceedings or receiving a more lenient penalty. Compliance programs initially developed and gained significance in the U.S., but in many European countries,

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[1] Sean J. Griffith, "Corporate Governance in an Era of Compliance", *William & Mary Law Review* 57, no. 6 (2016): 2082.
[2] Griffith, "Corporate Governance," 2082-83.
[3] See Roy Shapira and Asaf Eckstein, "Compliance Gatekeepers", *Yale Journal of Regulation* 41, no. 2 (2024): 472.
[4] Eugene Soltes, "The Professionalization of Compliance", In *The Cambridge Handbook of Compliance*, ed. Benjamin van Rooij, D. Daniel Sokol (Cambridge University Press, 2021), 29.
[5] Soltes, "Professionalization", 29.
[6] Griffith, "Corporate Governance", 2078.

they are becoming more important through the concept of lack of supervision or control by a leading manager.[7] In Serbia, when it comes to the legal framework for the criminal liability of legal entities, there is a possibility that adequate compliance programs could be recognized, but in practice, criminal prosecution of companies is very rare.

After providing introduction, the authors explain the relevance and position of compliance function in the context of law governing companies. In the first part of Section II, compliance function is examined in the context of rules governing companies in private sector while compliance function with regard to state-owned companies is analysed in the second part of this Section. Section III analyses compliance function and codes, first in the private sector and then in the public sector. Section IV analyses the significance of compliance programs in the prevention of corporate crime and whether, and in what way, an adopted compliance program is taken into account in criminal proceedings against companies. Section V is dedicated to the empirical analysis of compliance programs, i.e. several elements of them, in the most successful Serbian companies. The authors analysed to what extent certain compliance elements are represented on the websites of the 40 most successful companies in Serbia in 2023. Section VI concludes the paper.

II. Compliance function in the laws governing companies

General rules regarding organization of companies in Serbia are provided in the 2011 Law on Companies (*lex generalis*).[8] Special rules apply to companies operating in various business sectors, including their organizational structure, and are set out in several different laws (for example, law governing banks). These sector-specific rules are not going to be analysed in this paper. Additionally, the rules governing the management of state-owned companies differ from the general framework. Specifically, the 2023 Law on Management of State-Owned Companies introduced special rules regarding organization of state-owned companies.[9] With the adoption of this Law, the regulatory framework for public sector companies has become more complex than before. The organization of state-owned companies is now distinct from that of companies indirectly owned by the state and from companies owned by local self-governments and autonomous provinces performing activities of general interest, which remain subject to the Law

[7] Marc Engelhart, "Corporate Criminal Liability from a Comparative Perspective", In *Regulating Corporate Criminal Liability*, edited by Dominik Brodowski, Manuel Espinoza de los Monteros de la Parra, Klaus Tiedemann, Joachim Vogel (Springer, 2014), 62.
[8] Law on Companies, *Official Gazette of Republic of Serbia – RS*, No. 36/2011, 99/2011, 83/2014 – other law, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021.
[9] Law on Management of State-Owned Companies, *Official Gazette of RS*, No. 76/2023.

on Public Enterprises.[10] Moreover, the Law on Public Enterprises applies to public enterprises which are business entities established for performing activities of general interest, different from companies.[11] Since the Law on Public Enterprises does not mention compliance function, only the provisions of the Law on Management of State-Owned Companies will be analysed in the second part of this section, following the examination of compliance function in the law governing companies operating in private sector.

1. The 2011 Law on Companies

The Law on Companies refers to compliance in the provisions related to internal supervision. Specifically, internal supervision activities include, among other things, supervision regarding the compliance of company's operations with the law, other regulations and company's internal acts as well as monitoring of company's organization and conduct in accordance with the company's corporate governance code.[12] These tasks complement the audit function, as the person responsible for managing these activities is required to report to the audit commission or, in companies without such a commission, to the board of director in a one tier management system, or to the supervisory board in a two-tier system.[13] Nevertheless, the compliance function and the internal audit function are separate functions.[14] In Serbia, only public joint-stock companies are obliged to have audit commission.[15] Anyway, it is important to emphasise that implementation and organization of internal supervision is regulated by company's internal acts.[16] Therefore, it is left to the company to decide how it will organize the internal supervision.

If the company is established in a form of joint-stock company and if this company is a public company, there are special requirements regarding the person

[10] Law on Public Enterprises, *Official Gazette of RS*, No. 15/2016 and 88/2019. See Jelena Lepetić, "Društva kapitala i obavljanje delatnosti od opšteg interesa," *Pravo i privreda* 61, no. 4 (2023): 1015.
[11] See more in Jelena Lepetić, "Javna preduzeća – stari i novi izazovi," *Pravo i privreda* 60, no. 4 (2022): 679-81.
[12] Law on Companies, Art. 452, para. 1, items 1 and 4.
[13] Law on Companies, Art. 452, para. 2.
[14] See Iva Tošić, "Usklađenost i kontrola usklađenosti poslovanja u akcionarskim društvima za osiguranje u srpskom pravu i po konceptu solventnost II" (PhD diss., University of Belgrade – Faculty of Law, 2023), 74.
[15] According to the Law on Capital Market "Issuer means a public company provided it meets at least one of the following requirements: (1) has successfully executed a public offering of securities in accordance with the prospectus whose publication has been approved by the Commission, (2) whose securities are admitted to trading on a regulated market, MTF or OTF in the Republic." See the Law on Capital Market, *Official Gazette of RS*, No. 129/2021, Art. 2, para. 1, item 100.
[16] Law on Companies, Art. 451, para. 1.

competent for internal supervision of company's operations.[17] First, there has to be at least one person competent for these activities who fulfils the conditions set for internal auditor by the law governing audit. Second, this person has to be an employee of the company. Third, the person competent for activities of internal supervision of operations may conduct only the tasks of internal supervision. Four, the director of a member of supervisory board may not be a person competent for internal supervision. Five, this person is appointed by board of directors or supervisory board in a two-tier management system, at the proposal of audit commission. Six, the company has to draw a list of requirements in its internal act which a person managing the task of internal supervision has to meet in order to perform this role in the company. These requirements are related to her professional and expert knowledge and experience.

Finally, according to the Law on Audit, large legal entities which have an average of more than 500 employees during the business year and are public-interest entities are subject to non-financial reporting, unless they are subsidiaries included in a consolidated annual report along with their subsidiary legal entities.[18] At a minimum, the non-financial report includes information on environmental protection, social and labour-related matters, human rights compliance, anti-corruption efforts, and bribery-related issues.[19]

2. The 2023 Law on Management of State-Owned Companies

The 2023 Law on Management of State-Owned Companies applies only to the companies in which the state has more than 50% of shareholdings or have controlling ownership on another basis. Exceptionally, certain provisions of this Law also apply to companies where the Republic of Serbia holds 50% or less of shareholdings. However, the Law does not apply to companies which operate in military production, banking, insurance, non-profit sectors, innovation, or those undergoing privatization or bankruptcy. According to this Law, business compliance supervision forms part of the internal supervision system in state-owned limited liability companies and joint stock companies.[20] Besides business compliance supervision, this system includes risk management and internal audit function. It is important to note that compliance function is not equal to risk management function, but it is complementary to it.[21] As in the case of companies in private sector, establishing compliance supervision function should enable

[17] Law on Companies, 451, paras. 2-4.
[18] See Law on Audit, *Official Gazette of RS*, No. 73/2019, 44/2021 – other law, Art. 37, paras. 1 and 2.
[19] See Law on Audit, Art. 37, para. 3.
[20] See Law on Management of State-Owned Companies, Art. 28, para.1.
[21] Tošić, "Usklađenost," 74.

regular checking whether operations of the company are in compliance with the law, other regulations and internal acts of the company.

The terminology regarding business compliance, along with the rules governing it, is more precise and modern in the Law on Management of State-Owned Companies compared to the provisions in the Law on Companies. The former requires the business compliance function to regularly report to management bodies. More precisely, at least once a year business compliance function submits a report to the management bodies about the new regulations and their potential effect on the business.[22] This obligation can be fulfilled only by monitoring legal framework and assessing the risk of non-compliance. It may be concluded that the legislator recognised the importance of business compliance function and its proper position within the company's organization.

III. Compliance function and codes

Companies that aim to uphold high standards of conduct, often exceeding legal requirements, typically incorporate these standards into their codes. According to the G20/OECD Principles of Corporate Governance "an overall framework of ethical conduct goes beyond compliance with the law, which should always be a fundamental requirement."[23] The compliance function oversees whether the company and its employees adhere to these standards. Codes designed to ensure employee compliance with laws and regulations are commonly referred to as codes of ethics. This term reflects their primary purpose – promoting ethical decision-making.[24] However, they may also be called business codes, codes of conduct, or similar variations.[25] Furthermore, companies often require from their suppliers to comply with their codes of conducts.[26] For example, supplier codes of conduct enable including responsible business conduct expectations into business relationship.[27]

Finally, there are other types of codes which are especially relevant from the company law perspective. Codes which contain, among other things, the principles and recommendations regarding internal governance of the company are referred as corporate governance codes. It is indicative that 46 out of 49 countries

[22] See Law on Management of State-Owned Companies, Art. 28, para. 3.
[23] G20/OECD Principles of Corporate Governance, 2023, 35.
[24] See Muel Kaptein, "Business Codes: A Review of the Literature," In *The Cambridge Handbook of Compliance*, ed. Benjamin van Rooij, D. Daniel Sokol (Cambridge University Press, 2021), 597.
[25] Kaptein, "Business Codes," 595.
[26] Andreas Rühmkorf, "From Transparency to Due Diligence Laws? Variations in Stringency of CSR Regulation in Global Supply Chains in the 'Home State' of Multinational Enterprises," In *Globalisation of Corporate Social Responsibility and its impact on Corporate Governance*, ed. Jean J. du Plessis, Umakanth Varottil, Jeroen Veldman (Springer, 2018), 181.
[27] See OECD Due Diligence Guidance for Responsible Business Conduct, 2018, 60.

surveyed by OECD in 2023, had a national code of corporate governance or equivalent instrument.[28] Moreover, all EU Member States have national corporate governance codes.[29] With regard to the link between these two types of codes, it is interesting to note that 17 national corporate governance codes of EU Member States mention the concept of ethics, and eight of them suggest that management board or board of directors should adopt a code of conduct/ethics.[30]

According to the G20/OECD Principles of Corporate Governance "corporate governance codes may offer a complementary mechanism to support the development and evolution of companies' best practices, provided that their status is duly defined."[31] Even if a company applies a code and has a high compliance rate, it does not necessarily mean that company has adopted best practices suitable for its need; it may simply be an indication of "box ticking", as companies may not be prepared to explain to investors why they deviated from the standards.[32] Furthermore, deviating from a "comply or explain" rule should not automatically be seen as a negative practice, but rather as an adjustment to meet the company's specific needs.[33] Nevertheless, having in mind that deviations from international standards are generally discouraged, national "comply and explain" instruments may be considered as an indirect device for harmonisation.[34]

1. Private sector

The Law on Companies mandates that joint-stock companies, which are public, must draw up an annual report containing a statement on the application of corporate governance code.[35] This statement includes information about the code the company applies and where it is publicly available, significant information about the corporate governance practices the company implements, especially those not explicitly prescribed by law, and any deviations from the rules provided in the code, along with justifications. To conclude, only joint-stock companies which

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[28] India, United States and People's Republic of China apply only a legally binding approach. OECD Corporate Governance Factbook 2023, 41.

[29] See Michele Siri, Shanahan Zhu, "Integrating Sustainability in EU Corporate Governance Codes," In *Sustainable Finance in Europe – Corporate Governance, Financial Stability and Financial Markets*, ed. Danny Busch, Guido Ferrarini, and Seraina Grünewald (Springer, 2024), 226-28.

[30] Siri and SZhu, "Integrating Sustainability," 261.

[31] G20/OECD Principles of Corporate Governance, 10.

[32] Brian R. Cheffins, "Corporate Governance Regulation: A Primer," 2025: p. 43, https://www.ecgi.global/publications/working-papers/corporate-governance-regulation-a-primer.

[33] Vuk Radović, "Razvoj kulture odstupanja od 'primeni ili objasni' pravila korporativnog upravljanja," *Anali Pravnog fakulteta u Beogradu* 63, no. 2 (2015): 38.

[34] Patrick C. Leyens, "Corporate Social Responsibility in European Union Law: Foundations, Developments, Enforcement," In *Globalisation of Corporate Social Responsibility and its impact on Corporate Governance*, ed. Jean J. du Plessis, Umakanth Varottil, and Jeroen Veldman (Springer, 2018), 166.

[35] See Law on Companies, Art. 368.

qualify as public are required to apply a corporate governance code. Nevertheless, any other company may also choose to apply or adopt a corporate governance code.

To improve corporate government system in Serbian companies, the Chamber of Commerce and Industry of Sebia adopted the Corporate Governance Code in 2012.[36] This was the second Corporate Governance Code adopted by the Serbian Chambre of Commerce; the first Corporate Governance Code was adopted in 2005 to accompany the 2004 Law on Companies, which was a first Law to mention a code.[37] Nevertheless, according to the 2004 Law on Companies, management board of listed joint-stock companies could adopt a code of conduct or apply another code, but the application of the code was not mandatory.[38] In 2008, Belgrade Stock Exchange adopted a Corporate Governance Code primarily designed for joint-stock companies whose shares are listed on one of its markets.[39] Additionally, in 2005, the Serbian Chamber of Commerce and Industry adopted the Code of Business Ethics.[40] This Code establishes principles and rules binding on undertakings, their employees, chairpersons and members of the management board, supervisory board, audit committee, and contracted individuals working for the undertaking. It is binding on the undertaking, its branches, and subsidiaries. Compliance with the Code is overseen by the competent bodies of the Chamber of Commerce, which are responsible for its implementation.[41]

Principles and recommendations outlined in the 2012 Corporate Governance Code are not mandatory, but they are recommended to all companies as best practices. Companies may apply the principles and recommendations set out in the 2012 Code either directly, by the decision of the competent bodies, by adopting their own corporate governance code, or by adopting other internal acts. The Code contains two types of rules: recommendations, which are rules that a company should adopt and follow, and suggestions, which are rules considered good practice in corporate governance. The recommendations in this Code represent the minimum standards which public joint-stock companies should adopt and follow. If they do not comply or do not comply as specified in the Code, they must provide an explanation for the deviation in the statement on the application of the corporate governance code. It is important to note that, according to the 2012 Code, business compliance is defined as "the adherence to internal and external requirements: policies, plans, procedures, laws, regulations, contracts, and other

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[36] Corporate Governance Code, *Official Gazette of RS*, No. 99/2012.

[37] Law on Companies, *Official Gazette of RS*, No. 125/04; Corporate Governance Code, *Official Gazette of RS*, No. 1/2006. See Vuk Radović, "O približavanju kodeksa korporativnog upravljanja zakonskoj regulativi," *Teme* 40, no. 3 (2016): 1129; Radović, "Razvoj kulture," 33.

[38] See 2004 Law on Companies, Art. 318.

[39] The Corporate Governance Code adopted by the Belgrade Stock Exchange is available at: https://www.ecgi.global/sites/default/files/codes/documents/cg_code_serbia_jul2008_rs.pdf.

[40] Code of Business Ethics, *Official Gazette of RS*, No. 1/2006.

[41] Code of Business Ethics, Art. 90, para. 1.

requirements which govern the company's operations," while business compliance supervision is a type of internal supervision.

The 2012 Code is intended to all companies, including joint-stock companies (both public and private) and limited liability companies, as well as those in which the state is a shareholder. Having in mind this broad scope of application, the Code consists of three main parts: the first addresses companies (limited liability companies and joint-stock companies), the second contains additional principles and recommendations for family companies, and the third part provides additional principles and recommendations for companies in which the state is a shareholder. The first part, with regard to state-owned companies, and the third part of the 2012 Code largely lost their significance with the adoption of the Corporate Governance Code intended for state-owned companies in 2024.[42] Nevertheless, it should be noted that the definition of companies in which the state is a shareholder, as provided in the 2012 Code, is broader than the definition of state-owned companies to which the 2024 Code applies. Specifically, according to the 2012 Code, a company in which the state is a shareholder is one where the state has significant control, which it may exercise as a sole shareholder, a majority shareholder or a member with significant shareholding. The 2024 Corporate Governance Code for state-owned companies is intended only for companies to which the 2023 Law on Management of State-Owned Companies applies.[43]

2. Public sector

All state-owned companies on which the Law on Management of State-Owned Companies applies are required to have Code of Ethics. Code of Ethics provides the principes and the rules of business ethics, generally accepted rules of conduct, and professional standards which all employees are required to follow.[44] Furthermore, state-owned companies on which the Law on Management of State-Owned Companies applies are required to implement the Corporate Governance Code adopted by the Government in 2024. The Government adopted this Code to establish and strengthen corporate governance principles, with the aim of ensuring responsible and efficient management, as well as improving professionalism and competitiveness.[45] The companies are not required to adopt their own corporate governance codes but to align their organization and operations with the recommendations of the 2024 Code, to submit a report on its implementation by the end of the first quarter of the current year for the previous one, including the information about the application of the Code's recommendations and the explanations for any deviations, and provide any additional information related to

[42] Corporate Governance Code, *Official Gazette of RS*, No. 77/2024.
[43] See Section I, subsection 2 of this paper.
[44] Law on Management of State-Owned Companies, Art. 32, para. 2.
[45] Law on Management of State-Owned Companies, Art. 33, para. 2.

implementation of the Code at the request of the competent authority.[46] The Code is based on the "comply or explain" principle – the company must explain any deviations.

One of the Code's recommendations is related to business compliance. According to recommendation 7.4., an appropriate function responsible for ethics and business compliance, monitoring legal framework and assessing risks for non-compliance has to be established while the supervisory board of the company has to adopt an internal act governing its operation. Furthermore, larger companies are recommended to establish a sector or department for business compliance. Therefore, it may be concluded that in smaller and medium sized companies, business compliance function may be performed by one person and that this individual may perform other tasks or be assigned to carry out additional duties.

IV. Criminal law aspects of compliance programs

Today, it is indisputable that corporate crime causes numerous negative consequences, which in some cases exceed the damage caused by individuals committing criminal offences such as property crimes. In addition to crimes against the economy, such as fraud, restrictive agreements, money laundering, and tax evasion, companies through "triggering persons" (individuals acting on their behalf or employees acting without adequate supervision) often commit criminal acts that result in death or endanger the health of people and employees (workplace injuries and occupational diseases, environmental crime, placing defective and harmful products on the market, etc.).[47] On the other hand, criminal sanctions for companies are associated with several problems. First, the dark figure of crime is large.[48] Furthermore, even when a crime is detected, there are difficulties in proving it, and for the successful criminal procedure, it is necessary for the competent state authorities to be well-educated and specialized in the field of crimes against the economy, environment etc. The literature also points out that harsh criminal sanctions imposed on companies do not necessarily lead to success in special and general prevention of corporate crime, which is why many authors prefer internal control combined with occasional external control (e.g., inspections), while criminal law should truly serve as an *ultima ratio* mechanism.[49] Finally, models of

[46] The Law on Management of State-Owned Companies, Art. 33, para. 3; 2024 Corporate Governance Code, Art. 2.
[47] David O. Friedrichs, *Trusted Criminals: White Collar Crime in Contemporary Society* (Wadsworth Cengage Learning, 2009), 50-51.
[48] Brian K. Payne, *White-Collar Crime: The Essentials* (SAGE Publications, 2013), 34.
[49] Natalie Schell-Busey et al., "What Works? A Systematic Review of Corporate Crime Deterrence", *Criminology and Public Policy* 15, no. 2 (2016): 405-406.

criminal liability for legal entities vary, with some countries, like Germany, not accepting that legal entities can be criminally responsible.[50]

The history of the development of compliance programs has its roots in the United States. Since 1909, when the Supreme Court confirmed that companies could be vicariously liable for the criminal acts of their agents, up until 1961, when the involvement of dozens of prominent American companies in price-fixing was revealed, compliance programs were left to the companies themselves as a self-regulation mechanism.[51] Although it was easier for companies at that time to design and implement compliance programs on their own, rather than having the state do it, in the following decades, the situation regarding violations of criminal law norms did not improve, and the consequences were until then unimaginable prison sentences for company directors. The pivotal moment came in 1991, when the Organizational Sentencing Guidelines were adopted.[52] The rules allow for the imposition of milder financial penalties on companies if a crime has been committed, but all necessary actions have been taken to prevent such an occurrence. Additionally, there is the possibility for the public prosecutor to drop charges if it is determined that everything has been done to prevent the crime. The Guidelines contain seven criteria for determining whether there is a basis for the program to reduce guilt: 1) the program should be designed with a real capacity to prevent criminal behavior, 2) employees in senior positions must be responsible for overseeing operations, 3) the company must exercise due diligence by not delegating discretionary authority to employees who may have a "tendency toward illegal conduct", 4) the company must clearly establish its standards of conduct, 5) the company must take reasonable steps to achieve business compliance, such as implementing oversight, 6) standards must be consistently applied, and 7) the company must take all reasonable measures to respond adequately when violations occur.[53] After the Guidelines, laws such as the Sarbanes-Oxley Act and the Dodd-Frank Act were enacted, which introduced the obligation for companies to implement compliance programs, and failure to do so constitutes a criminal offense.[54]

Unlike U.S. federal law, which accepts the vicarious liability model[55] — meaning that the criminal liability of a company can be based on the actions of any

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[50] Martin Böse, "Corporate Criminal Liability in Germany", In *Corporate Criminal Liability, Emergence, Convergence and Risk*, eds. Mark Pieth, Radha Ivory, (Springer 2011), 228.
[51] Todd Haugh, "Criminalized Compliance", In *The Cambridge Handbook of Compliance*, ed. Benjamin van Rooij, D. Daniel Sokol (Cambridge University Press, 2021), 135.
[52] Haugh, "Criminalized Compliance", 136.
[53] Kevin B. Huff, "The Role of Corporate Compliance Programs in Determining Corporate Criminal Liability: A Suggested Approach", *Columbia Law Review* 96, no. 5 (1996): 1268.
[54] Haugh, "Criminalized Compliance", 137.
[55] John C. Coffee, "Corporate Criminal Liability: An Introduction and Comparative Survey", In *Criminal Responsibility of Legal and Collective Entities, International Colloquium, Berlin May 4-*

employee — the situation is different in countries that have adopted the identification model. Under this model, a company can only be criminally liable if the act was committed by a person within the managerial structures of the company.[56] Contrary to the vicarious liability model, which excludes the possibility of a legal entity receiving more lenient treatment in criminal proceedings if a high-ranking individual committed a criminal offense, the identification model means that criminal liability for the legal entity can only be established if high ranking individuals (usually directors or members of the board) committed the criminal offense on behalf of the legal entity.[57]

The goal of a compliance program is the prevention, detection and reaction to crime in the area of business operations.[58] In this way, different values are protected. The most important value is the overall property of the company. This is followed by business transparency. Other objectives include protecting employees, consumers, human rights, etc. The values that are protected also depend on the type of business, which is why these programs can differ significantly among companies. [59] However, there is no unified opinion on the significance of these programs for preventing criminal acts. A common view is that it is not enough to simply adopt, for example, a code of ethics or a code of conduct. Regular employee training must also be conducted, there must be support from managers/directors in promoting conformist models of corporate subculture, the consequences of not following the rules must be clearly stated, and problems must be reported to those who will genuinely take action.[60]

When it comes to Serbian criminal law, there are three models of criminal liability for legal entities – for criminal offenses, economic offenses, and misdemeanors. [61] This paper will focus only on the first model of liability, as an

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6, 1998, eds. Albin Eser, Günter Heine, Barbara Huber, (Max-Planck Institut für ausländisches und internationales Strafrecht, 1999), 11-12.

[56] Regarding the significance of compliance programs for the criminal liability of legal entities in, for example, Spain and Germany, see: Santiago Wortman Jofre, "Corporate Criminal Liability and Compliance Management Systems, A Case Study of Spain", *Transnational Crime*, no. 2-3 (2018): 1-63; Böse, "Corporate Criminal", 231-37.

[57] Coffee, "Corporate Criminal Liability", 12.

[58] Eugene Soltes, "Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms," *New York University Journal of Law and Business* 14, no. 3 (Summer 2018): 979.

[59] Urlich Sieber, "Compliance - Programme im Unternehmensstrafrecht, Ein neues Konzept zur Kontrolle von Wirtschaftskriminalität", In *Strafrecht und Wirtschaftsstrafrecht – Dogmatik, Rechtsvergleich, Rechtstatsachen, Festschrift für Klaus Tiedemann zum 70. Geburtstag*, eds. Urlich Sieber et al., (Carl Heymanns Verlag, 2008), 455.

[60] Sally Simpson, *Corporate Crime, Law and Social Control* (Cambridge, 2002), 101.

[61] See: Natalija Lukić, "Krivičnopravni i kriminološki aspekti usklađenosti poslovanja (compliance)," In *Kaznena reakcija u Srbiji XIII,* ed. Đorđe Ignjatović (Pravni fakultet Univerziteta u Beogradu, 2023), 285-90.

analysis of liability for economic offenses and misdemeanors would exceed the scope of this work.

According to the Law on the Liability of Legal Entities for Criminal Offenses[62], the basis for the liability of legal entities for criminal offenses is defined in Article 6. First, Paragraph 1 stipulates that a legal entity is liable for a criminal offense committed by a responsible person within the scope of their duties or authority, with the intent of obtaining a benefit for the legal entity. A responsible person is a natural person to whom a specific range of tasks has been entrusted in the legal entity, either by law or fact, as well as a person who is authorized, or can be considered to be authorized, to act on behalf of the legal entity. This model of liability for legal entities is similar to the U.S. vicarious liability model, which is based on the doctrine of *respondeat superior*, meaning that a legal entity is liable for criminal acts committed by responsible persons who are not in executive positions but occupy lower ranks, provided that other elements from Article 6, Paragraph 1 are met.[63] Additionally, the liability of the legal entity exists if, due to the lack of supervision or control by the responsible person, the commission of a criminal offense benefiting the legal entity is enabled by a physical person acting under the supervision and control of the responsible person.

As for the significance of compliance programs for the liability of legal entities, the Law does not explicitly mention it. However, it is undisputed that this factor could be considered as a mitigating circumstance when determining the penalty. Additionally, a compliance program could be taken into account when establishing the liability of a legal entity due to the lack of supervision or control by the responsible person. In such a situation, it could be relevant to assess what actions were taken to prevent the commission of a criminal offense for the benefit of the legal entity.[64]

Regarding the possibility for the public prosecutor to drop charges if a compliance program was in place, the Law does not explicitly provide for such an option, but there are opinions that it could be considered.[65] The problem in analysing the significance of compliance programs in relation to the liability of legal entities for criminal acts in Serbia is that the aforementioned Law is rarely applied in practice, which is why there are not many court rulings on this matter. In this sense, adopting compliance programs and engaging compliance officers currently does not hold much significance for companies in Serbia, at least when it comes to the liability of legal entities for criminal acts. It remains to be seen whether this will change in the future.

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[62] Law on the Liability of Legal Entities for Criminal Offenses, *Official Gazette of RS*, No. 97/2008.
[63] Lukić, "Krivičnopravni", 286-88.
[64] Lukić, "Krivičnopravni", 286-88.
[65] Zoran Stojanović, Richard Shine, *Komentar Zakona o odgovornosti pravnih lica za krivična djela*, (Ministarstvo pravde Republike Crne Gore, 2007), 173.

V. Empirical analysis

1. Study description

Compliance programs are studied using various scientific methods such as interviews, surveys, focus groups, ethnographic studies, and document analysis. The aim of these studies is to examine which factors and processes are involved in shaping these compliance programs, and it is also very important, though challenging, to determine how effective these programs are, and to test whether they represent more than just decorative and part of a "box checking" routine. This research aims to describe certain elements of compliance programs. We wanted to analyse whether and to what extent companies in Serbia adopt compliance programs, which is especially interesting given that only certain companies in Serbia are required to adopt some of the elements that could broadly be classified under compliance (for example, corporate governance codes). Apart from corporate governance codes we included in our analysis the following elements of compliance programs: code of ethics, existence of anti-corruption trainings, presence of a compliance unit/officer, established whistleblowing procedures, reporting by the company on the number of complaints about regulatory violations, reporting by the company on the number of workplace injuries. The independent variables included in the study are the legal form of the company (limited liability company or joint-stock company), the number of employees, and information on whether the majority capital participation is in foreign or private ownership. The last variable was included based on the assumption that companies majority-owned by foreign entities are more likely to have adopted compliance programs, as it is more probable that their parent companies, especially those operating globally, have already implemented compliance programs.

Therefore, this is a descriptive study that could represent the first step in examining the prevalence of compliance programs in Serbian companies, and based on this, further research can be conducted on how employees perceive these programs, which processes influence the creation of these programs, and how effective they are.

The sample was created based on the list of the most successful companies in Serbia for 2023. The list was compiled by Serbian Business Registers Agency based on several criteria[66], and we decided to focus on total business revenues, using this as the basis for analysing the top 40 most successful companies. Then, we visited the online presentations of each of these companies from the list to analyse whether and which of the aforementioned elements of compliance programs they accept. Most data were included in the 2023 sustainability reports,

[66] "Izveštaj o 100 naj... privrednih društava 2023". The list is available at: https://www.apr.gov.rs/upload/Portals/0/GFI_2024/Publikacije/TOP_100.pdf.

with majority of companies having published separately other relevant documents. If there was no data regarding the elements of compliance programs, we recorded that the company did not include them on their website, which, of course, does not mean that they do not adopt them or that (for example, that they do not have a dedicated compliance department). It only means that they do not report on that on their internet presentations. The sample included all business entities from the list, regardless of whether they are privately owned companies, state-owned companies, or public enterprises.

2. Results

Of the 40 companies included in the sample, 34 (85%) are privately owned companies, four (10%) are state-owned companies, and only two are public enterprises. Regarding the legal form of the companies, the majority are limited liability companies (73%), while the rest are joint-stock companies. Ownership in the company was analysed only in privately owned companies, and in most cases (91.2%), the ownership capital is held by foreign investors or legal entities. The number of employees in the companies varies, ranging from two to 19,595 employees. The average number of employees in the sample is 3,448, and half of the companies have up to 1,836 employees.

In the study, we first focused on the persons responsible for compliance. We analysed whether the companies in the sample have a compliance unit or a compliance officer. We also recorded cases where the company indicated that compliance is managed within the internal audit framework. For 14 companies, we found that they have either a compliance unit or a compliance officer. In 9 cases, business compliance is handled within the internal audit department. Therefore, this accounts for over half (57.5%) of the companies in the sample. For the remaining companies, there was no information at all regarding business compliance. Interestingly, all state-owned companies in the sample fall into the group of companies that do not have data on this variable on their websites. As for public enterprises, in one case, it was found that business compliance is managed within the internal audit department. Thus, the share of companies that recognize the importance of having a compliance unit/officer is not negligible, but examples from literature show that these percentages could be significantly higher exceeding 90% of the samples.[67]

The analysis of the sample further shows that a smaller number of companies (nine) have a corporate governance code. This is understandable considering the explanation in the first part of the text that this code is not mandatory for all businesses in the country. When it comes to the code of ethics, the majority (70%) have published it on their website. If we compare this data with

[67] Brandon L. Garrett, Gregory Mitchell, "Testing Compliance", *Law and Contemporary Problems* 83, no. 4 (2020): 70.

other studies, we see that a smaller percentage of companies in Serbia publish information regarding the code of ethics and its content.[68] It should be noted that for 5 companies in the sample, the code of ethics is available on the parent company's website, but the version in Serbian is not available on the domestic website. A more detailed analysis of the codes shows that among the reasons for their adoption, the need to highlight the values and principles on which the business is based is mentioned, as well as the need to bring together all relevant regulations in one place, facilitate business in unclear situations, etc. Some codes also contain information about whom the codes apply to (employees, suppliers, partners, etc.). Some companies, in addition to codes of ethics, also have special codes, such as those for suppliers. An important question is how the code is applied and how the company ensures that employees comply with the regulations. In this regard, some codes contain explicit provisions, while others do not mention this issue. In the first case, for example, it is stated that employees are required to sign an agreement, when signing the employment contract, acknowledging that they are familiar with the content of the code and will adhere to it in their work. Companies that go a step further mention that regular training is held to help employees, as well as business partners, understand the content of the code. There are also examples where it is explicitly stated to whom employees can turn if they need assistance regarding the interpretation of the code. A certain number of companies also foresee disciplinary measures in case of code violations, as well as internal control procedures to check compliance with the rules prescribed in the code of ethics. The content regulated by the codes in most cases covers the following areas: respect for diversity and the prohibition of all forms of discrimination, conflicts of interest, environmental protection, health and safety at work, reasonable use of company assets, and anti-corruption strategies.

When it comes to preventing corruption in companies, 27 companies in the sample (67.5%) have specific regulations aimed at preventing this phenomenon. There is no single approach. Among the best examples are companies that first have specific anti-corruption policies, with employee obligations being the same as for adopting ethical codes. Furthermore, in addition to the policies, companies also conduct training, and the best examples are those that renew the training every few years, emphasizing that the training applies not only to employees but also to members of management bodies. Companies that genuinely want to prevent corruption also conduct risk analysis to identify the sectors where the danger is greatest and take appropriate measures. Finally, the policies of some companies from the sample clearly outline procedures and sanctions in the event of corruption being discovered.

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[68] See: James Weber, David M. Wasielski, "Corporate Ethics and Compliance Programs: A Report, Analysis and Critique", *Journal of Business Ethics* 112 (2013): 614.

A similar percentage of companies in the sample (60%) establish whistleblowing procedures. When this number is combined with companies that also have specific whistleblowing regulations on the websites of their parent companies, it results in 72% of companies considering it important to publish the procedure, consequences, and decisions about appointing persons responsible for this task on their websites. Companies that seriously address this issue not only list the whistleblowing policy on their websites but also encourage all employees to report violations of regulations by either contacting the designated individuals or anonymously through various means (email, using hotlines, leaving messages in designated mailboxes, etc.).

Related to the previously mentioned issue is the question of how it is possible to check whether the established mechanisms for reporting regulatory violations are being used. Our sample shows that only five companies provided information about this on their websites. If we add that seven parent companies also publish this data in their reports (most often in sustainability reports), we conclude that 30% of all companies in the sample do so. In cases where the data is only published on the parent company's website, the information regarding the state where the complaint was made is often lacking. A smaller number of companies provide data about the number and type of legal proceedings initiated against the company. The situation is somewhat better when it comes to publishing data on violations of the right to a healthy and safe working environment. A total of 17 companies (seven of which are parent companies with information on the English version of their website) publish data on the number of recorded workplace injuries in the previous business year. Examples of good practice include detailed information on the country where the violations occurred, the types of injuries involved, and the actions taken in response. State-owned companies and public enterprises in our sample did not publish data on either whistleblowing reports or workplace injuries.

VI. Conclusion

An analysis of Serbian regulations indicates that the Serbian legislator is becoming increasingly aware of the importance of the compliance function. All public joint-stock companies must apply the Corporate Governance Code and provide an explanation for any deviations from the Code's rules, should they occur. Furthermore, all companies subject to the Law on the Management of State-Owned Enterprises must adhere to the recommendations of the 2024 Corporate Governance Code adopted by the Government, with any deviations requiring an explanation. Finally, these companies are also required to have a Code of Ethics.

The analysis of compliance program elements on the websites of the 40 most successful Serbian companies shows that more than half of the companies

recognize the importance of publishing this information. The most commonly featured element is the whistleblowing procedure, but it should be noted that the adoption of internal regulations on this matter is a legal obligation, and failure to do so can result in a legal entity being fined for misdemeanour. Companies that adopt compliance programs and genuinely adhere to these rules certainly contribute to the prevention of criminal offences in business. However, for compliance programs to have significance in criminal proceedings against companies, it is necessary for the Law on the Liability of Legal Entities for Criminal Acts to be more widely applied. For better understanding of compliance programs, future research should orient toward other research techniques, such as interviews and questionnaires, to allow individuals in relevant positions within companies to provide insights on the significance of compliance programs.

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