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Human resource manager's responsibility in creating a culture of legal compliance and ethics in an organization

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ABSTRACT

The aim of the article is to emphasize the importance of a role HR managers play in creating, implementing and applying compliance and ethics programs in their organizations once owners and top-level managers include strict legal compliance and ethics into the overall strategy. Not only make HR managers sure that all HR practices are ethical but also they act as change agents and involve other managers and employees in the process of turning an organization into a truly compliant and ethical one. Furthermore, they help build a culture of integrity by selecting and promoting people who embody organizational values.

KEY WORDS

business ethics, compliance program, ethics institutionalization, ethics management, ethics program, HR manager, integrity

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1 INTRODUCTION

We have witnessed a number of big organizational scandals impacting economies around the globe and lives of hundreds of millions of people since the beginning of a new millennium. Governments have reconsidered several times the level of autoregulation of the market and organizations operating in it by issuing laws to prevent undesirable organizational behavior. Activists and non-governmental organizations have pointed out to unethical activities of organizations with the aim to stop them. Organizational misconduct is not a phenomenon of only multinational corporations. Even local organizations can repeatedly breach set up rules and consciously harm society with their operations instead of serving it. It seems that such organizations do not realize that they in fact harm themselves in a way as they are also societal members or corporate citizens as Solomon (1992) calls them. They are morally responsible for their actions, and thus, have the obligation to follow the laws and ethical principles.

More governments need to regulate organizations by issuing new laws, more the legal environment becomes complex for organizations, and more it is necessary for them to create a strategy on how to prevent violations of the law if they want to avoid lawsuits and severe penalties. Furthermore, a growing concern of people about the consequences organizational activities have on society and the planet puts pressure on organizations to reassess what is expected from them. Consequently, owners or their representatives should revisit their approach to the legal and ethical obligations towards society to guarantee these are considered in the overall organizational strategy and can be met.

Human Resource (HR) managers, like owners and other managers in an organization, are confronted with an increasing list of rules, regulations and expectations regarding the area they are responsible for. In addition, according to Bajzíkóvá et al. (2009), one of two fundamental roles of HR management is to ensure positive behavior of employees by means of motivation. Despite many recent changes in the way businesses operate, organizations are

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still mostly about people. Human beings are behind every illegal or unethical act or decision of an organization. HR managers are responsible for the people side of business, so they are accountable for everything relating to people in their organizations. Hence, when it comes to compliance tasks and ethical issues, on top of dealing with the regulations relevant to their field of work, HR managers play a crucial role in establishing a culture where laws and regulations are strictly followed by everyone in the organization, where ethical standards are pursued, and where people act with integrity. Evidently, the decision about strict legal compliance and an ethical orientation has to be taken by owners and supported by top-level management first. Without this important step, an HR manager cannot do much in favor of a compliant and ethical climate. There is no purpose for compliance and ethics to be managed in an organization, if the idea of a compliant and ethical organization is not approved at the top.

This article explores the theoretical foundations of compliance and ethics institutionalization in an organization, new trends influencing compliance and ethics management in an organization, the role of owners and top-level managers in the advancement of legal and ethical behavior of an organization and HR manager's tasks and limitations in building and developing a compliant and ethical organizational culture.

2 THEORETICAL FOUNDATIONS

There has been a long debate on the place and role of organizations in society, and businesses in particular, among scholars, as well as representatives of organizations and civil society since the 1950s. We can find different opinions on what responsibilities organizations should have and what contributions they should make to society in the scientific literature. Nevertheless, academics have generally agreed that organizations have a wider range of obligations towards society besides the economic responsibility, i.e. creating profits for their owners/shareholders. For example, corporate social responsibility concept (Carroll, 1979) and creating shared value concept (Porter & Kramer, 2011) assume compliance with laws, following of the ethical standards and the aim to reduce harm from organizational activities as something natural and essential, and assign other obligations to organizations too. Even Friedman (1970) who believed that the one and only responsibility of a business is to increase its profits recognized that an organization had to act in accordance with the law and social standards while pursuing this goal. On the one hand, Friedman's idea of corporations' orientation to profit making has been heavily discussed, on the other hand, his implications of other organizational responsibilities – namely the legal and ethical ones - have been mostly neglected, so was his opinion that individual owners were free to spend money on whatever cause they wished.

In today's globalized world, business ethics has become an even more prominent topic, especially in light of corporate frauds and other organizational unethical decisions that led to huge economic losses and financial crisis in the 2000s. With the increasing power of organizations, particularly multinational corporations, their position in society has shifted, and they are now considered as political actors (Crane & Matten, 2016), hence, they are expected to behave ethically. In addition, it has become clear that organizations can no longer act in the interest of shareholders only. Their owners and top-level management need to take into account other groups and individuals affected by the activities of an organization when making decisions, so they need to be aware of other stakeholders, shareholders being just one group of stakeholders (Freeman, 1984). The stakeholder theory is even more relevant with disruptions we have been facing this century. The continuing process of globalization, the rapid development in the area of information technology and the increased concern of civil society about the impact of business on communities have led to the need of redefining the understanding of business (Freeman et al., 2010). Owners (or their representatives) and top-level managers should take this fact into account since they are responsible for the formulation of a strategy and for making sure the organization is run in the right direction and well. So, it is up to them to set up the right tone, to define whether an organization behaves in an ethical manner and follows all applicable laws when trying to achieve its vision and fulfill its goals and whether its positioning matches its actions. It is also up to owners and top-level managers to control the priorities are followed within an organization.

Therefore, good corporate governance is essential for the development of an ethical organizational environment. Owners and top-level managers of an organization are responsible for acknowledging different social responsibilities and taking different stakeholders into consideration when making strategic decisions. They need to set up a goal for an organization to have broader range of social responsibilities, to act with integrity, to think about all stakeholders and be ready to take accountability for the results of all organizational activities. Only then, an HR manager can work with them on preparing a plan on how to reach this goal. Thus, I fully agree with Sloan and Gavin (2010) that the HR function is not able to build an ethical organization by itself. It cannot take such decision on behalf of owners and cannot make it happen unless an ethical direction, including strict compliance with the laws, is part of the overall organizational strategy. But once this goal is set up and is formulated in the strategy of an organization, then the HR function's role is critical in reaching the goal. It is an

HR manager's responsibility to drive the creation of a compliant and ethical climate in an organization, assuring everyone gets on board. If owners and top-level managers cannot see a need for institutionalizing compliance and ethics, an HR manager is the right person to present a business case to top-level management or help top-level management provide evidence about the importance and necessity of doing business ethically to owners. An HR manager, together with a manager from a legal department, are best placed to give arguments for an organization to fulfill other responsibilities than purely economic ones if owners and top-level managers lack this knowledge. Indeed, having a compliance and ethics program in place brings many benefits for an organization. For example, such a program helps an organization protect its reputation and avoid severe penalties in case it commits a crime and is prosecuted. Besides, according to Lašáková (2011), if HR management is based on ethical principles like transparency, fairness, objectivity and concern for employees, an organization minimizes the risk of occurrence of ethical problems. Moreover, if ethical behavior exists within an organization, it is reflected towards external stakeholders as well, and positively impacts them.

3 ETHICS AND COMPLIANCE INSTITUTIONALIZATION

Many organizations have already institutionalized ethics and compliance in different forms. Remišová (2011) defines the following elements of the ethics institutionalization in an organization which are also captured in Table 1:

1. Documents and other written materials – a code of ethics, ethical leitmotiv;
2. Information flow channels – hot lines, ethics roundtables, ethics discussion forums;
3. Subjects and bodies – ethics council, ethics manager, a person in charge of ethics, ombudsman, ethics advisor;
4. Education forms – ethics seminars, seminar sections on ethics, ethics workshop, e-learning activities, ethics advisory column;
5. Mechanism of supervision – ethics monitoring, ethics supervision, personal talks on ethics.

Table 1: Forms of ethics institutionalization in an organization

Documents and other written materials	Information flow channels	Subjects and bodies	Education forms	Mechanism of supervision
- Code of ethics	- Hot line	- Ethics council	- Ethics seminar	- Ethics monitoring
- Ethical leitmotiv	- Ethics roundtable	- Ethics manager	- Seminar section on ethics	- Ethics supervision
	- Ethics discussion forums	- A person in charge of ethics	- Ethics workshop	- Personal talk on ethics
		- Ombudsman	- E-learning	
		- Ethics advisor	- Ethics advisory column	

Source: Remišová (2011)

As for the institutionalization of compliance in an organization, I believe the same forms are relevant as well. An organization can have a written document capturing what laws and regulations employees need to adhere to and what it means for them when performing their daily activities. So, an organization addresses legal compliance in a formal way. The expectations for the legal behavior can be communicated via various information channels and an organization might have a hotline for employees to report illegal acts. A compliance officer or a person responsible for compliance can be appointed, which means an organization can have an official subject in charge of compliance. An organization can educate its employees on what laws are applicable for their profession or position through seminars, workshops or e-learning activities. And last but not least, an organization can do the audit and monitoring of compliance with the law in the organizational activities, in other words have some sort of mechanism of supervision over legal compliance in that organization.

In their survey, Weaver et al. (1999) found out that 98% of 254 Fortune 1000 firms were addressing business ethics and business conduct in some sort of formal document in 1995. This means that many big American companies had already institutionalized ethics by mid-1990s. Weaver and the team assumed an increase in number of companies which introduced formal elements of ethics or compliance in 1993 and 1994 was due to the enactment of Federal Sentencing Guidelines for Organizations (FSGO) in 1991. The FSGO have encouraged American organizations to implement compliance and ethics programs because they offer a sentencing

punishment mitigation for an effective compliance and ethics program in case an organization commits a crime. Nevertheless, just a few years after the FSGO came into force, the US faced a series of corporate frauds between 2000 and 2002 (Enron, WorldCom, Tyco). Their reaction to the corporate misconduct was a new legislation - the Sarbanes-Oxley Act of 2002 (Peterson, 2013) aimed at increasing corporate responsibility, improving disclosure of financial information and combating corporate and financial fraud. This act very much affected the way organizations, especially the publicly traded companies in the US, dealt with legal compliance because they were required to adopt and report on certain formal elements of legal compliance. As a result, many American organizations were forced to institutionalize compliance. Still, acting legally does not always equal to acting ethically. As Gump (2016) mentions, the cause of the global banking crisis of 2008-2012 was partly due to compliance with the rules since the financial products were over-leveraged yet legal. Therefore, it is problematic if organizations consider business ethics as equal to legal compliance. Compliance with the law, although fundamental for a fair functioning of the market, is only a minimum of business ethics (Crane & Matten, 2016; Michaelson, 2006).

What the first decade of the new millennium taught us is that it was not enough for organizations to only institutionalize ethics, neither just be compliant with the laws and regulations. The formalization of ethics and compliance in an organization should not be a series of randomly introduced formal forms of ethics and/or compliance. If an organization chooses to be ethical and comply with the laws, that decision needs to be strategic and lead to a meaningful change. An HR manager acts as a change agent, driving the overall process and supporting other managers in transforming the processes and activities they are responsible for towards being ethical. This is where HR managers certainly add value to organizations.

4 TURNING AN ORGANIZATION INTO A TRULY COMPLIANT AND ETHICAL ONE

Based on past experience, organizations have started to realize that institutionalizing some of the forms of ethics and compliance without a thought through plan might not be effective at all. Currently, a growing number of organizations seems to understand that ethics and compliance with the laws cannot be considered as an additional cost and complication to running business efficiently and they go far beyond a simple calculation of costs and revenues. This is partly due thanks to the pressure of governments and civil society. We have noticed a new trend – creation of compliance and ethics programs, in other words formulation of systematic plans of ethical development in organizations with the aim to manage legal compliance and ethics in an organization, and to integrate legal compliance and ethics in all organizational activities.

For Remišová (2011), “an ethics program of an organization is the system of connections and relations between ethical mechanisms” (p.70). It is up to an organization to decide which mechanisms it will adopt depending on different quality and quantity factors. The sector an organization operates in, owners’ and top management’s attitude towards ethics and their willingness to support it, a quality of an organizational culture, as well as an economic situation of an organization are some of the quality factors an organization takes into account when creating its ethics program. Quantity factors such as an organization size and structure, its technological level and the length of its existence belong among quantitative factors (Remišová, 2011). In her later work, Remišová (2015) characterizes an ethics program as an ethical infrastructure in an organization. In our work, we understand a compliance program as “a set of internal policies, procedures and instruments, which regulate the organization’s behavior, i.e. behavior of its owners, management and employees, so that the law is not violated during any activity undertaken by the organization” (Remišová & Bohinská, 2017:12). Theoretically, it is possible to think of a compliance and ethics program in terms of two separate programs an organization can have. Practically, both are so closely linked together that it seems they cannot be isolated one from another. Even when very first ethics programs appeared, they included the requirement for an organization to strictly follow the legal rules. The American legislators recognized the interconnection of compliance and ethics. In the 2004 amendments to the FSGO, programs to secure compliant and ethical behavior became linked as the program to prevent and detect criminal conduct has been referred to as a “compliance and ethics program” in the American legislation since then.

The FSGO’s concept of a mitigation of the punishment does not mean that the prosecuted organization simply states it has a compliance and ethics program, it needs to give proof that the program in place is functional, that it is embedded in the organizational culture. The FSGO (United States Sentencing Commission, 2016) outline seven key criteria for creating an effective compliance and ethics program:

1. Adoption of compliance standards and internal controls, which can reasonably reduce criminal conduct of employees;
2. Oversight and overall responsibility for the compliance and ethics program by the organization's governing authority and high-level personnel;
3. Due Care in delegating substantial discretionary authority so that this is not delegated to anyone who has engaged in illegal activities or other conduct inconsistent with the effective compliance and ethics program;
4. Comprehensible and regular communication about standards, procedures and other aspects of the compliance and ethics program to all levels of employees, for example through training programs;
5. Reasonable steps to achieve compliance with the law, including a regular evaluation of the effectiveness of systems for monitoring, auditing and reporting criminal conduct without fear of reprisal;
6. Consistent promotion and enforcement of the compliance and ethics program, including appropriate incentives to act in accordance with the program and disciplinary measures for engaging in criminal conduct;
7. Reasonable steps to respond to and prevent further similar illegal actions, including modifying the compliance and ethics program as necessary.

It is clear that these guidelines provide only a framework for organizations, they can be considered as fundamental principles of good corporate citizenship. They give organizations the flexibility when it comes to the creation and implementation of a compliance and ethics program. So, the FSGO make organizations responsible for coming up with a program that works in their organizational culture considering their size, sector they operate in and their history. In Slovakia, for example, the Act on Criminal Liability of Legal Persons became effective on 1 July 2016 recognizing that a legal entity can commit a criminal offence, be prosecuted and punished. The punishments can be reduced if the prosecuted organization proves that it has an effective compliance program in place. Therefore, Slovak organizations, similarly to American ones, have motivation to implement compliance programs. However, the Slovak legislation does not define the term "compliance program", nor its elements and criteria for assessing its effectiveness. Thus, the FSGO can serve as inspiration and guidance for organizations in our cultural, social and economic environment too.

5 HR MANAGER'S ROLE IN CREATING AN EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

As already mentioned, an HR function cannot decide alone that it will build a compliance and ethics program and turn an organization into a compliant and ethical one. HR people will definitely not make it happen without the decision from owners and top-level managers who also need to be sponsors of the program and advocates of compliant and ethical behavior as stated in one of key FSGO's criteria for an effective compliance and ethics program. All other managers and leaders need to support such decision as well.

Once owners and top executives conclude that an organization will go in an ethical direction, an HR manager starts playing an important role in developing a compliance and ethics program. He/she needs to work with other people in an organization around the remaining six FSGO's criteria. This means that he/she needs to participate in creating the relevant formal written documents, make sure that the responsibility for the program is given to high-principled people, take part in the communication activities relating to the program and the development of the training activities. He/she has to engage in the regular evaluation of the program, support the respective employees in monitoring and auditing the effectiveness of the program, and work on creating a culture where people are not afraid to speak up. This implies that employees are not persecuted for reporting misconduct. An HR manager needs to persistently promote the program among managers and employees and last but not least, if a wrongdoing is detected, work on adjusting the program to avoid similar actions in the future.

One reason for an HR manager to be heavily involved in the creation, implementation and application of a compliance and ethics program is that employees see HR people as representatives of their concerns and as the ones who assure they are treated fairly (Weaver & Treviño, 2001), well and with respect. If an HR manager works on creating a compliance and ethics program, employees can perceive their views and needs are also considered and are more likely willing to adhere to it and apply it in their daily activities. Another reason is that the HR function oversees the overall ethical climate of the organization. That being said, an HR manager ensures that a compliance and ethics program is not entirely linked to compliance with the laws, norms and regulations, but is connected to organizational values, beliefs and attitudes and ethical principles too. Naturally, those values, beliefs and attitudes need to be ethical. Scholars (Sloan & Gavin, 2010; Weaver & Treviño, 2001) agree that the HR function cannot accomplish the task to turn an organization into a compliant and ethical entity without involving other functions and departments. On top of owners and top management, a legal department needs to be included in the process as

well. In addition, so that the program is not seen as an HR and legal departments' initiative that other departments have to follow, it is an HR manager's role to involve other managers and make a goal of becoming a compliant and ethical organization also their goal. Those managers are more likely to involve people in their teams to also adopt this objective. Managers and employees then do not consider a compliance and ethics program as a program of an HR department or a legal department, but as an organizational commitment that brings advantages for everyone. Only if an HR manager succeeds to engage everyone in their organization, if a goal of becoming a compliant and ethical organization is shared by all the employees, an organization is on the road to achieve this goal. Otherwise, a compliance and ethics program can be another organizational program that is followed so long as there are no conflicts on the way to reach departmental goals. When such problems or conflicts arise, managers will prefer solutions that might not be ethical.

Furthermore, an HR manager needs to understand that he/she sets an example for all other managers. Thus, he/she needs to ensure that all HR practices, processes and tools are ethical. He/she has to integrate legal compliance and ethics in the recruitment and selection practices, hiring, onboarding and training activities, performance appraisal and reward processes, promotion and succession planning, disciplinary activities and termination process. If HR practices and processes are not seen as ethical and in line with the applicable laws, a compliance and ethics program will not mean much for most managers and employees. They will take the program as a „window dressing” activity of an organization, and might decide not to follow it, nor act upon it. Other managers in an organization have the same responsibility as an HR manager in that they need to ensure actions and operations of their teams do not violate the laws and are ethical as stated in the strategy. Still, one of the most crucial HR manager's role in fostering ethical organizational climate is to support managers in the process of setting up departments that function ethically and in accordance with all legal rules and regulations. An HR manager makes sure to discuss ethics with other managers and help them solve any issues and dilemmas that emerge as a result of a conflict between economical and ethical reasoning in their departments. HR managers need to keep the discussion on ethics alive, invite activities and processes that build trust among employees so that they are not afraid to speak out. In doing so, employees contribute in their turn to building a truly compliant and ethical organization. In such case, legal compliance and ethics are no longer seen as something imposed from the top, and HR and legal departments, but something to base daily decisions upon.

Some authors (Krawiec, 2005; Laufer, 1999; Wellner, 2005) mention “cosmetic” compliance and ethics programs that are implemented for the sake of regulators or as marketing tools. This happens when owners and management teams do not take ethics and compliance with laws seriously. They might talk about the importance of legal compliance and ethics and declare they want their organization to behave legally and ethically but their decisions and actions are not in line with those declarations. Such programs are in fact not effective and can eventually be just a cost with no real benefit since when a criminal offence occurs, it might be difficult if not impossible to persuade the court and public that the program could reduce criminal conduct. Even if the need of integrity in business is not a new concept (Solomon, 1992), a growing number of owners and top-level managers start realizing that integrity is essential when it comes to ethical behavior. Governments and society do not want organizations to talk about ethics, they want them to truly behave ethically. Fortunately, illegal and unethical decisions are less and less tolerated in society. For Kaptein (2003), the manager of integrity is authentic, reliable and constructive and can turn words into deeds that add value. An HR manager plays an important role in selecting and promoting the right people, i.e. people with the right skills, competencies and character that embodies organizational values so that a compliance and ethics program is not a mere talk.

6 CONCLUSION

Since recently, Slovak organizations have been criminally liable for the illegal activities as enumerated in the Act on Criminal Liability of Legal Persons. Following the American experience from the 1990s, we can expect that an increasing number of organizations will soon start considering implementing compliance programs. Moreover, Slovak society has begun to be more perceptive not only to illegal but also to unethical conduct of organizations. Such conduct is no longer accepted the way it was accepted in our country a decade or two ago. Ethics has become an important topic for organizations too. In fact, it seems impossible to separate a compliance program from an ethics program in practice no matter what geography we refer to as legal compliance and ethics are closely interconnected. Each ethics program needs to be based on legal compliance and each compliance program should include requirements for ethical behavior. Thus, owners and top-level managers of Slovak organizations should ensure they implement a compliance and ethics program reflecting the new governmental and societal demands if they want to be successful. Still, based on their qualitative research of the activities undertaken by the Slovak NGOs to develop business ethics, Remišová and Lašáková (2018) found out that there is “a shortage of attention to ethics in human resource management, to the control of illegal and unethical activity within the company and to unethical leadership

and related negligence of the tone at the top of companies” (p. 402) in the Slovak business environment. Therefore, organizations in Slovakia, including their HR teams, have a long way ahead of them in terms of legal compliance and ethics advancement.

It is highly advisable that not only Slovak organizations make use of the American lessons learnt as the US has had the longest history of formal compliance and ethics programs. According to Sloan and Gavin (2010), a “tell and sell” approach to compliance and ethics programs does not lead to creating a compliant and ethical organization. Employees need to understand what the goal of becoming a compliant and ethical organization means for them. They need to know what the advantage of reaching this goal is for their organization, their customers, their communities and them. Furthermore, organizations can avoid a mistake of institutionalizing legal compliance and ethics without embedding them into the overall strategy. Every organization that is committed to behaving legally and ethically should have a thought through plan on how to ensure compliance with the law and ethical conduct. Besides, a concept of integrity becomes increasingly important since public and regulators expect to see that organizational declarations match with actions. All of this is not possible without the involvement of those who govern the organization. An HR manager’s engagement in ethics management is essential, yet not sufficient precondition for a development of a pro-ethical organizational culture. If owners and top-level managers are advocates of the importance of legal compliance, ethics and act accordingly, an HR manager can work on integrating compliance and ethics into all HR processes, support other managers in integrating compliance and ethics in their processes and help all employees understand what part they play on the road towards becoming an ethical organization. But the way an organization is governed can be limiting to a successful implementation of a compliance and ethics program. In case owners and top-level managers do not consider legal compliance and ethics important, an HR manager can try to persuade them about the necessity of having a compliance and ethics program by discussing many benefits a compliance and ethics program brings. If he/she is unable to change the opinion on compliance and ethics of those on the top, he/she should leave an organization.

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