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THE IMPLEMENTATION OF CRIMINAL COMPLIANCE AS A CRIMINAL POLICY TO COMBAT CORRUPTION

Juliano Astor Corneau[2]

ABSTRACT

The systemic corruption that exists in Brazil, in the public and private spheres, is one of the biggest challenges of the criminal justice system of the last decade in the country. The way to combat economic crimes is a major challenge for the criminal sciences, where, in the last decade, the legislator began to adopt alternative methods, such as the use of *compliance* programmes to prevent these crimes. Thus, it is the objective of this work to analyse whether criminal *compliance* could be adopted as a new form of criminal policy in the fight against corruption. It is concluded that there is a need to establish a culture of ethics and integrity in public and private institutions in Brazil, changing the course of the criminal policy of repression and prevention of corruption.

Keywords: Criminal Compliance; Criminal Law; Criminal Policy; Corruption.

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[2] Law undergraduate student at FSG - Centro Universitário da Serra Gaúcha. Email: juliano_corneau@hotmail.com.

1 INTRODUCTION

The criminal issue is, and always has been, one of the most debated topics in politics, in electoral campaigns and in the daily life of the Brazilian people, especially when faced with various allegations of corruption of politicians and businessmen, announced by the media. Corruption develops through a wide network, and is disseminated by broad sectors of society, making itself perceived in the public and private sphere (GONÇALVES & MARTINI, 2019, p. 121), distancing itself from the conception that the locus of corruption is in the centre of the State, as if the economic market were an area where the values of good faith and ethics reign.

The "fight" against corruption, a term constantly used by the media and by actors in the criminal justice system, traditionally occurs through the repressive channel of the State, that is, through criminal proceedings. In the last decade, Brazil has improved its legislation, introducing innovations with respect to the instruments of repression of economic crimes, recognising the inefficiency of the state repressive model in the face of crimes that are highly complex to elucidate, such as economic crimes. Still, in doing so, it also recognizes the need of participation of the private sector in the combat of corruption, establishing a series of duties of implementation of compliance programmes.

Initiating this process of change of paradigms of the fight against corruption, Law 12.846/2013 (called the Anticorruption Law) was enacted, followed by Law 13.303/2016 (Law of State Companies) and, finally, Law 14.133 (Law of Bidding and Contracts), only to mention the most relevant and that will impact the deductive logic brought in this work. In this process, which aims to ensure sustainability and confidence in the economic market, the State exercises its role as "Security State" or "Welfare State", which is attributed to it in the 21st century.

Thus, the objective of this study is to analyse whether the institution of criminal compliance can be adopted as a criminal policy to combat corruption. The hypothetical-deductive research method will be used, for presenting the most adequate result for the purposes of this research, of an eminently theoretical character and based on a logical construction of arguments.

Initially, the fight against corruption will be addressed, outlining briefly the phenomenon, as well as the manner in which it is currently seen and treated in Brazil, making comments on the repressive form traditionally used in economic criminal repression. In a second moment, one enters the area of compliance, making some explanatory comments about it, as well as the requirements and its eminently preventive characteristics, in order to, in a final moment, analyse the necessary characteristics that must be present in an integrity program in

order for it to be effective in the fight against economic criminality and, in particular, corruption, outlining by means of doctrine and the aforementioned legislations to form a critical judgment on the theme.

Finally, in a brief synthesis, the final considerations are made concerning what was presented throughout the study, correlating the topics explored on the combat of corruption and the implementation of criminal compliance in the structure of public and private organisations to combat corruption.

2 OVERVIEW OF THE CRIMINAL POLICY TO COMBAT CORRUPTION IN BRAZIL

In the last decade, corruption has become one of the most commented and debated subjects in Brazil, with different opinions about its roots, from the apparent natural dishonesty of the Brazilian, the famous “a little help”, to opinions such as corruption is present in the political agent, who is corrupt by nature (FILGUEIRAS, 2009, p. 387). Especially after the *Mensalão*, and, more recently, the outbreak of Lava Jato Operation, the Brazilian society sees constant allegations of corruptive acts by political agents and businessmen.

Although Lava Jato was not the first or the only Brazilian task force dedicated to fighting crime, it was innovative in terms of the use of a surprise element: the support of the mainstream media, which certainly helped to popularize the information and the practices of the Federal Prosecutor's Office and the criminal justice system as a whole (CALLEGARI, DIAS and ZAGHLOUT, 2020, p. 266-267). Taking advantage of this support of the media and part of the population, it used, as an instrument of enforcement of the so-called "fight against corruption", coercive conduits, leaking of information and other illegalities, performing for the criminal process a real show, sometimes creating the stigma of convicted corrupt in political agents who were only investigated in a police investigation, measures supported by some criminologists, who believe in a differentiated performance of criminal law to ensure its effectiveness (CACICEDO, 2017, p. 416).

Seeking to support popular desires, the State, represented by its agents of the criminal justice system, has availed itself of the repression of the Criminal Law as the first ratio for the solution of the conflict, as well as the accomplished to seek to solve various problems and ills of society (CACICEDO, 2017, p. 410; CALLEGARI, DIAS & ZAGHLOUT, 2020, p. 277). This form of repressive action through Criminal Law forms the classic conception, unfortunately rooted in the popular imagination, that corruption resides solely in the State and in the political agent, being the place and persona par excellence of the practice of corruptive

offenses (CACICEDO, 2017, p. 417; FILGUEIRAS, 2009, p. 403), criminalizing politics and the agent himself (INNERARITY, 2017).

Moreover, this criminalization reveals a contradiction, to the extent that, by adopting the criminal system as the first mechanism for conflict resolution, it disregards the influence and political power exercised by the agents accused of white-collar crimes (MENDES, 2020, p. 1185). The repressive discourse of combating corruption also has political-economic purposes, when sustaining in favour of (neo)liberalism that, from the conception that the locus of corruption resides in the core of the State, it should have its area of action reduced to a minimum, leaving all subsisting demands to the private sphere (GLOECKNER & SILVEIRA, 2020, p. 1148). As a result of the acceptance of this "fight" against the corrupt, represented in the political agent, the State should institute a series of transnational laws about limitations to the public agent, reducing its field of action, in true economic political action on account of the excusable endemic corruption (GLOECKNER & SILVEIRA, 2020, p. 1155).

In a study published about the emergence of economic crime, Sutherland (2015, p. 340) verifies that the business person, even if he/she practices crime, does not see himself/herself as a criminal, since he/she does not have the stereotype of criminal. Still, the author states that business people consider that, the smaller the government is, the better it is, highlighting their true contempt for the law (SUTHERLAND, 2015, p. 336).

In another way, in relation to the public agent and the business person, the legal rule of economic crimes aims to protect and safeguard the economic development and its sustainability (RUIVO, 2011, p. 32), being unlikely the existence of the financial market completely divorced from the legal order, to the extent that one must recognize the artificiality of the market and the possibility of correcting distortions (RUIVO, 2011, p. 20-21). Still, Ruivo (2011, p. 22) points out that it is essential to have preventive state intervention, with the proper conformation of the Administrative Sanctioning Law, using the Criminal Law in its minimal form, i.e., as the last ratio, making use of this instrument constantly used as a preferred tool in combating social ills (BOLDT, 2020, p. 1213).

In this area, it is noted that the fight against economic macro-criminality by the repressive way has proven ineffective for two reasons: its ineffectiveness for agents who commit this kind of crime and, the attempt to repress these crimes, the transgression of basic criminal norms of the rule of law aiming at the condemnation of the individual.

At first point, it is verified that there is evident difficulty in personal and individual attribution of criminal responsibility of the delinquent individual, not always being possible to verify this activity, given that the concealment of assets, money laundering and other practices

occur through various operations, third parties or even performed through legal entities (MENDES & SOUZA, 2020, p. 1185). From its ineffectiveness in the common forensic practice, identifying the agents who commit crimes, the Criminal Law does not even reach its general preventive character, since the certainty of its ineffectiveness generates the annulment of the dissuasive effects aimed at with the creation of the criminal type and the respective penalty (MENDES & SOUZA, 2020, p. 1186). Thus, crimes are more effectively prevented by the certainty of penalties than by their severity, because the certainty of a small punishment causes a more serious impression than a possible more severe punishment (BECCARIA, 2015, p. 76).

As for the second reason, sometimes the argument of "not tolerating impunity" is used to perpetrate illegalities against the accused or investigated, treating procedural guarantees as obstacles to the goal of criminal prosecution (CALLEGARI, DIAS & ZAGHLOUT, 2020, p. 282). The way in which the illegalities are diverse, such as restrictions on the right of defence, preventive arrests as a first measure, admission of extraordinary evidence and long periods of pre-trial detention aiming to constrain the accused to sign a plea bargain agreement, everything becomes legitimate if the goal is to fight corruption (BOLDT, 2020, p. 1219).

The damage to the fundamental rights injures the public interest itself, being impossible to restrict them on behalf of the "supremacy of the public interest", given that the defence of fundamental rights interests both the citizen with the offended legal good, as the community itself, weighed against the fact that the protection of fundamental rights is an intrinsic characteristic of the Constitutional State, constituting these unavailable rights and of negative provision before the Public Power (ABBOUD, 2011, p. 12-15). According to Zaffaroni (2007, p. 119), when extreme measures of illegality perpetrated against individuals are tolerated, regardless of the reason, it becomes impossible to avoid that the same actions are used against other agents at the time that is convenient for them, generating a huge precedent and extremely dangerous for guaranteeing.

Considering that in the 21st century we live in the "Security State", there is no way the State can escape from seeking to ensure stability and trust in institutions and economic relations, since crimes against the economic, tax and financial order, even if they do not cause immediate damage to third parties, produce effects on public policies, falling on legal goods of supra-individual nature (BURKE, 2020, p. 209-210), besides this being a state activity provided for in the Federal Constitution, in its Article 173, § 5.

However, it is necessary to perform a combination between extra-penal elements through the Administrative Sanctioning Law, using the Criminal Law as the last ratio

(MENDES & SOUZA, 2020, p. 1201). It is justified, for practical purposes, considering the insufficiency of the Criminal Law to fight economic macro-criminality in Brazil, with the repressive model proving to be inefficient in preventing frauds, in view of the expansion of the state scope in the criminalization of such conducts, resulting in the frustration of the expectations of the criminal prosecution model for abstract economic criminal problems (MENDES & SOUZA, 2020, p. 1177-1184).

Thus, it is necessary to seek new political-criminal strategies that can contribute in a preventive way, i.e., before the fact occurs, which are developed within the social and corporate sphere, collaborating to the criminal field (FURTADO, 2012, p. 23), and providing solutions in a timely manner, not simply being classic criminal procedural formulas (MENDES & SOUZA, 2020, p. 1202), as well as the verification of the possibility of participation of public and private agents in this movement, the institution of compliance programmes arises (NIETO MARTÍN, 2013, p. 134). This is essentially characterized by its ex ante performance in crimes, that is, by means of an analysis of internal controls and implementing measures that may prevent offenses, as a consequence, preventing the criminal prosecution (SAAVEDRA, 2011, p. 11) and administrative and civil sanctions resulting from conflicts with regulatory acts, as well as injuries to the image of the organisation (BOTTINI, 2019, rb-4.1).

With the obligation of implementation of compliance programmes in certain circumstances, the conception of the diffuse collective focus is reinforced, where, by means of stipulations and determinations, the State becomes increasingly present, forming a kind of "surveillance State" (SILVEIRA & SAAD-DINIZ, 2012), or, in other terms, a "privatization of the fight against corruption" (NIETO MARTÍN, 2013). Furthermore, modern regulation, like compliance, acts mainly focused on fighting risks, which may not even be produced, in comparison with criminal law, which fights damages (SOUZA & PINTO, 2021, RB-1.1).

Given this manner in which integrity programmes operate in the prevention of criminal offenses, it is essential to observe and analyse where it fits into the criminal policy to combat corruption, as well as verify its effectiveness for such, considering the cultural and legal environment currently in force in the country. A few considerations on these points will follow.

3 CRIMINAL COMPLIANCE IN THE INTERNAL STRUCTURE OF BRAZILIAN INSTITUTIONS

The implementation of integrity programmes in public and private institutions, also known as compliance programmes, the former being the term currently used by the country's legislation, are programmes that establish risk management strategies in the internal structure

of organisations and, under the criminal aspect, named criminal compliance, aim at the prevention of offenses (SOUZA & PINTO, 2021, RB-1.2). It represents beyond the mere legal compliance, being seen as the normative compliance, encompassing non-legal norms, such as technical rules, principles of business ethics and stakeholders' expectations (SOUZA & PINTO, 2021, RB-1.2; CUEVA, 2018, p. 54). However, unlike internal audits, such as ISO 19600, among others, which exercise a sporadic and punctual control, directed to analyse samples, compliance is a permanent and always preventive programme (BOTTINI, 2019, RB-4.3).

For its successful implementation, it must have some basic mechanisms, such as: continuous assessment of risks of the scope of action of the company/institution, preparation of the Code of Ethics and Conduct, commitment of top management, autonomy and independence of the team responsible, periodic trainings, safe channels for reporting violations and the protection of these informants, investigation of conducts reported by whistle-blowers, and the creation of an ethical culture of respect for the laws (FRAZÃO & MEDEIROS, 2018, p. 95). Some of these aforementioned requirements remain established in Decree no. 8,420/2015 of the Federal Government, which regulated Law 12.846/2013, listing minimum requirements for the evaluation of a good compliance programme.

However, there is not a programme applicable to each and every company/institution, but the analysis of the corporate culture in each institution is necessary for the formulation of the ideal integrity programme, which, despite the existence of numerous requirements, must not have bureaucracy as a principle, but the independent and collaborative performance towards all sectors of the company (SIMONSEN, 2018, p. 111). It is important to observe that its implementation aims at reflecting on points of risk and recommending practices that minimize the possibility of the practice of crimes, in a performance prior to the occurrence of the fact, aiming to provide legal safety to the managers and to the legal entity (BOTTINI, RIZZO & ROCHA, 2018, p. 383-385).

In summary, the criminal compliance programme may be defined as a series of internal and continuous efforts of self-organisation, which will aim at the detection and prevention of any criminal activity that may occur in the internal structure of the legal entity, using internal controls and the development of an ethical corporate environment (SOUZA & PINTO, 2021, RB-1.2).

From the preventive perspective of compliance, it inaugurates a new reality in Criminal Law, in view of the repressive performance that it classically exerts, seeking to establish a removal of the typical incidence, with softening of the delinquent risk (SILVEIRA & SAAD-DINIZ, 2015, p. 214). This movement is justified in view of the scandals led by financial entities

in acts of money laundering, interest manipulation and fraud and corruption practices, seeking a greater state intervention in the market, curtailing the autonomy previously enjoyed by large companies (ANTONIETTO & RIOS, 2015). Thus, through the "privatization of the fight against corruption", as Nieto Martín (2013) calls it, the state has granted corporations the duty to act together with public institutions in the development and implementation of regulatory policies (SOUZA & PINTO, 2021, RB-1.1), with the aim of avoiding legally relevant risks, giving way to preventive criminal types (SOUZA & PINTO, 2021, RB-1.2-RB-2.2).

In this context, several legislative innovations promoted in Brazil are introduced, which has aligned with international anti-money laundering and anti-corruption measures, being signatory of conventions and also signing a wide network of multilateral agreements of assistance between States (GONÇALVES & MARTINI, 2019, p. 116).

Among the legislative innovations, of the most recent and relevant are the Anti-Corruption Law (Law 12.846/2013), State Law (Law 13.303/2016) and the New Bidding Law (Law 14.133/2021), which follow the agreement signed by Brazil United Nations Convention against Corruption, called the Mérida Convention, signed by Brazil on December 9, 2003. The Anticorruption Law (Law 12.846/2013), the first national norm that delimited the compliance programmes, in addition to defining as objective the civil and administrative responsibilities for corruptive acts committed by private companies in detriment of the Public Administration, established, in its Article 7, item VIII, the integrity programmes as a mitigating circumstance in the application of sanctions to legal entities. Although it is not formally a criminal law, it has as a fundamental characteristic the restriction of rights, affecting the sphere of application of criminal conviction (SILVEIRA & SAAD-DINIZ, 2015, p. 308), configuring itself at the limit of the Sanctioning Administrative Law and the search for greater rationality and effectiveness to the criminal justice system (MENDES & SOUZA, 2020, 1194).

In turn, Law 13.303/2016, called the Law of State-Owned Enterprises, innovates in its Article 9, providing about the obligation of public companies and mixed economy companies, with gross operating revenues exceeding R$90 million, to implement rules of structures and practices of risk management and internal control. In this regard, they must prepare and disclose a Code of Conduct and Integrity, containing a series of requirements aimed at implementing a culture of business ethics, as mentioned above. One should not forget to mention the Laundering Law (Law no. 9.613/1998), which, already in the 90's, instituted the duty of compliance for sensitive sectors of the financial market, varying according to the activity and the degree of complexity of the operations, with the norms to be stipulated by the supervisory agency of the branch of activity of the company, and in its absence, by COAF (BOTTINI, 2019, RB-4.4).

Also within the scope of Public Administration, the New Bidding Law makes it mandatory for legal entities to adopt integrity programmes in large contracts executed with the Public Administration (contracts worth over R$200 million) and, within 6 months of the execution of the contract, must establish a compliance programme within the internal structure of the organisation (Law 14.133/2021, art. 25, §4). It also establishes the implementation of the integrity programme as a tie-breaker criterion between two or more bidders, as well as determines it as a mandatory requirement for rehabilitation in the administrative sphere.

As may be observed, the implementation of compliance in the internal structures of public companies and in the direct and indirect Public Administration is recent, which will still undergo improvements and internalization in the institutions. Likewise, it is not possible to make the need of implementing compliance only in private organisations, but this practice must be extended to the Public Administration and the governmental entities (NIETO MARTÍN, 2022, p. 37), with the same rigor or even greater for large companies (VIOL, 2021, p. 70), given that public integrity aims to sustain and prioritize public interests over private interests (VIOL, 2021, p. 57-58), and the fight against corruption cannot be completely outsourced to private companies and the State cannot exempt itself from implementing these programmes in its structures (NIETO MARTÍN, 2022, p. 38). It is weighed against the fact that its implementation within public organisations may contribute to one of the failures observed by Mairal (2018, p. 195-199), who warns about the contribution of Public Law to corruptive practices, such as the absence and defects of state oversight about the execution of contracts between private parties and the state.

It is of utmost importance its implementation in state agencies, given that many economic crimes occur between a legal entity of private law and another government entity, participant of the Public Administration, being this statement added to the fact of the absolute difficulty of unravelling certain criminal conducts in the economic criminal field, due to specific internal procedures within each organisation (SILVEIRA and SAAD-DINIZ, 2015, p. 72).

Thus, public integrity programmes should encompass the obligations inherent to public organisations, in addition to the legal duties stipulated for each sector, as well as internal control, adequate service provision with risk management and other instruments designed to combat corruption (VIOL, 2021, p. 71). According to Nieto Martín (2022, p. 39), for this self-regulation in the public organisation to be effective, it is necessary to establish sanctions that oblige leaders to seek continuous improvement in the internal organisation, in addition to numerous other essential requirements so that this internal structure in the legal entity, whether public or private, produces real positive effects in the fight against economic crimes, and seeks

to break with the cycle of corruption present, sometimes very well structured, without invalidating the traditional forms of combating corruption (GONÇALVES & MARTINI, 2019, p. 118). In order to break the cycle, the integrity programme cannot be solely formal, since the mere existence of rules and penalties is not capable of preventing certain criminal conduct, and should therefore be created based on the characteristics of each organisation, for example, senior management, all members should understand the programme, periodic review of the programme, availability of direct lines for whistleblowing, and, in the event of complaints, investigations should be conducted (VIOL, 2021, p. 72-78), creating an organisational culture of integrity (VIOL, 2021, p. 78).

Thus, it is fundamental to visualize the idea of building an organisational culture of integrity, which requires deep insertion and exercised with ethics by all members of the organisation, from the trainee to the CEO (VIOL, 2021, p. 78; SOUZA & PINTO, 2021, RB-3.3), from suppliers to customers, propagating the culture and the expected behaviours of non-tolerance of violations of internal rules and legal standards (SOUZA & PINTO, 2021, RB-3.2). The Code of Conduct or Ethics should be solid and establish the bases and guidelines to be adopted on a daily basis, with the values being directly associated with each institution in a unique way (SOUZA & PINTO, 2021, RB-3.3).

Once the bases of the Code of Conduct are defined, the management of leaders in the organisation's environment will have the role of seeking to disseminate the ethical culture set forth in the Code, being, at the macro level, the role of the tone-from-the-top, that is, the company's management, the example in a broad sense, with the company's decisions reaffirming ethical attitudes, as well as tone-in-the-middle, the managers and leaders in the day-to-day execution of work activities, who should be trained and aligned with the ethical purpose of the integrity programme, aiming to propagate it to other sectors of the organisation (VIOL, 2021, p. 180). The influence of leaders is explained to the extent that, in organisations where individuals perceive a culture of integrity is ingrained and procedures are viewed as fair, members are more likely to be motivated to comply with rules and regulations (VIOL, 2021, p. 80).

The next collaboration act of all members of the organisation is the provision of whistleblowing channels, or direct lines, which are effective means of obtaining information that would hardly be discovered otherwise, which must be treated with secrecy and care, so that information of the names of the whistle-blowers does not leak (SOUZA & PINTO, 2021, RB-3.5). The information arrives to the reporting channel, and sometimes it may be inaccurate or incomplete, and the team responsible for compliance must perform a valuation of the

information received, and, if pertinent, perform an internal investigation to verify what was discovered (SOUZA & PINTO, 2021, RB-3.5).

Thus, before the verification of the commission of a crime, the team responsible for compliance has the duty to report them to COAF (Financial Activities Control Council), an administrative entity, which may promote precautionary measures, breach of secrecy and even require the initiation of criminal proceedings (article 14 of Law 9.613/98), being responsible for receiving, storing and systematizing information, and contribute to the fight against money laundering by means of strategic planning (BOTTINI, 2019, RB-3.6).

Moreover, one should not forget to raise the use of information technology as a means of investigation of criminal acts in the internal structure of the organisation (NIETO MARTÍN, 2022, p. 37). It is emphasized, with the digitalization and universalization of information systems, with the compacting of data, that this can and must be used during the investigations performed by the team responsible for compliance when there is the suspicion of illegal acts in the internal environment, given the advancement of new control technologies during the last decades (SAAD-DINIZ, 2018, p. 26).

In other words, having observed these fundamental aspects for a successful integrity programme, that is, one that prevents corruption, it is emphasized that of great value would be the creation of connections between the private and state control systems, making available a field of information of possible front programmes, which circumvent the legal system of the implementation of a real compliance programme (SIEBER, 2001, p. 25), which would use the capacity of the private and state control systems to prevent corruption. 25), which would use the capacity of compliance to monitor information, systematize data and generate reports on money laundering practices and laundering acts (BOTTINI, 2019, RB-3.6). This dialogue between the private and public sectors would aim at an approximation between compliance and antitrust, exercising and protecting constitutional values of isonomy, publicity, and accountability, considering that compliance is one of the structuring elements of accountability (ABBOUD, 2019, p. 8).

Having weighed the parameters and requirements described above, it is verified that an integrity programme that truly combats corruption goes through three stages: the assembly of the integrity plan, the instruments and mechanisms of integrity and the effective formation and construction of a culture of integrity (VIOL, 2021, p. 83). There is an infinity of "cons" within each one of these topics described above, all equally impacted by the independence of the compliance policies structured within the company by the top management, its freedom of action among the most diverse sectors and the ability to suggest changes in the internal work

process to avoid certain breaches for offenses, with the compliance area being a prominent area of the corporate structure (SOUZA & PINTO, 2021, RB-3.1). Within this context, and in view of the above, the final considerations about this paper will be made.

4 FINAL CONSIDERATIONS

Finally, after a brief analysis of corruption and criminal compliance, it is necessary to make some conclusive comments, but which by no means close the debate on the theme. The debate on corruption has countless interfaces and lines of research, among them the political, sociological and legal, which, in this work, is opted to perform an analysis among these three, given the understanding that it is impossible to dissociate the political from the legal, and vice-versa, guided by the principle *ubi societas, ubi jus.*

The phenomenon of corruption, "fought" by the criminal justice system in recent decades, especially through the repressive route, which is outlined in a critical manner in this work, considering the various transgressions of fundamental rights, justified by the supposed "public interest", which, as exposed, does not even have legal-argumentative validity within a Constitutional State of Law. Furthermore, the inefficiency of state repression in the fight against corruption, considering the offender agent in economic crimes, generally possessing economic and political power, as well as the use of sophisticated and internal mechanisms for money laundering and other crimes in this area.

Thus, after the legislator acknowledged the inefficiency of the repressive measures and the need to ensure the sustainability and confidence in the economic market, integrity programmes were introduced in accordance with the U.S. model, aimed at combating economic crime through private enterprise. Inaugurated with Law 12.846/2013, a movement began for the creation and implementation of compliance programmes in private organisations in Brazil, extending to public companies with Law 13.303/2016, as well as becoming a mandatory requirement for the execution of large contracts with the Public Administration, with the advent of Law 14.133/2021.

Differently from the repressive conception of economic crimes, which are constantly treated as a "fight" or a "combat", compliance deals with a change of perspective and of criminal policy, with an essentially rationalizing focus. In the last decade, the Brazilian legislator began to strongly bet on the formation of a culture of integrity within private organisations, which, in our view, should be extended to public institutions, which, by the way, have an accentuated duty of public ethics and of providing an example to be followed in the private order,

constituting a new form of criminal policy through the increased use of the administrative sanctioning law.

As for the challenges of implementation of a compliance programme, for certain there are many, with issues that reside at the core of the institutions, added to the fact that there is not a standard integrity programme for all organisations, but, with respect to the speed with which business and financial updates currently occur, criminal compliance reveals itself as the most effective means of prevention of economic crimes and subsequent aggregator of security to the market. It is justified because the classic alternative, the repressive means, proves to be extremely slow, flawed and at times exceeds legality, contrary to integrity programmes, which, although it is not denied that at times organisations merely seek to meet the expectations of the regulator to avoid punishment, would be the creation of a culture of business and institutional ethics within organisations, currently non-existent in Brazil.

It is certain that no culture is created with the mere promulgation of a law, and it must be improved by countless instruments, with the collaboration of the business society and public institutions in its effectiveness, since from the moment in which society has engaged itself to fight corruption, it is incumbent upon it to collaborate with the State to decrease corruption, also by means of compliance.

REFERENCES

Abboud, G. (2019). Programas de *compliance* e a proteção do mercado: o combate à corrupção e à deslealdade concorrencial. *Revista dos Tribunais Online*, (1007), 37-64.

Abboud, G. (2011). O mito da supremacia do interesse público sobre o privado: a dimensão constitucional dos direitos fundamentais e os requisitos necessários para se autorizar restrição a direitos fundamentais**.** *Revista dos Tribunais Online*, (907), 61-119.

Antonietto, C; & Rios, R. S. (2015). *Criminal compliance*: Prevenção e minimização de riscos na gestão da atividade empresarial. *Revista Brasileira de Ciências Criminais*, 23 (114), 341-375.

Azevedo, R. G. de; & Azevedo, T. P. de. (2008). *Política Criminal e Legislação Penal no Brasil: histórico e tendências contemporâneas* (Cap. 3, pp. 49-63). Porto Alegre: Livraria do Advogado.

Beccaria, C. (2015). *Dos delitos e das penas* (2. ed.). São Paulo: Hunter Books.

Boldt, R. (2020). Maxiprocessos criminais, corrupção e mídia: uma análise a partir da operação lava jato. *Revista Brasileira de Direito Processual Penal, 6* (3), 1209-1237.

Bottini, P. C; Rizzo, B. D; & Rocha, M. (2018). Algumas linhas sobre compliance criminal. In R. V. B. Cueva; A. Frazão (Coord.). Compliance: *perspectivas e desafios dos programas de conformidade* (pp. 381-395). Minas Gerais: Fórum.

Bottini, P. C. (2019). *Lavagem de dinheiro*. São Paulo: Revista dos Tribunais.

Burke, A. (2020). *Crimes de colarinho branco um desafio ao direito processual penal contemporâneo. Revista de Direito Penal e Política Criminal, 8* (1), 201-216.

Cacicedo, P. (2017). Democracia e processo de criminalização da corrupção no Brasil. *Revista Brasileira de Ciências Criminais, 25* (128), 409-430.

Callegari, A. L; Dias, P. T. F.; & Zaghlout, S. A. *As operações de combate à corrupção no Brasil e o impacto nas ciências criminais. RDP, 17* (93), 265-291.

Cueva, R. V. B. (2018). Funções e finalidades dos programas de *compliance*. In R. V. B. Cueva; A. Frazão (Coord.). *Compliance: perspectivas e desafios dos programas de conformidade* (pp. 53-69). Minas Gerais: Fórum.

Filgueiras, F. (2009). A tolerância à corrupção no Brasil: uma antinomia entre normas morais e política social. *Opinião Pública, 15*(3), 386-421.

Frazão, A; & Medeiros, A. R. M. (2018). Desafios para a efetividade dos programas de *compliance*. In R. V. B. Cueva; A. Frazão (Coord.). Compliance: perspectivas e desafios dos programas de conformidade (pp. 71-102). Minas Gerais: Fórum.

Furtado, L. (2012). *As raízes da corrupção: estudos de casos e lições para o futuro*. Tese de Doutorado, Universidade de Salamanca, Salamanca, Espanha.

Gloeckner, R. J; & Silveira, F. L. (2020). A transnacionalização da corrupção e a instrumentalização política do processo penal. *Revista Brasileira de Direito Processual Penal, 6*(3), 1135-1174.

Gonçalves, V. C; & Martini, S. R. (2019). Ressignificando o crime de corrupção, o seu controle e os seus efeitos. *Revista do Programa de Pós-Graduação em Direito da UFBA, 29*(2), 108-123.

Innerarity, D. (2017). *A política em tempos de indignação: a frustração política e os riscos para a democracia* (Tradução: João Pedro George). Rio de Janeiro: Leya.

Mairal, H. A. (2018). *As raízes legais da corrupção: ou como o direito público fomenta a corrupção em vez de combatê-la* (Tradução: Susan Behrends Kraemer). São Paulo: Contracorrente.

Mendes, S. da R; & Souza, A. C. B. (2020). O acordo de não persecução penal e o paradigma da prevenção no enfrentamento à corrupção e à macrocriminalidade econômica no Brasil: novas alternativas ao modelo punitivista tradicional. *Revista Brasileira de Direito Processual Penal, 6*(3), 1175-1208.

Nieto Martín, A. (2013). *La privatización de la lucha contra la corrupción*. Revista Penal México, 2(4), 133-143.

Nieto Martín, A. (2022). *Da ética pública ao public compliance: sobre a prevenção da corrupção nas administrações públicas* (Cap. 1, pp. 36-58). São Paulo: Tirant lo Blanch.

Ruivo, M. A. (2011). *A criminalidade contemporânea e a fraude na gestão*. Porto Alegre: Livraria do Advogado.

Saad-Diniz, E. (2018). Brasil v. Golias: os 30 anos da responsabilidade penal da pessoa jurídica e as novas tendências em *compliance*. *Revista dos Tribunais*, (988).

Saavedra, G. (2011). Reflexões iniciais sobre criminal compliance. *Boletim IBCCRIM, 18*(218).

Silveira, R. de M. J; & Saad-Diniz, E. (2012). *Criminal compliance*: os limites da cooperação normativa quanto à lavagem de dinheiro. *Revista de Direito Bancário e do Mercado de Capitais.*

Silveira, R. de M. J; & Saad-Diniz, E. (2015). Compliance, direito penal e lei anticorrupção. São Paulo: Saraiva.

Sieber, U. (2001). *Programas de "compliance" em el Derecho Penal de la empresa: uma nueva Concepción para controlar la criminalidade económica*. Lima: Fondo.

Simonsen, R. (2018). Os requisitos de um bom programa de *compliance*. In R. V. B. Cueva; A. Frazão (Coord.). Compliance: perspectivas e desafios dos programas de conformidade (pp. 105-126). Minas Gerais: Fórum.

Souza, L. A. de; & Pinto, N. R. (2021). *Criminal compliance*. (Vol. 4). São Paulo: Revista dos Tribunais.

Sutherland, E. (2015). *Crime de colarinho branco: versão sem cortes* (Tradução: Clécio Lemos). Rio de Janeiro: Revan.

Viol, D. M. (2021). *Programas de integridade e combate à corrupção: aspectos teóricos e empíricos da multiplicação do compliance anticorrupção no Brasil*. São Paulo: Almedina.

Zaffaroni, E. R. (2007). *O inimigo no Direito Penal* (2. ed.). Rio de Janeiro: Revan.