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THE IMPORTANCE OF COMPLIANCE FOR THE ACCOMPLISH OF PUBLIC GOVERNANCE IN MUNICIPAL ADMINISTRATION

A IMPORTÂNCIA DO COMPLIANCE PARA A EFETIVAÇÃO DA GOVERNANÇA PÚBLICA NA ADMINISTRAÇÃO MUNICIPAL

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ABSTRACT

This paper has the purpose of highlighting the importance of compliance programs in the administration, especially in municipalities, so that public governance can be accomplished. For this, deductive methodology is used through an essentially critical approach, so that the concepts involving the matter, the emergence and expansion of compliance in Brazil can be analyzed, as well as its relation with public governance. In the same way, considerations will be made regarding the adoption of this mechanism by the administration, starting from laws, guidelines and examples arising from the jurisdiction of the Union and the States. From that, the idea is to evidence the instruments of the compliance programs in the public sector and its fundamental application for greater effectiveness and improvement of municipal public governance. In the end, we conclude to be fundamental and positive the application of compliance programs as a tool for effectiveness of public governance in municipalities, especially because it has the consequence of reducing risks to the administration and the fact of present itself as an essential mechanism for greater ethics and efficiency in the public sector.

Keywords: Municipal Public Administration. Compliance. Governance. Integrity.

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RESUMO

Este artigo tem por finalidade evidenciar a importância dos programas de compliance na administração, em especial nos municípios, para a efetivação da governança pública. Para isso, utiliza-se o método de abordagem dedutiva através de técnica essencialmente crítica, de forma que serão analisados os conceitos que envolvem a matéria, o surgimento e expansão do compliance no Brasil e sua relação com a governança pública. Da mesma forma, são feitas considerações acerca da adoção desse mecanismo pela administração, a partir de leis, orientações e exemplos surgidos da competência da União e dos Estados. A partir disso, a ideia é demonstrar as ferramentas dos programas de compliance no setor público e sua aplicação fundamental para maior efetivação e aprimoramento da governança pública municipal. Ao final, conclui ser fundamental e positiva a aplicação dos programas de compliance como ferramenta de efetivação da governança pública nos municípios, especialmente por ter como consequência a redução de riscos à administração e pelo fato de se apresentar como mecanismo essencial para o fortalecimento ético e eficiente no setor público.

Palavras-chave: *Administração Pública Municipal. Compliance. Governança. Integridade.*

1. INTRODUCTION

The rejection of the lack of ethics in the public and private sector has been growing, especially since the disclosure of numerous corruption and other illicit scandals and the resulting publicity given by the media to these events. As a result, corruption increasingly attracts the attention of society, whether on the national or international scene, requiring a united effort to combat it.

According to the Corruption Perception Index, created by Transparency International, a non-governmental organization based in Berlin, Germany, and considered the main indicator of corruption in the public sector in the world, Brazil reached its worst position in the historical series, with the position out of 106 out of 180 countries in 2019. The country's score was 35 points on a scale ranging from 0 (highly corrupt) to 100 (very healthy).[3]

Such a position is a worrying example, but it demonstrates the reasons for the increasing search for improving public governance and tools to fight corruption, whether by the public administration, private entities, or by the doctrine, which has increasingly dedicated greater space for these studies.

Based on this, this article focuses on the need to understand compliance as a tool to fight corruption, especially within the scope of municipal public governance, with the aim of contributing to its improvement.

Brazil has an enormous number and diversity of municipalities, in which the structure and capacity to control corruption and other illicit acts generally differ in a wide spectrum.

To carry out the investigation of this problem, the deductive approach method is used, with essentially critical technique, through exploratory, descriptive and explanatory research, based basically on legislation, doctrine and documentary research, to highlight the importance that compliance programs have in the search for a more integral and effective public governance in the municipalities.

3 For more information on the Corruption Perception Index, cf. INTERNATIONAL TRANSPARENCY. Corruption Perception Index 2019: Transparency International Brazil, 2020. Available at: https://transparenciainternacional.org.br/ipc/.

Therefore, it will be sought to verify how this improvement has been made and what are the possible paths for its success, based on guidelines from bodies such as the Comptroller General of the Union - CGU, as well as the examples of the others federation entities that can serve as a model for municipalities for a better formulation of compliance programs, which lead to alignment with public governance objectives. In the end, it will be sought to answer whether compliance programs contribute to the improvement of municipal public governance, and how they should be instituted to achieve this objective.

2. COMPLIANCE PROGRAMS AND PUBLIC GOVERNANCE

The expansion of a true culture for integrity in companies and organizations, and, more recently, in the public sector, found refuge in compliance programs, which began to be instituted in Brazil, mainly after the emergence of the Anti-Corruption Law (Law 12.846 / 2013, regulated by Decree nº 8,420 / 2015), and of the Law of State-owned companies (Law nº 13.303 / 2016, regulated by Decree nº 8,793 / 2016)[4].

The word compliance comes from the English verb to comply, which expresses, in an expanded sense, a state of being in accordance with certain established guidelines or standards, whether specifications or legislation. The term integrity, which is often used as a synonym for this, can be established as an essential value that is the cause of the compliance program, which not only guides it, but is a fundamental element of an entire integrity system. (OLIVEIRA; ACOCELLA, 2019, p. 81).

In practice, compliance programs, as a technique, are not just an organized addressing of internal audit or arbitration systems, as they go much further, revealing themselves as a kind of institutional acceptance guided by the preventive purpose, programmed by a series of conducts aimed at reducing the risks of the activity, and which encompasses the various decision-making perspectives of the business sphere. (SILVEIRA; SAAD-DINIZ, 2015, p. 255)

Appeared in the United States, compliance became relevant mainly after the appearance of the FCPA - Foreign Corrupt Practices Act, in 1977, which systematized the control of acts of corruption by American companies abroad. (SPORKIN, 1997, p. 271-272). Furthermore, its jurisdiction is capable of encompassing individuals from any other country that use means located in the United States to carry out acts of corruption. (VENTURINI; CARVALHO; MORELAND, 2019, p. 319).

The anti-bribery provisions of the Foreign Corrupt Practices Act - FCPA include a prohibition on paying, offering or promising to pay foreign government officials to influence any state act, or to influence employees to act or fail to act contrary to their legal obligation, or to induce the use of its influence before the government to gain business. (GLYNN; KOBRIN; NAÍM, 1997, p. 18).

4 Although the growth of the programs was considerable after the creation of the aforementioned regulations, compliance in Brazil emerged initially as a result of Law No. 9.613 / 1998, which provides for money laundering crimes, by establishing, in its articles 9, 10 11, the duty of information on the part of financial institutions to the competent authorities, under penalty of liability.

However, the pioneering adoption by the United States to punish transnational corruption ended up creating a sense of business disparity in the top executive commands of American companies. It turns out that no other industrialized country had enacted or enforced similar standards, and, especially in the 1980s and 1990s, the Foreign Corrupt Practices Act - FCPA remained a very sensitive and controversial point for the American business community, especially because their business abroad now corresponds to an increasing share of the income of these corporations. (GLYNN; KOBRIN; NAÍM, 1997, p. 18).

Taking into account their diverse views on the Foreign Corrupt Practices Act-FCPA, the executives of North American multinationals were almost unanimous in their interest in greater equality of conditions, so that they encouraged the United States government to act for the standard's predictions to be internationalized or even to persuade other countries to adopt similar laws. (GLYNN; KOBRIN; NAÍM, 1997, p. 19).

These conditions were fundamental for the American government to increase the pressure for anti-bribery recommendations to be approved by international organizations and by the countries that participated in them. In 1994, two factors were fundamental when the Organization for Economic Cooperation and Development - OECD produced recommendations against international corruption: pressure from the US government for more serious actions against bribery, as well as an anti-corruption sentiment. that existed in Europe, which made it increasingly difficult for European governments to publicly oppose the initiative of the United States. (GLYNN; KOBRIN; NAÍM, 1997, p.19-20).

The process of globalization of the economy was, likewise, fundamental in bringing a new urgency to the problem. It turns out that this process of economic integration has increased the likelihood that the impacts of corruption will expand and end up influencing the entire global economy, so that globalization, by facilitating the occurrence of corruption, also served to highlight and combat it. (GLYNN; KOBRIN, NAÍM, 1997, p. 12-13).

Precisely as a result of this new concern with corruption and the historical context involved, there were several international commitments assumed by Brazil, such as, for example, the Inter-American Convention against Corruption, internalized in the Brazilian system as of Decree 4.410, of 7 October 2002 (BRASIL, 2002, online), the United Nations Convention against Corruption, internalized through Decree No. 5.687, of January 31, 2006 (BRASIL, 2006, online) and the Convention on Combating Corruption of Foreign Public Officials in International Business Transactions, of the Organization for Economic Cooperation and Development - OECD, internalized through Decree No. 3.678, of November 30, 2000. (BRASIL, 2000, online).

The purpose of the Inter-American Convention against Corruption, of the Organization of American States - OAS, was to raise collective awareness of the seriousness of the existing problem, in order to encourage actions to combat transnational corruption among states, and to focus especially on prevention, detection and sanction of corruption in the civil service and related activities. (BLOK, 2014, position 747).

Susan Rose-Ackerman (2001, p. 255), one of the most eloquent researchers on the subject, says that "the Convention requires a good degree of border cooperation and demands from countries that prohibit and punish international bribes."

Likewise, Brazil adhered to the guidelines in the Partnership for the Open Government or OGP - Open Government Partnership, an initiative that brings together nations and civil society

organizations in the search for the strengthening of democracies and in the fight against corruption, among others. (CGU, [2020b?]).

Therefore, from the international commitments assumed, there was a direction for Brazil to start adopting new tools in the fight against corruption and other illicit acts, as well as for the strengthening of constitutional democracy (COPETTI NETO, 2016, passim) and governance public.

Governance primarily originated at the corporate level, and was related to the historical moment in which business organizations moved away from the classic management model by the owner and moved to management by third parties, who were given the power and authority for management. from the company. However, many times, the disagreements between these new managers and the owners ended up generating conflicts of interest, so that each party had as a motto to obtain the maximum of their own benefit. (TCU, 2014, p. 11).

It turns out that corporate governance is a diffuse concept, which should not necessarily be applied solely and exclusively to business management, but that it can be used to preserve the environment, such as environmental governance, as well as to combat bribery and corruption in the public service, in the case of public governance. (MAZALLI; ERCOLIN, 2018, p. 16 apud Alves, 2001).

Public governance, therefore, had its origin in the idea of corporate governance, and can be understood as a system that defines the balance of power between citizens, government officials, senior management, managers and employees, with the purpose of enabling the prevalence of the common good over individual or group interests. (TCU, 2014, p. 17-18 apud MATIAS-PEREIRA, 2010, adapted).

It turns out that the fiscal crisis of the 1980s demanded a new international economic and political arrangement, with the intention of making the State more efficient. (TCU, 2014, p. 13). This context promoted the discussion of public governance, which, according to the International Federation of Accountants - IFAC, is governed by the principles of transparency (openness), integrity (integrity) and accountability[5] (accountability). (IFAC, 2001, p. 20).

It is important to highlight that, in Brazil, several instruments emerged and continue to emerge in the search for strengthening public governance, beginning in the 1990s, such as: a) the Code of Professional Ethics of the Civil Public Servant of the Federal Executive Branch (Decree 1,171 , of June 22, 1994); b) the Fiscal Responsibility Law (Complementary Law 101, of May 4, 2000); c) the National Program for Public Management and Bureaucratization (GesPública), instituted in 2005, revised in 2009 and 2013; d) Law 12.813, of May 16, 2013, which provides for the conflict of interests in the exercise of the position or employment of the Federal Executive Branch. (TCU, 2014, p. 15).

However, the definitions brought by Decree nº 9.203 / 2017 BRAZIL, 2017, online) deserve special mention, which provides for the governance policy of the direct, autarchic and foundational federal public administration, which are basic and of fundamental importance for the

5 In this article, the term 'accountability' will be used as a translation of the original term in the English language accountability, according to the TCU Governance Framework (2014, p. 13). This is because the translation of the term into Portuguese and its definition are still the subject of doctrinal debate in Brazil. See CAMPOS, Anna Maria. Accountability: when can we translate it into Portuguese? Public Administration Magazine, Rio de Janeiro, Feb./abr. nineteen ninety; Cf. DE PINHO, José Antonio Gomes; SACRAMENTO, Ana Rita Silva. Accountability: can we translate it into Portuguese yet? Public Administration Magazine, Rio de Janeiro, Nov / Dec. 2009.

understanding of the Institute. According to item I of art. 2 of the federal regulations, public governance is the set of mechanisms of leadership, strategy and control put in place to evaluate, direct and monitor management, with a view to conducting public policies and providing services of interest to society. The principles of public governance, in turn, under the terms of art. 3rd, will be the responsiveness, integrity, reliability, regulatory improvement, accountability and responsibility, as well as transparency.

Art. 4 of Decree nº 9.203 / 2017 (BRASIL, 2017, online) also establishes a series of guidelines for public governance, highlighting item V, which deals with the provision of incorporating high standards of conduct by senior management to guide the behavior of employees. public agents, as well as item VI, which has the need to implement internal controls based on risk management, which should prioritize strategic preventive actions before sanction processes.

It should also be highlighted the definition provided in item III of art. 5 of the aforementioned Decree (BRASIL, 2017, online), which provides for control as a mechanism of public governance and which comprises structured processes to mitigate risks, aiming at the achievement of institutional objectives, in order to guarantee orderly, ethical, economic, efficient execution and effective of the organization's activities, with preservation of legality and economy in the expenditure of public resources.

In its article 19, Decree nº 9.203 / 2017 expressly provides for the adoption of integrity programs by the bodies and entities of the direct, autarchic and foundational public administration:

> Art. 19. The bodies and as entities of the direct, autarchic and foundational administration, institution of integrity program, with the objective of promoting the adoption of measures and institutional actions destined to the prevention, detection, punishment and remediation of fraud and acts of corruption, structured in the following axes:
>
> I - commitment and support from senior management;
>
> II - existence of a unit responsible for implementation in the body or entity; III - analysis, assessment and management of risks associated with the integrity theme; and
>
> IV - continuous monitoring of the attributes of the integrity program. (BRASIL, 2017, online).

It is possible to understand, therefore, the relationship between compliance and public governance, as the axes and guidelines of both are aligned and complement each other, as Decree No. 9.203 / 2017 makes clear, as well as the purpose for which they are intended, which it is the ethical and efficient fulfillment of the organization's activities, the preservation of legality and the reduction of risks to management. (BRASIL, 2017, online).

The importance of the relationship between public governance and the axes of compliance programs can also be highlighted by understanding organizations such as the Independet Commission for Good Governance in Public Services - ICGGPS, the World Bank and the Institute of Internal Auditors - IIA, who understand that , in order to better serve the public interest, it is essential that ethical behavior, integrity, responsibility, commitment and transparency of leadership is guaranteed, as well as that: a) corruption is controlled; b) that a code of ethics and conduct is effectively implemented; c) observing and ensuring that organizations adhere to regulations, norms, codes and standards; d) that communications are transparent

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and effective; e) that interests are balanced and effectively cover stakeholders (be they citizens, users of services, private initiative or shareholders. (TCU, 2014, p. 13).

The provision of high standards of conduct for members of management, as well as the existence of control mechanisms to reduce risks and the consequent implementation of internal controls are fundamental, therefore, in the construction of effective public governance. These are also pillars of compliance programs, as seen previously, and must be implemented to improve public governance.

Having presented such concepts, the effectiveness and importance of public compliance programs should be analyzed, more specifically at the municipal level, as well as what are the basic guidelines for their implementation, so that one can move towards a more ethical and integral public administration that is in accordance with the precepts of better public governance.

3. COMPLIANCE PROGRAMS AT THE MUNICIPAL SCOPE AND THE GUIDELINES OF THE CGU

Once the remarkable link between public governance and compliance has been demonstrated, it is important to highlight how the work of the Comptroller General of the Union - CGU has been fundamental in the process of expanding these institutes in the municipalities, as well as for their improvement.

Based on initiatives such as the Transparent Municipality Collection, the agency proposes to Municipalities from suggestions for regulation via the Decree of the Anti-Corruption Law (Law No. 12.846 / 2013) to guides for strengthening management, as well as guidelines for the implementation of municipal corregidor offices. (CGU, 2017, online).

The role of the Comptroller General of the Union - CGU in the application of the anti-corruption law is crucial, since, without a doubt, it is the body that has the best structure and is most skilled for this function, since it has the competence and training to do so. , as well as the fact that its employees have experience and knowledge of what is effective compliance, having participated in international forums and groups, including the Organization for Economic Cooperation and Development - OECD. (BLOK, 2014, position 1213).

Specifically in the How to Strengthen Your Management Guide, the agency guides municipal entities and public bodies especially to: 1) regulate the Anti-Corruption Law at the municipal level; 2) register the agency or public entity in the Integrated Registration System of the National Registry of Inidonous and Suspended Companies - CEIS and in the National Registry of Punished Persons - CNEP; 3) to encourage the adoption of integrity programs by legal entities that relate to their agency or entity and 4) to promote training, in order to ensure that public servants or managers are aware of the legislation. (CGU, 2017, online).

Such steps are basic in order to consolidate the basis of public governance. This occurs since without the regulation of the anti-corruption law in the municipality, (1st step of the guidance of the CGU in the How to Strengthen Your Management Guide), this entity will not be able to repress any wrongdoing committed. The regulation establishes the legal norms and

expands the ways in which the public administration can adequately inspect and punish illegal and unethical conduct.

The municipal manager must also include the public entity and its bodies in the registers of the National Register of Inidonous and Suspended Companies - CEIS and in the National Register of Punished People - CNEP (2nd step of the guidance of CGU in the Guide for Strengthening Management) so that punishments derived from the regulations of the Anti-Corruption Law can be included in the national system.

The application of the law will also require training from the municipal public administration and bodies prepared to exercise this function. The creation of a body, such as an Internal Affairs Unit, for example, may make it responsible for spreading knowledge, by promoting training and qualification for public servants, so that they are aware of the law and are prepared to apply it, as recommended by the Comptroller. -General of the Union in the 4th step of the guidance in the How to Strengthen Your Management Guide. (CGU, 2017, online).

Regarding the adoption of integrity programs by legal entities that relate to the municipal entity, the third step of the guidance of the Comptroller General of the Union - CGU in the Guide for Strengthening Management, these can be encouraged through the mandatory adoption of a program compliance within the scope of public contracts, which, due to their relevance, will be highlighted in the following chapters of this article. (CGU, 2017, online).

It is also essential, for the effectiveness of compliance programs in public administration, the adoption of codes of conduct, whose function is essential for the formation of a culture of compliance with the rules. These codes must cover different situations of daily life, but they must have effective reporting channels that protect the identity of the whistleblowers, so that no type of reprisal against them occurs (CARVALHO et al., 2019, p. 648). The Federal Government, for example, adopts the Code of Conduct of the High Federal Administration, in which it seeks to ensure the high standard of ethical behavior of its employees, which can guarantee the smoothness and transparency of the acts practiced in the conduct of public affairs. (BRASIL, 2000, online).

In addition, when defining what conducts are prohibited, it seeks to guarantee public agents greater security by indicating the limitations of their acts, as well as giving control bodies within the municipal public administration the basis for investigating potential practices that are not permitted.

The code of conduct must, therefore, establish how the agent should behave, as well as the companies that relate to the municipal power, imposing, properly, the policies aimed at these fundamental participants in public-private relations. However, codes of conduct will only be effective if they really reflect what happens within the administrative scope, with emphasis on the joint need for a whistleblowing channel, which plays a fundamental role for the effectiveness of the rules described therein and the integrity program itself. (CARVALHO et al., 2019, p. 650).

The role of the whistleblowing channel is essential, as it will be the one who will receive reports of possible acts of corruption, unethical conduct or practices that violate the code of conduct, which can take place through one or more systems, such as the telephone, and -mail, internet or intranet.

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Care should be taken to ensure that the whistleblowing channel does not alienate potential employees concerned about some type of reprisal in the municipal public sphere, such as the opening of disciplinary administrative proceedings, which would probably discourage the reporting of irregularities.

Therefore, it is also important to create mechanisms to protect whistleblowers that seek to make the whistleblowing channel effective, in order to guarantee its real applicability and functioning. In this sense, there is the example of Decree No. 10.153 / 2019, from the Federal Government, which establishes safeguards for the protection of whistleblowers and irregularities against the federal public administration. (BRAZIL, 2019, online). Such a safeguard is essential, as it would be useless to have the best reporting channel available, but that behind it there are no adequate measures to safeguard the whistleblower, placing him at the mercy of possible retaliation.

As demonstrated, whether based on legal regulations or the guidelines of the Federal Comptroller General - CGU, there will only be real effectiveness of a compliance program, based on public governance, at the municipal level, if its implementation is real, so that it must have the necessary mechanisms so that there is effectiveness on the material plane. To this end, in addition to regulating the anti-corruption law, municipalities must include companies in the registers of the Integrated Registration System of the National Registry of Inidonous and Suspended Companies - CEIS and in the National Registry of Persons Punished - CNEP, as well as promoting the training of agents public, elaborate a code of conduct and establish a denouncement channel, in addition to including rules regarding the adoption of compliance programs by companies that relate to the public administration, which will be analyzed below.

4. THE REQUIREMENT FOR COMPLIANCE PROGRAMS FOR PUBLIC CONTRACTING

The requirement for the adoption of compliance programs by companies that report to the public administration, especially in the hiring processes, arose at the initiative of the State of Rio de Janeiro (Law No. 7.753 / 17) and the Federal District (Law No. 6.112 / 18). Innovation has multiplied and is already adopted by other states of the federation, as well as expanded to several Brazilian municipalities[6].

In this sense, it is important to analyze compliance in the scope of public procurement, to report how the initiatives of state entities have been reproduced by the municipalities, as well as to highlight the importance that these entities comply with the recommendations of the Comptroller General of the Union - CGU so that, based on the correct formulation of the programs, greater effectiveness is guaranteed to municipal public governance.

6 See Bill no. 16/20 of Cascavel-PR, which establishes a series of requirements for contracting with the Government.

4.1 CONTEXT

As portrayed, the fight against corruption and other illicit acts, through public governance, has left the sphere of the Federal Government to expand to the States and Municipalities, so that many already demand that companies or organizations that relate to the public power implement programs compliance.

Discussions arise in the doctrine regarding possible unconstitutionality biases that the rules for the requirement of compliance programs in public tenders and contracts could bring. (CASTRO; ZILIOTTO, 2019, p. 22).

The requirement for compliance in contracting is not unconstitutional, since it does not conflict with the provisions of item XXI of art. 37 of the Constitution of the Republic, nor with the rules established by the General Bidding Law (No. 8.666 / 1993), but which, in fact, complements them, in line with the needs of each entity. (CASTRO; ZILIOTTO, 2019, p. 43).

It so happens that the Constitution of the Republic, in its article 37, defines the principle of morality as the governor of administrative activity. Federal Law No. 8.666 / 1993, related to bidding, brings, in the same way, in its article 3, the principle of morality as one of the pillars of the administration. The norm establishes, in the same sense, that the promotion of sustainable national development is one of the objectives of the bidding. (CASTRO; ZILIOTTO, 2019, p. 25-26).

Part of this reasoning arises from the fact that it is possible for the State to develop social policies of public interest, even in hiring, as long as authorized by the legal order. (GUIMARÃES; REQUI, 2018, p. 207).

It happens that, since administrative law is responsible for conducting public action and for establishing the standards within which the public power must act towards the purpose guided by the Constitution, it is of fundamental importance that it be delimited with a plurality of themes that it seeks to ensure effective performance. (DIAS; COIMBRA, 2019, p. 4).

In the case of tenders, however, care must be taken that there is no offense or obstacle to participation in the competition, which would disrespect the provisions of item XXI of Article 37 of the 1988 Constitution.

There is no violation if the requirement does not address the qualification condition, which would lead to unconstitutionality, but rather a contractual obligation, so that compliance programs should only be required in the third phase of contracting, that is, in the execution of the administrative contract. (DE CASTRO; ZILIOTTO, 2019, p. 44).

In turn, such defects can only be properly analyzed on a case-by-case basis, in each legislation, based on a careful observation and the semantics of the legal wording. (LOSINSKAS; FERRO, 2019, p. 671).

What the requirements of integrity programs in public procurement intend, in fact, is to reduce risks to the public administration, especially in relation to economic losses derived from corruption, such as collusion or cartels. (GUIMARÃES; REQUI, 2018, p. 208).

Thus, the movement of state and municipal entities against illicit acts such as corruption and other deviations is shown to be positive, especially when demanding integrity programs that combat unethical or illegal conduct, precisely when aiming at their reduction and, at the same time, in the search to implement the guiding principles of public administration, namely

legality, impersonality, morality, publicity and efficiency, as provided for in article 37 of the Constitution of the Republic. (BRASIL, 1988, online). At the same time, the initiatives comply with the recommendation of the Comptroller General of the Union in item 3) of the How to Strengthen Your Management Guide (CGU, 2017, online), which is to encourage the adoption of integrity programs by the legal entities that are related with your organ or entity, as previously seen.

It is certain, in any case, that state and municipal laws have taken the legal initiative to demand compliance programs for public contracts in order to improve public governance. (LOSINSKAS; FERRO, 2019, p. 671).

Consequently, it is interesting to verify how the requirement for compliance programs in public tenders and contracts has been made and how it can be improved, so that, in the end, the initial purpose is reached, that is, the search for the reduction of acts corruption and other illicit acts in the public administration.

4.2 THE DEMAND CRITERIA IN THE STATES AND THEIR GROWTH IN THE MUNICIPALITIES

To date, there is no federal regulation that requires private organizations to implement compliance programs for public procurement, so that state laws are the main points of reference for municipalities.

Currently, at least seven states have laws or decrees that oblige contractors with the public administration to establish a compliance program. (DE FARIA; CHIZZOTTI, 2020, online).

Despite the fact that the State of Rio de Janeiro (2017, online) was a pioneer in Brazil, since Law 7.753 / 17 has made compliance programs mandatory for companies that have relations with the public administration, it matters here, to analyze the rules of the Federal District, especially due to the mixed nature of state and municipal entities, the latter as the focus of this article, not with the aim of exhausting it, but merely to exemplify the criteria adopted by it.

As of Law No. 6.112 / 18, the Federal District (2018, online) established the mandatory integrity programs for hiring, for all spheres of power, as long as the values are higher for hiring in the price taking modality, which is provided for in Law 8.666 / 1993, and provided that the contract has a term of more than 180 (one hundred and eighty) days. (DE CASTRO; ZILIOTTO, 2019, p. 37). Initially, the standard predicted that the values would be equal to or higher than the bidding in the price taking modality, estimated between R $ 80,000.00 (eighty thousand reais) and R $ 650,000.00 (six hundred and fifty thousand reais), even though form of electronic trading. However, after a legislative change in 2019, the Federal District regulations (2018, online) started to provide that the obligation would apply to amounts greater than R $ 5,000,000.00 (five million reais).

It is important to note that the district regulations also provided for the methodology for evaluating compliance programs, by emphasizing that facade programs or scham programs, those that are merely formal but that, in fact, are ineffective to reduce, will not be accepted. the risk of harmful acts against the public administration provided for by law. (CARVALHO; VENTURINI, 2018, online).

Well, from the example of the Federal District rule, it is noted that the municipal entity must define, at least, the following criteria: a) the minimum contract term, b) the minimum contract value and c) how it will take place the evaluation of compliance programs.

This is because the establishment of a compliance program is complex, often requiring a term longer than one hundred and eighty days, as provided by the Federal District Law (2018, online). The municipality that intends to regulate the compliance requirement for public procurement must, therefore, take this criterion into consideration, under penalty of many companies accelerating the establishment of these programs to meet the contractual deadlines, without considering, in fact, their real effectiveness or adequacy, creating real scham programs.

In the case of the evaluation of compliance programs, especially in the requirements after the conclusion of the contract, the evaluation method, which can take place through certifications, aims to ensure that the public authorities are truly effective, in order to avoid, precisely, a scham program.

The central element of the debate in favor of evaluating compliance programs through certification is based on the fact that, when evaluating these programs, it may prove excessively difficult for the public administration to do so with the appropriate technical analysis. It happens that, for many times, there are no public agents prepared in sufficient numbers to be able to fulfill this role. It is for this reason, too, that the municipal bodies charged with the control of the anti-corruption law and the inspection of contracts must have trained and qualified civil servants, as recommended by the Office of the Comptroller General in item 4) in its Management Strengthening Guide, which is to promote training, in order to ensure that public servants or managers know about the legislation. (CGU, 2017, online).

It is important to note that, to date, there is no regulation or reference of which, or which, would be the most appropriate certifications, which is under debate before the Government's doctrine and bodies.

Certification widely recognized internationally is ISO 37001, which deals with anti-bribery management systems, approved in 2016 with the participation of Brazil, through the Brazilian Association of Technical Standards. (ABNT, 2017, p. 6). In turn, the Empresa Pró-Ética initiative, of the Comptroller General of the Union (CGU, [2020a?], Online), which consists of promoting the voluntary adoption of integrity measures by companies, through public recognition of those who, regardless of size and industry, they are committed to implementing measures aimed at preventing, detecting and remedying acts of corruption and fraud.

Obviously, the question of evaluation centrally covers the entire functioning of the compliance program and the reduction of risks for the public administration. Therefore, if adopted, it is essential that the evaluation method is adequate, and that this is provided for in the law or in specific municipal regulations.

Still, it must be considered: what is the reasonable value for the compliance requirement? This may be the most difficult question to answer. For this, it seems more reasonable that it is appreciated, by the regulating municipality, what would be the appropriate value according to the local reality, as well as the companies that negotiate with the entity. The importance of this consideration is fundamental, as it does not seem balanced to require a robust compliance program from a company that contracts for low amounts, which can lead to distortions in bidding processes and the elimination of competition. The size and specifics of the legal entity

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must be considered, in order to avoid misrepresentations, as also provided in § 1 of article 6 of the Federal District rule. (2018, online).

Therefore, based on the state regulations and their improvements, there have been many initiatives by the municipal executive and legislative branches regarding the requirement for such programs. Cities of relevant importance in their states have joined projects to implement public compliance. The cases of Jaraguá do Sul / SC (2019, online) are cited as an example, through Decree nº 12.533, Foz do Iguaçu / PR (2019b, online), by Municipal Law nº 4.832 and Ponta Grossa / PR (2019, online), by Decree nº 15.520.

Regarding the requirement for compliance programs to contract with management, there was adoption by the city of Vila Velha - Espírito Santo (2018, online), with Law No. 6,050. In the city of Foz do Iguaçu / PR (2019a, online), there is already a bill in this regard (Bill 172).

It is possible to verify, from all these initiatives, that the intention in adopting compliance programs is really to establish a means for changing public governance and corporate culture, and it is expected that the growing rejection of corruption and other irregularities in the public sector will continue to inspire various initiatives and bills in many of the 5.576 Brazilian municipalities (IBGE, 2017, online), in order to follow the trend towards adapting to the best public governance standards based on the creation of adequate compliance programs.

5. FINAL CONSIDERATIONS

It is notable that the innovations introduced in recent years to the country's legal system, as well as international commitments assumed by Brazil, seek to promote the dissemination of ethics and integrity, both in the public and private sectors.

It is from this new conjuncture that public governance arises, supported by compliance, which has been presented as an essential mechanism in the construction of a new public governance, more ethical and efficient, not only as good practice, but as a need that goes to the meeting of the administrative principles established by the constitutional order.

Compliance programs seek to reduce the risks of wrongdoing for the public administration, such as acts of corruption and other deviations in licenses, public contracts, among others. Therefore, such initiatives have been replicated. Within the scope of the Union, the important guiding role of the Comptroller General of the Union - CGU is noteworthy. It is extremely important, as recommended by this body, that the municipalities regulate the anti-corruption law at the municipal level, register the body or public entity in the Integrated Registration System of the National Register of Incumbent and Suspended Companies - CEIS and in the National Register of Punished People - CNEP , encourage the adoption of integrity programs by legal entities that relate to their agency or entity and promote their training, in order to ensure that public servants or managers are aware of the legislation. In this sense, the tools of the compliance programs at the municipal level must be applied together, as true pillars, because this way there will really be a possibility for public governance to be implemented.

Special emphasis is given to the fact that several States have required compliance programs in private companies to be mandatory in order to participate in public contracts. This

is mainly due to the fact that public contracts are more susceptible to illegal or unethical conduct, so that it has received special attention.

It was clear, therefore, in the present work, that the adoption of compliance and its tools in the search for the effectiveness of public governance in the municipal public administration is fundamental and positive, presenting itself as an essential and indispensable mechanism so that greater ethics and efficiency in the public sphere.

Therefore, it is not possible to dissociate the search for a more integral public governance that intends to be effective from compliance, as this is an essential tool in the pursuit of the objectives that should be pursued by management, according to the principles present in the legal order. The adoption of compliance programs thus constitutes an essential role for public governance, and must be replicated in order to achieve a more complete and effective administration for the benefit of society.

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