THE IMPLEMENTATION OF THE PUBLIC COMPLIANCE PROGRAM AS AN ANTI-CORRUPTION PUBLIC POLICY AND AN INSTRUMENT TO REALIZE THE RULE OF LAW

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Abstract: The present article aims to analyze, in a succinct manner, legality as a principle that forms the Rule of Law and its connection with the public compliance programs. It alsoaims to delimit the effective objective of the implementation of a public compliance programas public policy and to analyze how corruption can undermine the Rule of Law in its materialconception. The origin of the principle of legality and compliance programs, and the formation of the Rule of Law are based on the theoretical framework. The American economic crises and cases of corruption involving the governments of the United States of America and Brazil are also part of the historical framework. The law creating the Comptroller General of the Union (CGU), the law on state-owned companies and the anti- corruption law are revised. Because it is a descriptive, bibliographical and documentary research, the methodology used emphasized establishing relationships between data already produced and the central theme, in addition to the bibliographical review, especially the normative references to public compliance programs.

Keywords: legality; rule of law; public compliance, public policy; corruption.

1. INTRODUCTION

Despite the criticisms in recent years, especially from 2020 to 2021, regarding the police operations combating corruption in Brazil, one fact is indisputable: since the beginning of Operation Car Wash, the Brazilian population has witnessed that the law applies to everyone and must be obeyed, regardless of social status, as all individuals became subject to investigation, judgment, and imprisonment.

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Notwithstanding this new reality, widely reported throughout the country, it is also indisputable that despite the great efforts of all oversight and control agencies within government structures, they are neither sufficient nor capable of embedding within public service the expectation of incorruptible conduct, ensuring that nothing contrary to legality occurs (DEMATTÉ; GONÇALVES, 2020, p. 63-64).

In this context, the implementation of a public compliance program seeks to prevent and manage the risks associated with the actions and conduct of established agencies and the public servants under their command.

In countries like Brazil, as well as other large or highly populous nations, public management systems are highly complex, justifying the implementation of a risk management program, which is essentially a public compliance program. Today, relying solely on public trust is no longer sufficient; much more is needed.

The critical question is: how can it be demonstrated that these programs have been fully implemented and are effectively managing the risks of public services? The answer is not simple, but demonstrating compliance with the rule of law should be one of them (HAYEK, 2011, p. 236-260).

Thus, these programs may function in various ways and within different organizations, but all must adhere to a basic structural essence, as is the case with the Office of the Comptroller General (CGU) in Brazil or other institutions in different states and nations, as will be shown throughout the article.

Therefore, this article argues that the implementation of public compliance programs in all public organizations serves as a tool for enforcing the rule of law, this time with the purpose of guiding public servants to prevent, detect, and remedy situations of integrity breaches.

This work will be divided into three chapters, along with this introduction and final conclusions. The first chapter will present the historical origins of the principle of legality and how it shaped the rule of law, tracing its roots to demonstrate its connection to the foundational principle of public compliance programs. This chapter will also briefly discuss the origins of these programs.

The second chapter will seek to highlight the impacts on public administration with the implementation of compliance programs, their history in Brazil, and how this translates into the rule of law's effects in controlling the state and curbing its deviations. This stage of the study will aim to demonstrate in theory what will be evidenced by the practical cases in the third chapter.

The third chapter will focus mainly on the program implemented by the Federal Government, led by the CGU, and some states within the Federation. With these practical

demonstrations, it will be shown that the implementation of public compliance programs are anti-corruption public policies that reflect the principles of the rule of law.

2. THE ORIGIN OF LEGALITY, ITS ESTABLISHMENT AS ONE OF THE FOUNDING PRINCIPLES OF THE RULE OF LAW, AND ITS CONNECTION WITH PUBLIC COMPLIANCE PROGRAMS

2.1 Legality as a Constituent Principle of the Rule of Law

The principle of legality will be presented historically according to its practical application in each nation established under the rule of law. In Brazil, we can affirm that theprinciple of legality was already recognized as early as the Imperial Constitution of 1824, which provided that no citizen could be compelled to do or refrain from doing anything except by virtue of law.

When associating the principle of legality with the rule of law, MOREIRA NETOand GARCIA (2012) limit the dependence of the public domain on the existence of a rule, necessarily written, and remind us that individual freedom, so fundamental to the rule of law, by the simple right of being free, also presupposes the formality of legality. They emphasize the connection with the principle of legitimacy, essential for guaranteeing citizens' rights and protecting them against state arbitrariness:

> *[...] This principle, as a foundational premise of the rule of law, guarantees, in theprivate sphere, that 'no one shall be required to do or refrain from doing anythingexcept by virtue of law' (art. 5, II, CF/88) and, in the public sphere, the submissionof the State's actions to the law, as the formal product of the State's legislative bodies.*
>
> *Furthermore, constitutionally, the principle of legality also results from the application (as desired by §2° of art. 5°) to the administrative sphere of the principle that 'there is no crime without a previous law defining it, nor punishment without previous legal provision' (art. 5°, XXXIX, CF/88).*
>
> *Directly linked to the principle of legality is the associated principle of legitimacy, understood as the will, expressed through democratic means, of the society's interests, thus placing it in a broader field than that of strict legality* (MOREIRA NETO; GARCIA, 2012, p. 13).

In contemporary history, we cannot discuss the origin of legality without going back to 17th century England and addressing individual freedom. As HAYEK (2011, p. 236-260) explains, it was only during the Middle Ages that the concept of creating new laws, legislation more akin to what we know today, began to be accepted by society. In England,the parliament evolved from an institution seeking the application of law to one that createdthe law.

In this context, HAYEK (ibid., p. 236-260) continues to explain that it was in thedispute

over the authority to legislate that this medieval England of the 15th and 16th centuries transitioned to the limited government model of the 17th century, which rejected arbitrary actions contrary to recognized general laws and delved into the understanding of the word 'isonomia' to describe a state of equality before the law and responsibility for thosewho applied it. This same word continued throughout this century to be explained as: equality before the law; government by law; or the "RULE OF LAW".

As we can see, the rule of law is formed through the individual freedom of each person living in it, with the assurance that they will be treated equally in rights and duties, thanks to the laws governing this state, which is a state of law because it applies these lawsresponsibly, in favor of guaranteeing each person's individual freedom.

The principle of legality, as we have seen, has been shaped historically with the necessity that something can only be demanded if it is previously established in rules that have been previously deliberated.

2.2 The Origin of Compliance Programs and Their Connection with the Emergence of the Rule of Law in Public Service

Building on the previous section, which led us down the path of predetermined rules, we begin with a brief explanation of the origins of Public Compliance. To start this discussion, we make a small reference to TAMANAHA (2007, p. 3), who describes the functions of the rule of law, such as the role of imposing legal restrictions on public servants,requiring them to act in compliance (LAMBOY, 2018, p. 6)[2] with all the rules and norms ofthat institution, and to limit the power to legislate for any and all state officials.

Making a brief exploration of the boundaries of compliance programs, one cannotoverlook the consequence of state intervention and its regulation to curb the excesses of theprivate sector's self-regulation, though as a necessary evil.

In this context, in the mid-1870s, when the U.S. Supreme Court ruled on Munn v. Illinois, where state limitations on fees charged by grain storage and transportation companies were challenged, the Court upheld state intervention by ruling that regulation ofprivate companies was constitutional when they affect the common good and public interest(CUNHA, 2020, p. 227). Since then, America began instituting various legal frameworks holding companies and their executives accountable, such as the Interstate Commerce Act of 1887; United States Antitrust Law, including the Sherman Act of 1890 and Clayton Antitrust Act of 1914; the Pure Food and Drugs Act of 1906, among others.

[2] But what is compliance, and how is compliance risk defined? When we hear the word 'Compliance,' we tryto translate and understand what it means, what it encompasses, what it involves. The term 'Compliance' comes from the English verb 'to comply,' which means to fulfill, execute, agree, conform, satisfy what has been imposed. Compliance is the duty to comply and be in accordance with established guidelines in legislation, norms, and procedures, internally and externally, for a company, in order to mitigate risks related to reputationand regulatory aspects (SCHRAMM, 2019, p. 155). The term 'Compliance' refers to the set of actions aimed at observing the 'duty to comply, to be in conformity and enforce compliance with laws, guidelines, internal and external regulations, seeking to mitigate the risk associated with legal/regulatory reputation risk' (COIMBRA; MANZI, 2010, p.2

Therefore, in America, from the 1950s onwards, due to the growing state regulationaimed at holding large corporations and their executives legally accountable, a group of lawyers mobilized to 'establish a methodology for implementing Compliance programs as away to ensure companies' adherence to established laws' (ibid., p. 227). According to the literature reviewed, this is considered one of the first recorded instances of American companies creating self-regulation methods preventively to protect themselves from their own actions, which could otherwise result in harm to investors, employees, and society, which sometimes depended on that single company.

Moreover, due to American jurisprudence, which established the existence of Compliance Programs as a mechanism for mitigating liabilities, the state once again neededto intervene to regulate what was considered a Compliance Program (ibid., p. 228). Thus, in1991, we have the well-known publication of the U.S. Federal Sentencing Guidelines (Sentencing of Organizations), standardizing the recognition of such programs.

Continuing from the beginning of it all, we must return to the origin of internal control, which in 1985, with the creation of COSO[3], initially aimed at sponsoring the U.S. National Commission on Fraudulent Financial Reporting, issued in 1992 the Internal Control — Integrated Framework document, which began to define internal control activities in the following categories: 'effectiveness and efficiency of operations; reliability of financial reporting; and compliance with applicable laws and regulations' (VIANNA, 2020, p. 174). Before advancing further, it is also necessary to discuss INTOSAI, which in 2004, within the public sector, published the document Guidelines for Internal Control Standards for the Public Sector, with the objectives of: 'a) orderly, ethical, economical, efficient, and effective execution of operations; b) fulfillment of accountability obligations; c) compliancewith applicable laws and regulations; d) safeguarding resources to prevent loss, misuse, or damage' (VIANNA, 2020, p. 174-175).

However, despite these significant events depicted to support the origins of Public Compliance, its true trigger is linked to a governmental corruption scandal, as in Brazil with Operation Car Wash, and in the USA with the infamous Watergate case.

Thanks to the Watergate case, which was also highly fueled by the repercussions itbrought to another scheme involving improper payments by corporations to foreign public officials, the U.S. Congress, in response to public outcry, passed the Foreign Corrupt Practices Act (FCPA) in 1977 (LAMBOY, 2018, p. 137), making it illegal to offer cross- border payments to foreign public agents. Alongside this, the Ethics in Government Act of 1978 was also passed, imposing various Compliance rules on the American public service, as well as creating the Office of Government Ethics to promote integrity and prevent illicit conduct by public officials. Thus, the first General Controller of the Public Service in historywas established.

At a certain point, however, attention turned to the consequences imposed by the FCPA due to the rigorous, comprehensive, and effective enforcement processes conducted by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). These processes created unfair competition with companies not subject to the FCPA, i.e., those not based in the U.S. or not listed on U.S. stock exchanges. This led to international pressure from the U.S.

[3] Available at: https://www.coso.org/Pages/default.aspx. Accessed on 02.10.2021.

for the global community to adopt similar anti-bribery and anti- corruption rules. In this context, starting in the 1990s, various anti-corruption policies wererecommended by the most important international organizations of the time (ibid., p. 142- 144)[4].

3. THE IMPACTS ON PUBLIC ADMINISTRATION WITH THE IMPLEMENTATION OF COMPLIANCE PROGRAMS AND THE HISTORY IN BRAZIL

Are public compliance programs effective? Is having a public compliance program the solution against corruption? Well, these answers will be left for another article, but the big question is: how can it be proven that these systems or programs have been fully implemented and that they are capable of managing the risks within public service?

The answer is neither simple nor straightforward, as it depends on ensuring that there is an integrated set of laws, rules, and institutional norms that are organized and effective, capable of preventing, detecting, and remedying misconduct from the highest levelto the humblest position, in the same way that the "Rule of Law" is established, that is, ensuring equality and laws for all individuals, equality before the law, or a state of equality and laws for all (HAYEK, 2011, p.232-260).

In this sense, the implementation of compliance programs in public administrationshould have more coercive, broader, and effective impacts than the very emergence of the Rule of Law, through its dual function and the will of the people:

> *[...] As is known, with the advent of the Rule of Law, the norms of Public Law explicitly laid out their dual function: to limit and control the power of the State, in order to curb excesses and deviations practiced in the exercise of political power to the detriment of administrators.*
>
> *The historical task of overcoming the arbitrariness of power by the power of law was completed in theoretical terms, with the replacement of the sovereign's will by the will of the law, resulting in the subjection of the State itself to the limits and controls imposed by the legitimate legal expression of the people's will. (*MOREIRA NETO; GARCIA, 2012, p. 2)

Thus, the functions of the Rule of Law in limiting and controlling, curbing excesses,will be the same in public compliance, but with the advantage of expertise in risk management. In this

[4] Inter-American Convention against Corruption, adopted in 1996 by the Organization of American States (OAS); Council of Europe Convention, consolidated in 1997 by the European Council; African Union Convention, signed in 2003. Other international agreements have reached a global level, such as: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1997 within the framework of the Organization for Economic Cooperation and Development (OECD); United Nations Convention against Corruption, developed by the United Nations (UN) in 2003; Code of Good Practices on Transparency in Monetary Policies, approved in 1999 by the World Bank; The Plurilateral Agreement on Government Procurement, signed in 1996 by the World Trade Organization (WTO); and The Arusha Declaration on Customs Integrity, approved by the World Customs Organization in 1993.

area, the emphasis must be on the implementation of compliance pillars,such as preventive actions through whistleblowing channels, due diligence of suppliers, and internal integrity and audit procedures, as initially envisioned with the creation of the CGU(Office of the Comptroller General of the Union) by Law No. 10.683/2003 (already revoked/replaced), which functioned as the country's anti-corruption agency and marked a significant milestone for compliance in public institutions in Brazil, as will be further demonstrated in the following chapter.

Another historic step was the creation of Law No. 13.303/2016, known as the State-Owned Enterprises Law, which directly mandates the existence of a compliance sector in public companies and mixed-economy corporations.

Highlighting the compliance pillars, it is worth emphasizing the awareness pillar, which, when unexplained occurrences of misconduct in public service are identified, whether they happened years ago or are happening right now, these occurrences, which occurred after the implementation of public compliance programs, regardless of the time weare living in, carry more weight in the accountability of the individual involved, thanks to the aforementioned pillar of acculturation and awareness/training of the entire integrity system. Therefore, it is in this light that one might ask: if the individual was trained, made aware, and educated, and everything was done to change their integrity culture, but still theyinfringe it, what is left to do but to restrain them with the full force of the Rule of Law?

It is also important to note that, on the other hand, the Anti-Corruption Law provides for the mitigation of the legal entity's liability in cases where an already establishedintegrity program can be demonstrated. Here, it is worth explaining the jurisdiction and applicability of the Anti-Corruption Law, as, despite its primary focus and effect on privatecompanies that interact with public administration, it is important to remember that the State-Owned Enterprises Law provides for the application of sanctions under the Anti-CorruptionLaw to public companies, mixed-economy corporations, and their subsidiaries. Consequently, Article 42 of Federal Decree 8.420/2015, which regulates the Anti- Corruption Law and standardizes the minimum criteria for the implementation of a Compliance Program, applies, classifying them through specific evaluation requirements.

However, despite all these consequences, it was only in 2017 that the obligation toestablish integrity/compliance programs within the federal public administration was created, for agencies and entities of the direct administration, autarchies, and foundations, as provided by Federal Decree 9.203/2017, signed by then-President Michel Temer, addressing the governance policy of the federal public administration.

Currently, the Office of the Comptroller General of the Union (CGU), at the federal government level, is responsible for all the historical milestones regarding the effectivenessof public compliance programs in Brazil, being the main entity responsible for attempting toanswer the question posed at the beginning of Chapter II, that is, how can it be proven that these programs have been fully implemented and that they can manage risks? See below.

In January 2019, the CGU (Office of the Comptroller General) issued Ordinance n°.

57/2019[5] (amending Ordinance n°. 1.089/2018) to regulate Decree n°. 9.203/2017 and establish procedures for structuring, implementing, and monitoring integrity programs in federal government agencies and entities (ministries, public autarchies, and foundations).

The regulation set forth guidelines, stages, and deadlines for federal agencies to create their own programs with mechanisms to prevent, detect, remedy, and punish fraud and acts of corruption. Integrity plans are mandatory and must be presented by all agencies covered by the regulations[6].

In this context, the question posed above can now be answered, namely, the secret formula is: periodic risk analysis and continuous monitoring of the program (SCHRAMM, 2019, p. 219), which, at the federal government level, as explained above, is overseen by the CGU. To demonstrate the implementation across hundreds of government agencies and units, the CGU implemented a national-level control system, as will be shown in Chapter III.

As mentioned above, the secret formula for proving the effectiveness of Public Compliance Programs lies in risk management and control and oversight mechanisms, such as internal audits and the establishment of a whistleblowing channel (VERÍSSIMO, 2017, p. 286).

However, when it is found that identified criminal acts are sent directly to the competent authorities due to the absence of internal investigation mechanisms or the lack of independence of the Compliance sector, in addition to the lack of procedures for investigating complaints, this exposes the other side of the program, namely its ineffectiveness and lack of efficacy, that is, literally a "token" Program (ibid., p. 287).

Reaching the end of this chapter and still debating the ways to implement public compliance programs, it is appropriate to draw an analogy with the comparison between the Formal and Material Rule of Law by ENTERRIA (1984). In this sense, it can be concluded that the evidence of its formal implementation occurs according to the documentation of its governance, such as the code of conduct and its regulatory policies, the agendas of the trainings conducted, the slides of the topics covered, the number of people trained, the classification and number of internal complaints received, as well as the duly recorded investigation processes.

However, the compliance program is much more than a formal mechanism resolved in mere legality; it is also an unequivocal claim to supra-legal and moral values that must be embedded in the core of the individuals subjected to it. Only with the materiality of the legal state of the program will it be possible to demonstrate its effectiveness, such as through the awareness of trained individuals, changes in routines or procedures for improvement and correction due to the perception of vulnerabilities in day-to-day management, the effective punishment of employees identified as perpetrators in the substantiated complaints, and finally, changes in individuals' attitudes (VERÍSSIMO, 2017, p. 294-296).

[5] Available at: https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/58029864. Accessed on October 4, 2021.
[6] Office of the Comptroller General – Public Integrity. Available at: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/campanhas/integridade-publica/integridade-publica. Accessed on October 4, 2021.

4. PUBLIC COMPLIANCE PROGRAMS IMPLEMENTED AS AN ANTI-CORRUPTION PUBLIC POLICYPROMOTE THE LEGALITY AND LEGITIMACY OF THE RULE OF LAW

4.1. The legality of public compliance programs as anti-corruption publicpolicy within the federal public administration

This chapter aims to show examples experienced in the reality of Brazil, particularly regarding the implementation of public compliance programs within the federalgovernment. In this context, it will primarily address Federal Decrees No. 10.756/2021, 9.755/2019, 9.203/2017, and Law No. 10.683/2003 (replaced), as mentioned in previous chapters, in addition to the CGU's Ordinances, Manuals, and Guides, as well as the programs and systems initiated by the Union.

We will begin with the creation of the CGU through Law No. 10.683/2003 (already revoked/replaced), which was tasked with various functions, in addition to the typical function of the country's anti-corruption agency, as mentioned earlier. Initially, it was responsible for internal control, public auditing, correction, prevention and combating corruption, as well as public service ombudsman functions. However, nowadays, despite thename changes the CGU has undergone and other legislative acts that have been added to improve its structure and increase its responsibilities[7], the one that will be most important to our study is the control and monitoring of all integrity programs within the federal publicadministration. As we will see next, the CGU is a guide and model for Controladoria (Comptroller's Office) for all other public institutions in the country, including at the municipal, state, and federal district levels, standing as a landmark for public compliance in Brazil.

Therefore, following this historic milestone in Brazil, we move on to December 2015, which saw the publication of the first document by the Federal Executive Branch through the CGU: the Guide for Implementing Integrity Programs in State-Owned Companies. This publication provides guidance on implementing or improving the integrityprograms of federal state-owned companies, seeking to comply with anti-corruption regulations applicable to these entities[8].

Continuing in this vein, the following year saw another legislative act, which is alsoconsidered an important step for Public Compliance in Brazil: the creation of the State-owned Enterprises Law (Law No. 13.303/2016), which in its Article 9 mandates the existence of a compliance sector within all public companies and mixed-economy corporations, in line with the above-mentioned CGU guide.

Well, with these legislative initiatives and historical milestones, we finally come to the PROFIP - Public Integrity Promotion Program[9], created in August 2017, which marks another step

[7] Available at: https://www.gov.br/cgu/pt-br/acesso-a-informacao/institucional/historico/historico. Accessed on 10/03/2021.
[8] Available at: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/guia_estatais_final.pdf. Accessed on 10/03/2021.
[9] Available at: https://www.gov.br/cgu/pt-br/assuntos/etica-e-integridade/profip. Accessed on 10/03/2021.

in this timeline of national public integrity. It was established by CGU Ordinance n° 1.827/2017[10], with the objective of encouraging and training federal executivebranch agencies and entities to implement integrity programs.

Through PROFIP, participating agencies and entities would receive guidance on building and adapting internal mechanisms and procedures to prevent, detect, and remedy misconduct. The ordinance makes it clear that, initially, PROFIP was voluntary, requiring those who joined to be trained by the CGU and to develop an integrity plan for implementation within the institution.

In line with the above PROFIP proposal and with the aim of assisting the mentionedagencies, in August 2017, the CGU released the Manual for Implementing IntegrityPrograms in the Public Sector, to "present a proposal for implementation... through thedevelopment of an Integrity Plan..., as well as ways to monitor and improve the Program"[11].

As previously detailed, Federal Decree 9,203, of November 2017, which addresses the governance policy of the federal public administration, also represents a significant development in the subject we are exploring. Its most notable provision is found in Article 19, which mandates that federal public administration bodies must establish integrity programs.

In this context, in April 2018, the Practical Guide for Implementing a Public Integrity

Program was released, which "establishes guidelines for agencies to adopt procedures for structuring, executing, and monitoring their integrity programs"[12].

In September 2018, the CGU (Office of the Comptroller General) published the Practical Manual for Evaluating Integrity Programs in Administrative Agreements (PAR). The manual aims to guide federal executive branch officials in evaluating integrity programspresented by legal entities for the purpose of reducing the amount of fines imposed under Article 6, Item I, of Law 12,846/2013, in accordance with Article 18, Item V, of Decree 8,420/2015.

Moving forward with the CGU's series of publications, in October 2018, the Practical Guide to Risk Management for Integrity was published. It "was developed to assistfederal public administration bodies and entities ... in the initial stages of their risk management for integrity"[13].

In January 2019, the CGU issued Portaria 57/2019, providing guidelines for federalpublic administration to adopt procedures for structuring, executing, and monitoring their integrity programs.

By mid-June 2019, the CGU developed the Practical Guide for Integrity Management Units (UGIs), "to provide guidance for the implementation of ... UGIs withinthe

[10] Available at:https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=57&data=04/09/2017 Accessed on 10/03/2021.
[11] Available at: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/manual_profip.pdf. Accessed on 10/03/2021.
[12] Available at: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/integridade-2018.pdf. Accessed on 10/03/2021.
[13] Available at: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/manual-gestao-de-riscos.pdf. Accessed on 10/03/2021.

federal public administration's direct, autarchic, and foundational bodies and entities"[14].In the same year, 2019, the Federal Government issued Decree 9,755/2019, which established the Interministerial Committee for Combating Corruption. In December 2020, the Committee presented the Plan, Diagnosis, and Actions, aimed at organizing theexecution of "actions to improve the mechanisms for preventing, detecting, and holdingaccountable those involved in acts of corruption within the scope of the Federal Executive Branch"[15].

Finally, we will discuss the launch of Sipef (Federal Executive Branch Integrity System) through Decree 10,756, issued in July 2021[16], which established a system for coordinating public integrity activities and setting standards for the integrity measures adopted by the administration's bodies and entities, all under the complete direction of the CGU[17].

In this sense, it is important to conclude that this entire regulatory framework, especially through the formalization of the Interministerial Committee for Combating Corruption and Sipef, marks the Union's initiative to promote public compliance programs as an anti-corruption public policy within the Federal Public Administration, setting rules and standards that position the Union as a regulatory body ensuring the legality of a model to be followed.

4.2. The legitimacy of public compliance programs as anti-corruption public policy within the Federal public administration

At this stage, the legitimacy of public compliance will be addressed in accordancewith the Federal Government's authority to demonstrate that all the legality and regulation outlined in the previous section is effectively in place to curb the excesses committed by institutions with implemented programs.

To address this, the Federal Government's Public Integrity Panel, where the CGU (Office of the Comptroller General) is responsible for verifying the development and implementation of integrity plans across dozens of federal public agencies and institutions. The CGU states that it is possible to access the full content of all recommendations through this tool.
According to the Comptroller General, this tool allows public participation, enabling citizens to track and monitor the government's actions in preventing and combating corruption, as demonstrated below by the internalized actions within the agencies:

The CGU's monitoring highlights the establishment of procedures for verifying nepotism, conflicts of interest, complaints, and disciplinary processes as anti- corruption and compliance initiatives. These measures, once implemented and available as data for monitoring, are intended

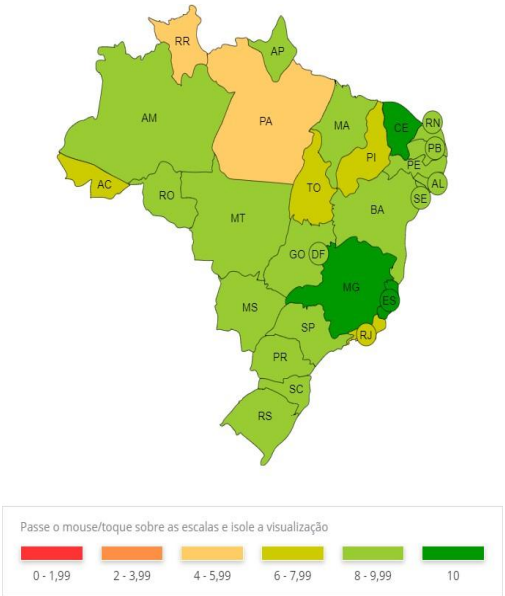
[14] Available at: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/unidades-de-gestao.pdf. Accessed on 10/03/2021.
[15] Available at: https://www.gov.br/cgu/pt-br/anticorrupcao/plano-anticorrupcao.pdf. Accessed on 10/03/2021.
[16] Available at: https://www.in.gov.br/en/web/dou/-/decreto-n-10.756-de-27-de-julho-de-2021-334837774. Accessing on 10/03/2021.
[17] Available at: https://www.gov.br/cgu/pt-br/assuntos/noticias/2021/07/governo-federal-lanca-sistema-de-integridade-publica-do-poder-executivo-federal-sipef. Accessing on 10/03/2021.

to demonstrate the unquestionable effectiveness of the Public Compliance Program within these organizations.

Additionally, an important index measuring the effectiveness of anti-corruption public policies and public compliance programs implemented by the States of the Federation is also presented, known as the EBT — 360° Evaluation - 2nd Edition, a monitoring tool designed and conducted by the CGU. Here is how it explains it:

> *"The Escala Brasil Transparente—360° Evaluation is an innovation in the traditional methodology of public transparency evaluation adopted by the CGU. In the 360° EBT, there was a shift to include not only passive transparency but also active transparency (publication of information on the internet). This evaluation incorporated aspects of active transparency, such as the verification of the publication of information on revenues and expenses, bids and contracts, administrative structure, public servants, monitoring of public works, and others. By applying the EBT as an institutional practice, the CGU aims to deepen the monitoring of public transparency and enable the tracking of actions implemented by states and municipalities in promoting access to information"*[18].

As demonstrated below, the CGU develops a ranking based on the monitoring of public [19]to highlight the effectiveness of actions implemented by the States inpromoting access to public administration information[20].



[18] Available at: https://mbt.cgu.gov.br/publico/avaliacao/escala_brasil_transparente/66. Accessed on10/03/2021.
[19] Available at: https://mbt.cgu.gov.br/publico/avaliacao/escala_brasil_transparente/66. Accessed on10/03/2021.
[20] Evaluation period: 04/01/2020 to 12/31/2020. Available at: https://mbt.cgu.gov.br/publico/avaliacao/escala_brasil_transparente/66#ranking. Accessed on 10/08/2021.

Ranking Geral	Localidade	UF	Nota
1	Ceará	CE	10,0
1	Espírito Santo	ES	10,0
1	Minas Gerais	MG	10,0
4	Paraná	PR	9,96

In this ranking, referring to the 2nd edition of the evaluation, the State of Ceará ranked first, followed by Espírito Santo in second place and Minas Gerais in third, all scoring 10 on the scale. Roraima ranked last (4.91), and Pará second to last (5.92), indicating a deficiency in their transparency regarding public administration information.

Drawing a parallel with the aforementioned states, it is noted that the State of Cearáhas had a central internal control body since 2003, with the new CGE-CE (General Comptroller of the State of Ceará) format in place since 2018, and a growing integrity program. The State of Minas Gerais has had an internal control area for 40 years, but since 2011, the CGE-MG has operated under this new Comptroller format, with its Integrity Program fully functioning. Finally, the State of Espírito Santo has had the State General Audit since 1987 and the Secretariat of Control and Transparency since 2017, also followingthe same model as the CGEs of the other states, and, of course, with an Integrity Program managed by it, in a considerable amount of time, similar to the other states mentioned.

However, regarding the State of Roraima, although it has a unit called CGE-RR, and despite the identification of Decree 30.108 of April 2021, which regulates an Integrity Program, there was no evidence of its promotion, dissemination, implementation, or any practical effect, as this decree was only identified through a Google search in the State's Official Gazette.

As for the State of Pará, the situation is similar: although it has a unit called AGE-PA, General Audit of the State of Pará, similar to the Comptroller units of other States, despite a note identifying the launch of the National Anti-Corruption Program on 15/06/2021, which was after the EBT evaluation mentioned above, nothing was identified regarding the existence of an Integrity or Compliance Program.

With this context and the practical demonstrations above, of control, risk management, and publicity that generate public participation, it can be asserted that Public Compliance, as an anti-corruption Public Policy, reflects the principles of the Rule of Law such as the proper management of public affairs and assets, integrity, transparency, and accountability, as defined in Article 5 of Federal Decree 5.687/2006[21] in which Brazil ratifies the United Nations Convention

[21] Federal Decree 5.687 of January 31, 2006. Promulgates the United Nations Convention against Corruption,adopted by the United Nations General Assembly. Article 5. Anti-Corruption Policies and Practices. 1. Each State Party, in accordance with the fundamental principles of its legal system, shall formulate, apply, or maintain in force effective and coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule

against Corruption.

5. CONCLUSION

At this stage, the following question may be raised: What is the ultimate goal of implementing a public compliance program? The answer might seem simple, especially after everything that has been presented: to prevent corruption, right? But what if the answer wasno? Wouldn't that be very confusing?

Probably so, but the previous paragraph attempts to be provocative rather than confusing, as it is necessary to have concise explanations for its effective application. No anti-corruption program or system is obliged to prevent irregularities; after all, for misconduct to occur, the behavior only needs to have intent. In this sense, if the behavior isintentional, no amount of training will prevent it. Therefore, it is essential to clarify that theobjective of the compliance or integrity program is to manage risks in a way that minimizeslosses to the State.

And how is it possible to manage risks when those who should be the greatest examples of virtue through the program are the ones who most evade it? Well, in the post- Lava Jato period, there has been a glamourization of the implementation of compliance or integrity systems or programs in public organizations, with the argument that the political environment is instituting anti-corruption measures and policies, and thus governments are being shielded from corruption.

Many professional politicians raise the banner of compliance and use their programs as if in their administration and State, compliance rules prevail. However, when itbecomes inconvenient, the ruler claims that their compliance does not allow it. But when thecompliance rule should apply to themselves, it is when the program does not seem to reachtheir Rule of Law. Therefore, the impression is that some implemented programs are actuallya mask, a camouflage, or "a protective screen against state sanctions" (VERÍSSIMO, 2017,p.94). In this sense, appearances will confirm that the only goal is to maintain the status quo,that is, to show the cover of a book that from afar seems thick, hard, and embossed, but uponcloser inspection, it is found to be a fragile, thin cover with letters that are difficult to understand. Worse still, when trying to comprehend its content, it is found that it lacks clear,well-defined rules and processes that are required of everyone, from the highest-ranking official in that institution to the most humble servant (JEHRNG, 1963, p. 242).

And in this sense, as JEHRNG (1963) explains in his analysis of the "Bilaterally Binding

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of law, proper management of public affairs and property, integrity, transparency, and accountability. 2. Each State Party shall endeavor to establish and promote effective practicesaimed at preventing corruption. 3. Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures to determine their adequacy for combating corruption. 4. States Parties, as appropriate and in accordance with the fundamental principles of their legal system, shall collaboratewith each other and with relevant international and regional organizations in promoting and formulating the measures mentioned in this Article. Such collaboration may include participation in international programs andprojects aimed at preventing corruption. Article 6. Anti-Corruption Body or Bodies. 1. Each State Party, in accordance with the fundamental principles of its legal system, shall ensure the existence of one or more bodies, as appropriate, responsible for preventing corruption by measures such as: a) The implementation of the policies referred to in Article 5 of this Convention and, where appropriate, supervising and coordinating the implementation of those policies; b) Increasing and disseminating knowledge regarding the prevention of corruption.

Force of the Norm," an analogy can be made with the integrity program, where evenif it represents a set of mandatory norms in force in a State and manages to be effective through the public coercion of the public service/servant through the norm, we still won't have the formation of the Rule of Law in this integrity program. For the creation of this Ruleof Law, it is not enough to have the norm and make it applicable; it is necessary that the State that imposes it also submits to it, as if it were an ordinary person. Here, when we talk about the implementation of a public compliance program, we are talking about a set of rulesthat seek not only to prevent, detect, and remedy corrupt practices and ethical misconduct but also to punish such practices.

Therefore, since it is a public compliance program, we are talking about punishingpublic servants. However, if the ruler of this State does not feel coerced to comply with thisset of norms or effectively violates them, we are literally facing JEHRNG's insufficiency (ibid.) for the materialization of the Rule of Law in the public compliance program.

It is worth noting that the Rule of Law of the public compliance program must be based on the Tone at the Top principle, meaning the example comes from above. In this sense, the application of the program applies to everyone, whether the President, the Governor, the Mayor, or even the school lunch lady, janitor, or doorman. The norm is appliedequally:

[...] Thus, randomness disappears in the application of norms, and arbitrariness gives way to uniformity, certainty, and the visibility of the law. This is what we call legal order, and what we have in mind when we speak of the sovereignty of law and order. This is what the law must provide us if it is to meet our expectations. (Ibid., p. 242)

Corruption can generate a mere semblance of the Rule of Law, that is, it appears tocomply with the laws, norms, rules, and governance of that administration, but in reality, itis merely fulfilling the government plan of a ruler (ZENKNER, 2020, p. 185-199), a mere implementer of a plan, program, or system on paper or a shelf[22].

For a public compliance program to be effective, it must meet the elements of the Rule of Law. To fulfill its objective, it must realize the principles of the Rule of Law. Onlythen will integrity reign in the state regime.

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