



Corporate Fraud and Liability Provisions in Albania

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Abstract: *Corporate fraud is a very problematic and serious phenomenon, regardless of company size, place of business, branches and way of doing business. Considering fraud not only as a random phenomenon of corporate reality but to a great extent as a criminal offense as provided for in almost all laws, responsible persons (those who commit such an offense) bear criminal as well as civil liability, depending on the circumstances and jurisdiction to which they belong. This paper will critically approach the concept of corporate fraud following the Albanian legal framework and jurisdiction. It will focus on the key aspects of the company in question, the civil and criminal provisions related to the liability that would be borne by the executives and/or the corporation, the fiduciary duties of the executives, the interpretation of the court cases established so far, case studies and analyzing the effectiveness of the application of the respective legal provisions.*

1. INTRODUCTION

Corporate fraud is a widespread and complex problem affecting firms worldwide, cutting through borders related to geography, organizational size, and operating strategies. This phenomenon entails the purposeful falsification, misrepresentation, or manipulation of financial data, assets, or transactions for individual or corporate gain. Corporate fraud threatens the integrity of financial markets, erodes public confidence, and poses serious problems for societal well-being and economic stability. This study intends to examine the complex terrain of corporate fraud in Albania while assessing the efficacy of the laws governing the civil and criminal liability imposed on corporate entities and individual executives. Corporate fraud may be considered an incidental part of business operations, but it is crucial to understand that it is a crime with serious repercussions.

The effectiveness of civil and criminal responsibility rules for executives and companies in preventing corporate fraud in Albania is examined in this article. The study stresses how crucial it is to demonstrate executive criminal culpability by demonstrating intent, knowledge, and active participation in Albania. Civil liability laws prioritize reimbursing victims and reestablishing economic equilibrium. While corporate criminal responsibility acknowledges an entity's propensity to commit crimes, vicarious culpability emphasizes organizational accountability. The laws of Albania are influenced by comparative analysis, which identifies global best practices and difficulties. Effective enforcement is still necessary. In conclusion, it is essential to combat corporate fraud, protect stakeholders, and promote transparency and integrity within Albania's corporate landscape through a strong legal reaction and proactive prevention.

The intention of this paper is not to analyze the economic effects of corporate fraud, but only the focus on liability for such offence. Fraudulent actions within the corporate activity appear in various forms and might belong to different sectors of such activity. The most common ones, however, usually refer to cases such as the misreporting of balance sheets, falsifications of the data, manipulation, and falsification in the financial statements.

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1.1. Background and Significance

Numerous international financial scandals that have shaken economies and undermined public confidence have repeatedly shown the negative effects of corporate malfeasance. Globally, legislative actions have been taken by governments and legal systems to address and deter corporate fraud. To solve this urgent issue, Albania, a participant in the global economic community, has also adopted legal procedures. This paper aims to critically assess how well these regulations deal with corporate fraud and hold offenders accountable.

1.2. Research Objectives

The main goal of this study is to examine the legislative framework in Albania's provisions for the civil and criminal culpability of executives and corporations implicated in corporate fraud. The study's specific objectives are to:

- Assess the sufficiency and clarity of legal definitions and standards for detecting corporate fraud.
- Look into the practical application and enforcement of criminal and civil responsibility clauses.
- Examine if punitive actions, sanctions, and penalties successfully prevent corporate fraud.
- Look at the difficulties and barriers that prevent successful prosecution and damage recovery.
- Provide suggestions for prospective legislative framework enhancements based on global best practices.

2. LEGAL FRAMEWORK AND CORPORATE FRAUD

Corporate fraud, which frequently involves lying, misrepresenting, or manipulating financial data for unlawful gain, poses a serious threat to the honesty of business operations and the health of the economy as a whole. Corporate fraud is defined, prevented, and punished by law to resist this threat effectively (Bashari & Metani, 2021). This section explores the many dimensions of corporate fraud's legal framework, including its definition, typologies, and global context.

2.1. Corporate Fraud: Definition and Types

A precise and thorough definition of corporate fraud is crucial to any legal structure. Corporate fraud in Albania includes a variety of behaviors, including but not restricted to:

Financial statement fraud: falsifying financial documents to give the impression that an entity is in good financial standing.

1. Insider trading: Using secret knowledge to your benefit while trading securities.
2. Bribery and corruption: Giving or receiving improper benefits to sway business judgments.
3. Asset misappropriation: the unauthorized use of corporate resources for one's benefit.
4. Market Manipulation: Creating misleading information or transactions to manipulate market circumstances.

Effective enforcement and prosecution of these kinds of corporate fraud depend on having a sophisticated understanding of them (Desai, 2020).

2.2. Legal Aspects of Corporate Fraud from a Global Perspective

Corporate fraud is a global problem that transcends national boundaries, necessitating global cooperation and unified legal standards. Due to the seriousness and prevalence of corporate fraud, many governments worldwide have passed legislation to address it (Bashari & Metani, 2021). For instance, in reaction to the Enron crisis, the United States passed the Sarbanes-Oxley Act, strengthening financial reporting standards and providing whistleblower protection (Constable, 2022). Similarly, the Fraud Act of 2006 in the United Kingdom included extensive provisions to address numerous types of fraud (Correia, 2019). Studying different legal systems worldwide sheds light on effective methods for thwarting business fraud and may influence future legal reforms in Albania.

2.3. Corporate Fraud in the Legal Context of Albania

Corporate fraud is addressed within the Albanian legal system using a combination of statutory laws, rules, and legal precedents. Corporate fraud charges are described in the Albanian Penal Code, whereas the Albanian Civil Code's guiding principles govern civil responsibility (Veizi & Bega, 2023). Supervisory organizations, like the Financial Supervisory Authority, are also essential in regulating the financial markets and spotting fraud. However, it is crucial to evaluate these legislative measures' effectiveness, how they are enforced, and the overall deterrence they provide against corporate fraud (Nikolla et al., 2023). It is with great importance to be mentioned that a certain role plays also the Law 9753/2007 as amended "For Criminal Liability of the Juridical Persons". The effectiveness of these legal measures and how they affect preventing and dealing with corporate fraud in Albania will be covered in more detail in the next sections of this paper.

2.4. Criminal and Civil Liability: Executives and Entities

2.4.1. Criminal Liability of Executives

Corporate fraud exposes executives, who play a key role in determining the course of corporations, to criminal liability, underscoring the gravity of the situation and serving as a deterrent and a tool of justice (Bezo & Dibra, 2020).

Criminal Liability Elements. Several requirements must be met to prove an executive's criminal responsibility for corporate fraud. A key consideration is intent, which calls for evidence that the executive engaged in dishonest behavior to earn a personal or organizational gain. It includes proving that the executive was aware of incorrect information, misrepresentations, or other fraudulent actions, proving knowledge is equally important (Bezo & Dibra, 2020). The executive's involvement in the fraudulent scheme must also be proven, proving their involvement in organizing or aiding the scam.

Prosecution and Sentencing. When bringing charges against CEOs for corporate fraud, precise evidence presentation is crucial. Financial information and pertinent papers are scrutinized when a case is litigated. For CEOs who are found guilty, severe penalties, time behind bars, probation, or a mix of these are possible sentences. Penalty severity depends on various variables, including the degree of deception, financial losses, executive involvement, and prior criminal history. For successful prosecution, responsibility, justice, and deterrence of potential wrongdoers, there must be effective cooperation between the judiciary, regulatory bodies, and law enforcement (Valbona et al., 2021).

2.4.2. Civil Liability of Executives

In corporate fraud cases, the legal system covers executive civil accountability and criminal responsibility. Its primary goal is to repair harm and restore financial integrity by providing restitution and compensation to persons who have suffered financial hardship due to fraudulent activity.

Compensation and Restitution. Underscoring restoration and compensation is executive civil liability. Executives who are legally responsible might have to make restitution to organizations that suffer losses due to fraud (Venditti et al., 2020). This may also apply to stakeholders whose stock prices are inflated or investors who lose money due to inaccurate data. In order to restore the financial balance that the deception upset, restitution also entails restoring assets or income obtained illegally (Olldashi & Hoxha, 2019). If the fraudulent strategy results in financial losses for shareholders or other stakeholders, executives may be required to pay back any improper gains. This characteristic emphasizes the idea that wrongdoers should not profit unfairly at the expense of others.

Piercing the Corporate Veil. Additionally, "piercing the corporate veil" occasionally makes particular leaders personally accountable for corporate misdeeds. This idea ignores the legal distinction between a person and a corporation when fraudulently using the corporate structure. This guarantees that CEOs remain personally liable for dishonest behavior, regardless of corporate protection (Valbona et al., 2021). Civil liability cases require careful examination of financial records, contractual obligations, and pertinent facts to ascertain the extent of the victims' financial injury. In the wake of corporate crime, the legal system seeks to protect justice and accountability by placing civil liability on CEOs to give harmed parties opportunities to pursue restitution and correct financial imbalances.

2.4.3. Criminal Liability of Entities

Legal systems have developed to hold corporate entities criminally responsible for their activities because it is now understood that these companies can play a significant role in committing corporate fraud. By directing attention away from specific wrongdoers and toward the larger organization, this strategy seeks to assign collective blame to the latter. Imposing criminal culpability on companies highlights the necessity for strict compliance and moral behavior by acknowledging their capability to commit crimes.

2.4.4. Corporate Criminal Liability

Corporate criminal accountability increases legal liability. Companies and other legal entities can be held accountable for their actions (Nuredini & Matoshi, 2021). Preventing corporate fraud and developing workplace ethics require this perspective. Corporate criminal liability often requires showing the entity's direct involvement, collaboration, or tolerance for fraudulent activity. The organization must have known, approved, or profited from the fraud. Successful prosecutions require a thorough investigation and detailed documentation by law enforcement, regulatory, and legal specialists.

Sanctions and Penalties. Companies convicted of corporate fraud face various penalties. These can involve large fines, the loss of illegal gains, court-mandated compliance processes, and firm

probation. These consequences aim to hold the offender accountable, deter future fraud, and encourage strong internal controls and ethical frameworks (Çeloaliaj, 2019). Corporate criminal responsibility shifts the paradigm to emphasize organizational accountability in fighting corporate fraud (Nuredini & Matoshi, 2021). Liability encourages corporate accountability, transparency, and ethics. The next section will evaluate Albanian law provisions using real-world case studies and comparative analyses.

2.4.5. Civil Liability of Entities

Corporate fraudsters face civil and criminal liability. Civil culpability compensates victims for financial losses and restores corporate fraud's equilibrium. This section discusses corporate civil liability in detail, focusing on accountability, restitution, and compensation.

Vicarious Liability. The vicarious responsibility principle holds companies liable for their workers' or agents' actions. This ensures that companies cannot avoid responsibility by blaming others (Krasniqi, 2020). The entity may be liable if its representatives or employees deceive others for their gain (Krasniqi, 2020). Because they control their staff, companies should be held accountable for fraud. This rule prohibits businesses from tolerating or supporting such behavior and emphasizes the need for competent supervision.

Damages and Fines. Civil penalties for corporate fraud may include large fines and damages to victims. Fines punish offenders while damages restore victims' finances. To calculate fines and damages, stakeholders, investors, and other impacted parties must analyze their financial losses (Cela et al., 2023). Courts weigh the fraud's gravity, financial damage, and the entity's role in preparing or sanctioning it. Organizations have a civil obligation, and victims can seek restitution under the law to increase accountability (Cela et al., 2023). This legal reaction restores financial fairness, promotes moral company behavior, and deters corporate dishonesty.

3. CASE STUDIES AND COMPARATIVE ANALYSIS

3.1. High-Profile Corporate Fraud Cases in Albania

Albania has had several high-profile corporate fraud cases, which have prompted questions about transparency, accountability, and governance in the country's corporate environment. The incident involving the former first lady, Monika Kryemadhi, stands out among these examples. Monika Kryemadhi has been linked to a controversy involving payments from Kremlin-affiliated Russian oil businessmen (Digest, 2023). Around the time of Albania's 2017 presidential and parliamentary elections, the payments were made. Kryemadhi is charged with denying all wrongdoing while attempting to discredit the magazine that revealed the payments. This case emphasizes the expanding Russian influence in the Western Balkans and the necessity for Albania to deal with corruption and negative influence as it pursues EU membership.

Another incident regarding the construction and operation of garbage incinerators in Albania led to eleven people's arrest. Concessions were given to a business with no prior trash management background, resulting in the improper use of millions of taxpayer dollars (Taylor, 2022). Even when the incinerators were not working, the corporation got paid. A Socialist Party minister and other former government officials have been charged with corruption and bribery concerning the affair. Despite requests for a full inquiry, the government nonetheless pays the concessions.

The case study of the fraudulent scandal of CEZ-DIA is considered the main case of this size regarding corporate fraud in the corporate world of Albania (Burnazi, 2016). The head of the board of directors of the CEZ group's subsidiary in Albania, Josef Hejsek, together with Kastriot Ismailaj, an Albanian businessman were the key players in the fraudulent scheme of a debt collection that cost millions of euros. Everything started in 2009 when CEZ group bought a controlling stake in the company of electricity distribution in Albania Operator of the distribution system (OSSH) and rebranded the company with the commercial name CEZ Shperndarje. The biggest problem that faced this company was the large amount of debt that Albanian citizens had because of not paying their electricity bills for a long time. In order to collect all the arrears debt of the OSSH, the CEZ subsidiary in Albania (hereafter CEZ Shperndarje) contracted a private company (Burnazi, 2016). Also, DIA was one of the fictive companies established by Ismailaj for fraudulent purposes. It has resulted that this company was founded on July 5, 2010, with a principal capital of 50000\$, with headquarters in "Trident Chambers, Virgin Islands" and its CEO was J. M. who decided on August 2, 2010, to open a subsidiary in Tirana, Albania, employing as the legal representative of the company Kastriot Ismailaj. It is registered in the National Business Center, and its activity consists of financial investments, collecting obligations, consulting, commercial activity, export-import of goods, etc. Regarding the legal framework, this subsidy was acting regularly and in harmony with the Albanian laws. The only handicap of all this is that it is verified by the prosecution that Ismailaj has presented fake data and information regarding the organizational structure of the company and its experience in the required field. The prosecution accused Ismailaj of the criminal offense of Fraud with serious damages, money laundering and laundering of criminal products. Also, the prosecution in 2015 ordered the confiscation of the amount of 3.4 million dollars, which is suspected of coming from the illegal activity of Ismailaj. This order was issued by the Prosecution of Serious Crimes on the framework of the Anti-Mafia law, after the investigations performed by the Prosecution of Tirana. This amount of money was alienated by Ismailaj through some suspicious transactions with one fictive company in Switzerland and with one another in the U.S.

The case of CEZ- DIA went through an arbitration process in the Vienna International Arbitral Center (VIAC), where the CEZ group initiated these procedures against Albania for the damage caused. However, under the pressure of the Czech Republic over its EU integration bid, the dispute remained resolved in Tirana, and Albania paid 95 million Euros for shares to the company. The most interesting fact is that Ismailaj when used to sign the contract with CEZ Shperndarje was under investigation for money laundering, a fact that the supervisory board of the CEZ Shperndarje did not take into consideration, or did not investigate for the Ismailaj figure and criminal records, and this might be considered as negligence for this board (Likmetaj & Veizaj, 2015).

Additionally, Albania went through a serious Ponzi scheme problem in the 1990s, when shady businesses enticed a sizable section of the populace to invest by promising enormous returns. When these plans fell apart, there was severe civil unrest and other issues (Staff, 2018). The incident emphasizes the value of good company ethics and governance in averting similar financial catastrophes. The success of the Ponzi schemes was made possible by a lack of control and governance, highlighting the demand for significant legislative changes to safeguard investors.

3.2. Comparative Analysis: Legal Provisions' Efficacy

It is clear from a comparison of the prominent corporate fraud cases in Albania that the nation's legal framework could require improvement to deal with such instances successfully. The issues concerning Monika Kryemadhi and the concessions for the incinerator draw attention to potential

weaknesses in the existing legal systems. The accusations against Kryemadhi highlight the difficulties in implementing financial accountability and transparency, particularly in situations involving foreign interests, like the suspected ties to Russia. The incinerator issue also highlights the need for improved rules and control when issuing contracts and handling public funds.

3.3. Challenges and Enforcement Gaps

The prominent corporate fraud instances mentioned above highlight substantial difficulties and enforcement limitations in the Albanian setting. The Monika Kryemadhi affair shows how intimidation strategies, like Strategic Lawsuits Against Public Participation (SLAPPs), intimidate the media and obstruct investigations (Digest, 2023). This approach hinders efforts to tackle corruption effectively and impedes accountability. Due to lax government monitoring, corruption, and improper fund distribution occurred in the incinerator affair, raising issues with contract enforcement and project management. Even more, the Ponzi scheme crisis highlights how vitally important strong company ethics and governance are for preventing financial catastrophes and safeguarding investors (Staff, 2018). To maintain transparency, accountability, and the rule of law in Albania's corporate sector, these difficulties highlight the significance of thorough legal reforms and improved enforcement measures.

4. FUTURE RESEARCH DIRECTIONS

Although this study offers insightful information about the efficiency of Albania's legal guidelines and enforcement practices regarding corporate fraud, several directions for future research could further advance our comprehension of this complicated problem. A comparative examination of corporate fraud cases involving several Balkan nations can be explored, providing a more comprehensive evaluation of regional trends and variances in enforcement outcomes. Additionally, research into how technological innovations like blockchain and digital forensics might be used to prevent and identify corporate crime may provide essential insights into future difficulties and possible solutions. A more thorough understanding of the underlying reasons for fraudulent actions would also result from exploring the psychological and socio-economic elements that influence corporate fraud and the impact of cultural norms and ethical issues. Furthermore, long-term research examining the effects of regulatory changes on corporate fraud rates over time would support efforts to improve corporate governance and financial integrity in Albania and elsewhere.

5. CONCLUSION

Corporate fraud continues to be a threat to economies and enterprises around the world. The effectiveness of civil and criminal liability laws in Albania for CEOs and entities was investigated in this study. The importance of demonstrating intent, knowledge, and participation was underlined when criminal responsibility was examined, highlighting the importance of cooperation between law enforcement and regulatory organizations. Mechanisms for civil culpability highlighted compensation and restoring the financial balance that fraud had upset. While corporate criminal culpability recognized an entity's power to conduct crimes, vicarious liability strengthened organizational accountability. Comparative studies that highlighted global best practices and problems influenced Albania's legal provisions. Enforcement that works well is still essential. Detering corporate fraud, providing shareholder protection, and promoting transparency and integrity in Albania's business sector depends on a strong legal reaction and proactive prevention.

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