

POTENTIALS AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY IN ALBANIA

Blerta Aliu
European University of Tirana
ALBANIA

ABSTRACT

In the context of CSR, it takes a special discussion on the importance of human rights in the corporation as well as the three main strategies for its implementation are: Respect protective legal minimums established by the *lex specialis* for each category of stakeholders, building dynamic dialogue (dynamic stakeholder dialogue) and the engagement in corporate decision making (stakeholder engagement). Expected results from research within this theme consists mainly of identifying legal space of corporate governance in Albania; assessing the effectiveness of transplantation of foreign models and assessing the effectiveness of implementation of the current norms of corporate governance. Research question in this paper is "Do companies protect stakeholders in Albania and what are the legal provisions seeing in the light of a widely used strategy in the international context?". In this way, we build our hypothesis which states the idea that, "The protection and respect for the rights of stakeholders in Albania, especially employees, is achieved through their participation in the decision making of the company, which guarantees sustainable development of the company, making them competitive in the international market". But what are the forms and legal theory and, further, the practical challenges of implementing this theory, we will see in the following chapters.

Keywords: Corporate governance, Corporate social responsibility, Stakeholders, Special Councils.

INTRODUCTION

The concept of ownership and "profit" in a commercial society has undergone radical changes in relation to traditional concepts. Today, are seen new definitions dealing with the fragmentation of capital or management issues, which are related to principles, such as the obligation of loyalty, executive compensation, social responsibility of business, etc. Corporate governance is a topic studied by multiple disciplines, such as the economic, sociological, legal and political one. Other approaches about corporate governance are based on the nature of the employment relationship. So we bring further the prism of representation by looking at human capital and elaboration of the concept of human assets of a corporation productivity and involvement of employees in decision making.

Codes of Corporate Governance are an important legal tool, but there is more need for binding legislation. The main objective would be to increase transparency in the relationship between ownership and management structures, but also between the administrators and the dominant owner-especially with regard to the manner of compensation.

LITERATURE REVIEW

The Corporate Social Responsibility Theory, A Solution or Utopia?

The term corporate social responsibility is mainly implemented by companies or large corporations, although such practices exist in all types of public and private enterprises, including small and medium enterprises. In specifying the purpose of the stakeholder theory, M. Friedman, (1970) has stated that discussions about "corporate social responsibility" or "protecting stakeholders" are significantly characterized by the lack of analysis and logic. What does it mean "corporate" responsibility? Only people can have responsibilities. A corporation is an artificial person and in this sense, it may have artificial responsibilities, but it remains unclear. If there is truly "social responsibility" it belongs to individuals, not corporations. He considers the theory of "corporate social responsibility" as a socialist doctrine and represents the element of leadership, which, according to him should not have to do with this responsibility, but only with the task of increasing the benefits of society.

Edward Freeman (1994) brings a very interesting idea, dismissing rumors of a paradox about this topic, which is built on the basis of the so-called Separation Thesis. He was based on the arguments Kenneth GoodPaster, which analyzes the theory of stakeholders in two perspectives. The first interpretation is the Strategic one and says that stakeholder management is a simple tool to the primary purpose of gaining maximum executives or owners. On the other hand, Multiplex Loyalty interpretation stipulates that directors or managers have fiduciary obligations towards stakeholders, including shareholders and the management of these relationships is not optional but morally obligatory. Summarized in simple terms, the theory of Freeman can be seen in two versions, the first of which aims to serve all stakeholders, while the second version is balancing their interests, which must be acceptable.

As is well-known, there is an old and still unresolved debate about whether mandatory employee involvement rules such as the German rules on employee participation are efficient or not. (Horst Eidenmüller, Lars Hornuf, Markus Reps, 2012). Most recent experiments in Germany indicate re-conceptualization of employees as a shareholder in a company, the so-called Employee-shareholder activists who have created employees unions as shareholders, called Employee shareholder associations, are well institutionalized practices currently known in this countries ordinary. Zwan (2012) provides three models of active participation of employees in German corporations providing all modern concept of ownership, or as she calls the "dis" ownership.

In our description of the evolution that has gradually undergone corporate governance in modern developed societies, will rely primarily on extensive detailed analysis of the author John Cioffi,(2005) who has written about reforms in this area, and the foundations of regulatory policy financial capitalism, in two columns reference the U.S. and Germany, representing two basic systems, common law and civil law.

According to Cioffi (2005) regulatory policies defined by different systems of government set up the foundations of modern financial capitalism. The right corporate governance is an essential regulatory function: definition of power relations, the flow of information, decision-making processes and the economic initiatives; within an important economic institution of modern capitalism that is a corporation.

Perspectives of legal families are characterized by elements that differ from one system to another, which has led to ongoing studies during the period 1970-2005; protection of shareholders, creditors and employees. Studies reveal that two of legal families sharing common law and the civil law, does not explain the features that "wear and change" occasionally different countries, the protection of minority shareholders or the protection of employees.

To illustrate the above conclusion they are based in the argument that the center-left parties have historically been supportive of the working class and unfriendly to the interests of financial capital, which are pro-shareholder reform. Thus, the center-left in the U.S. and Germany, under conditions of economic crisis, followed very different ways. American neo-liberal policies post Enron were fast but short-lived, as in the German context they had the form of coordinated measures, in harmonization with the European Union market. Consequently, the German reforms were consensual, and long-term transformation, for more than a decade. These paradoxical challenges provide two main theoretical approaches to corporate governance.

METHODOLOGY

Method of literature review is to assess the range of existing materials but the main methodology of the paper is based on the comparison standard. In this paper, will be "weighed" the international context, where we have selected the German case, as the most interesting application of the protection of stakeholders, especially employees. We have seen, based on our hypothesis, the relevant literature and arguments about the topic. What are the assumptions that pops this literature and its criticism. It also includes a discussion of the various theoretical schools that exist and an analysis of theoretical perspective on Corporate Social Responsibility.

Will see the decision making structures of a company and analyze the role and legal-judicial status of stakeholders in Albania. A specific aspect is the German case, where a specific law assumes special importance on co-determination. The novelty of this paper is to study the Albanian case about corporate social responsibility. We see that the issue of implementation of social responsibility is still not very developed and remains with philanthropic understanding applications, which means charity and social activities for the community.

RESULTS

Germany's Stereotype

Germany, since the mid-19th century began to be characterized by: the existence of a two-tier structure, Assembly Supervision and Administrative Board, created to protect minority shareholders, and to the obligation of loyalty towards shareholder and stakeholders (Cioffi, 2005) Up to 1990s, the legal framework of commercial law and securities in Germany, was the reverse image of American Structures. Germany had a uniform federal law to commercial law and a fragmented arrangement securities distributed among to Lander or states.

Corporate governance Germany relied on the power of the big banks, monitor the managers, by defining a set of stable relations with concentrated ownership and long term relations between banks and corporate investors. So, banks in Germany were very important creditors to shareholders companies with public offering. Banks' representation on the Board or

Supervisory Council combined voting power with long-term relationships with shareholders as borrowers.

Even today, according to commercial law in Germany, public offering companies have a two-level structure where the supervisory board (analog with the American Board) is completely separated from the board of directors (the version of collegial executive directors "CEO" in American corporations), with no overlap in their membership. Supervisory Board appoints and supervises the Board and formulates basic corporate strategies (H.Michel 2007).

Assembly of Shareholders entitled to receive information for each step and vote on a range of issues that include, changes in capital transactions and set about major changes in corporate strategies. Thus, to limit the power of the executive, corporate German law is based on internal corporate institutions rather than in regulation of the securities market (U.S. case).

These institutional provisions were created to protect the interests of creditor banks and employees as important stakeholder of the company. Co-determination (A Gorezi, 2011) that implicates the involvement of employees into governing structures reflect the context of German companies. This fact was achieved through strong Councils and absorption by the Supervisory Board of active stakeholders within a corporation. Those typical structures facilitate negotiation, compromise, cooperation and consensus on corporate governance. So, this policy became an essential symbol of the country's economic policy and allows employees, through rights to information, consultation and co-determination, to seek compensation for the damage that may be caused to them by the wrong decisions of executives.

Albania's challenges toward CSR

Employee involvement in the SE is governed by the provisions of Directive 2001/86/EC (hereinafter SE-Dir.) and the national transposition laws. The SE-Dir. supplements Regulation 2157/2001/EC and rests on two 'pillars': information and consultation rights of the employees on the one hand and direct involvement in managerial decision-making by the right to influence the selection of the members of the SE's supervisory (two-tier system) or administrative organ (one-tier system) on the other hand (Horst Eidenmüller, Lars Hornuf, Markus Reips, 2012).

Germany jumped on the first steps towards rebuilding structures of companies through corporate governance principles, meanwhile in Albania is questionable the concept of company and private property, enshrined later in the 1990s. Features of Central and Eastern European countries, due to historical context are similar, so often, authors group them for ease of analysis. (Pajuste, 2003) Institutional indicators, and legal environment of the non-compliance rates are typical. Katharina Pistor (2000), referring to the study on the characteristics of legal change in countries with transitional economies, realizes a categorization.

The first category, according to her, are Germanic countries, as a legal heritage of Austro-German or German, the period between the two world wars. The second category, such as Albania and other countries in Eastern Europe and Central Europe, consisting of the countries which have been under Ottoman rule and which have inherited French law. The third category includes countries of the former Soviet Union, with legal inhomogeneous features. According to his study, all transition countries have a low level of protection of shareholders. Other authors who deal with the analysis of East European region, are numerous, though

never touched the Albanian context specifically. It is clear that they remain an accurate background, which provide the line on which to rely.

After we slightly touched the context in which circulates this issue, we need to focus on the current situation. European provisions on employees and their role in commercial companies, have recently evolved, characterized by a high degree of protection towards this category. According to Council Directive 2001/86/EC with regard to the involvement of employees is established a Statute for a European company (SE). That Regulation aims at creating a uniform legal framework within which companies from different Member States should be able to plan and carry out the reorganization of their business on a Community scale; notably in the field of employee involvement. The object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level. Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.

The term "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company; It means for example the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives. It means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of: the right to elect or appoint some of the members of the company's supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

In general, WTO member countries, as also the International Labour Organization, where takes part also Albania, are dedicated towards observance of internationally recognized principles such : prohibition of forced labor, prohibition of minors, prohibition of discrimination, freedom of association - freedom of association. As trade often takes place more easily in countries with low wages, low job protection; its development has the potential to affect the growth of labor protection standards.

As for the nature of the management structure of a company, we consider the distinction between one level system and a two-level system level. At this point we have a comparison of the balance of powers between the respective structures, Shareholders Assembly, Administrator, supervisory councils, but questions arise: In the context of the management of the company, the most important position belongs to which structure?

Co-administration and activity parameters that have to do with the avoidance of conflicts of interest, the obligation to act in the best interests of the company, the exercise of competitive activity and loyalty towards the company. Supervisory Council specifications (Law 9901 "On Entrepreneurs and Commercial Companies) say that members can be shareholders, employees as well, with a term of 3 years and the right of reelection; The number of the member is 3-21.

According to the positioning of employees in a corporation, such as the German model and tradition mentioned above as Co-determination Act 1976; the Albanian model defines of modalities of choice or level of participation. Questions arise: Can the membership for

employees be at parity level as the shareholders? Barriers to the implementation of this option?

Legal prohibitions exist in the actual law for the 'Entrepreneurs and companies' as it provides for the representation in the Supervisory Board, as a facultative option; Unlike the previous law, 7638, which provided for obligatory participation up to 1/3 of members of the Supervisory Board by the employees.

The role and importance of the Council on Occupational Safety and Health as a case of involvement of employees in Albanian companies

Article 14 of Law no. 10 237, 18.02.2010 "Safety and Health at Work" provides that the Council of Safety and Health at Work's mission is to contribute to the protection of physical and mental health and safety of employees, as well as the improvement of working conditions. Council is an advisory partnership with representatives of employers and employees, represented equally, which aims to regular counseling and periodic activity of the enterprise, for the prevention of occupational hazards. Composition and rules of organization and functioning of the Council of safety and health at work, are determined by the Council of Ministers.

The Board of safety and health at work: a) participates in the evaluation, design and implementation of programs to prevent risks to the enterprise; b) promote initiatives on ways and procedures for the effective prevention of risks, the company proposed to improve conditions and mitigate the risks. The employer is obliged to implement the proposals made by the council of safety and health at work, cooperating with the State Labour Inspectorate and the State Sanitary Inspectorate.

Meanwhile, according to DCM "On the composition, rules of organization and functioning of the Council of Safety and Health at Work and the representatives of the employees' defined collection procedures of this body. There is a categorization of the number of members, according to number of employees.

Point 1 of this decision provides that:

1. For purposes of organization and determining the number of representatives of employees and employers in the security council and health at work, sorting is divided into the four groups, as follows:

1.1 Group A includes subjects with 51 to 250 employees and must have no less than 3 representatives of employers, employees and three representatives;

1.2 Group B includes subjects with 251 to 500 employees and must have no less than four representatives of employees of four representatives of employers;

1.3 Group C includes subjects with 501 to 1,500 employees and must have no less than six representatives of employees of six representatives of employers;

1.4 Group D includes entities with over 1,500 employees and must have no less than 9 of 9 representatives of employers representatives of employers.

CONCLUSIONS

The globalization of markets is a modern phenomenon, with positive or negative consequences, but what is worth noting is the broad and unlimited terrain encountered by commercial companies. Therefore, corporate governance has emerged as a key point in the debate on reform and new policies anywhere in the world, by redefining academic concepts,

but regardless of theoretical perspectives and diversity of corporate governance practices at the global level, to define clearly and correctly "corporate governance" remains a challenging task. Existing definitions are closely related to the paradigm, or different ways of conceptualizing the organization of a society. We presented a brief summary of the theoretical-philosophical aspect of corporate governance, expressing some of the concepts that "disturb" more in this area, will shed light on some new opportunities, even in theoretical point of view, which provides the international academic literature.

The main conclusion about Labour and Trade legislation in Albania is that, they give some clearly, accurately and fairly international principles, being contemporary in their entirety. They provide and protect employee rights and guarantee the information of employees on the activity and status of the company. On the other side, the most important provisions are not punitive, but just facultative. For example, they provide recommendations or suggestion forms, such as the right to establish workers' council, but the coverage of funds is made from the funds of the company; The right to have representatives in the organs oversight of the company, or the right to obtain free shares from the capital increase, All optional; The provisions suggest to create mechanisms to enable employees and their representatives, confidentiality concerns and protect those who provide such information.

REFERENCES

- Berglöf Erik and Pajuste Anete, (2003) "Emerging Owners, Eclipsing Markets? Corporate Governance in Central and Eastern Europe" Stockholm School of Economics.
- Cioffi, W. John, (2005) "Corporate Governance Reform, Regulatory Politics, and the Foundations of Finance Capitalism in the United States and Germany" CLPE Research Paper 6/2005 Vol. 01 No. 01
- Freeman Edward, 'The Politics of Stakeholder Theory: Some Future Directions'. Business Ethics Quarterly 4:4 (1994): 409-421
- Friedman, Milton 'The Social Responsibility of Business is to Increase its Profits', The New York Times Magazine, September 13, 1970.
- Gorezi, Arnisa, « Shareholder Rights, Executive Compensation and Stakeholder Protection: A Comparative overview of United States of America and chosen European Union Jurisdictions » CEU, Budapest, 2011
- Michel, Heiner (2007) Co-determination in Germany: The Recent Debate Johann Wolfgang Goethe-Universität, Frankfurt
- Pistor, Katharina (2000) "Patterns of Legal Change: Shareholder and Creditor Rights in Transition Economies", EBRD Working Paper Nr. 49
- Van der Zëan, Natascha, (Dis-)Owning the Corporation: Three Models of Employee-Shareholder Activism, New Political Economy. (2012)
- Directive 2001/86 EC- assessed at http://www.kapitalmarktrecht-im-internet.eu/en/Areas%20of%20Law/Company_Law/European_Law/101/Directive_2001_86_EG.htm
- Law Nr 9901, date 14.04.2008 "On Entrepreneurs and Companies" assessed at http://absa.gov.al/v2/dokumenta/baza_ligjore/ligji_9901.pdf
- Law no. 10 237, 18.02.2010 "Safety and Health at Work" assessed at http://134.0.34.135/wp-content/uploads/2014/02/Ligj_Nr.10237_-18.02.2010.pdf
- Decision of Council of Ministers No. 107, dated 02.09.2011 "On the composition, rules of organization and operation of the council of safety and health at work and representative of employees" assessed at http://134.0.34.135/wp-content/uploads/2014/02/vendim_107_keshilli_i_sigurise.pdf