

**It has always been done like that and nobody has noticed**  
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Currently in Peru several companies and their managers are involved in the Lava Jato scandal; however, the same Marcelo Odebrecht in one of his statements before Peruvian prosecutors said:

The 5 percent or less that Odebrecht was responsible [...] was already discovered [...] You have to discover the 95 percent that was not Odebrecht [...] We were a company that took the initiative to disclose this. This is how Latin America works [...] <sup>1</sup>

Which would mean that 95% is disseminated in other companies that have no relationship with Odebrecht or with any of the companies whose executives are being investigated by the Prosecutor's Office.

But, what could be the reason why corruption has been implanted surreptitiously in the scheme of work of some companies that operate in our country?

Since they begin their training in law school, future lawyers always repeat them: (i) ignorance of the laws does not exempt their compliance and that they can be condemned if their non-compliance is classified as a crime and (ii) no one is above the law.

These two phrases become part of the ABC of any lawyer and any questions asked, will repeat it without fear until he hears the phrase with a loud voice "has always been done well", "do not try to invent gunpowder", "Do not put obstacles in the way of business" or "do not make us afraid". Perhaps those phrases could have worked until recently in our society and this, due to the fact that managers knew that companies could not be processed as they were and are natural persons; situation that changed on January 1, 2018 with the coming into force of Law No. 30424 - Law that regulates the administrative responsibility of legal persons, and that provides that legal persons will be prosecuted, sitting in the dock and If so, condemned.

Until now the codes of conduct approved and disseminated in the company were only papers that reflected what the employees had to fulfill, since for the "tone at the top" it was only a dead letter or even worse, according to the established policies, the General Manager was the one who had the last word on the anti-bribery policy without anyone until then dared to question or ask the following questions that Cassin<sup>2</sup> asks: "But should

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<sup>1</sup> <http://larepublica.pe/politica/1164690-marcelo-odebrecht-apoyamos-a-todos>

<sup>2</sup> Cassin. Is the compliance idea as bad as it sounds? <http://www.fcpablog.com/blog/2018/4/6/is-this-compliance-idea-as-bad-as-it-sounds.html>

the CEO ever have the role of" administering and interpreting "an anti bribery policy? or "There are so many ways the CEO's interest could interfere with his or her judgment about compliance. If a problem were to happen, how would anyone defend this?

Interestingly, Cresceszi<sup>3</sup> emphasizes that compliance reports must be sent directly by the Compliance Officer to the governing body or board without any interference or intermediary, including the General Manager or CEO, as that may well be an opportunity. for it to filter, modify or censor information that for obvious reasons is not convenient for the board or governing body to take cognizance of what actually happens in a company, because that would affect their image and reputation as a "good executive or manager" . Likewise, it emphasizes that the fact that a member of the company's administration participates in the meetings of the Ethics Committee is an interference since it will always tend to minimize non-compliance or alter the facts.

It is not surprising, for example, that in the event of detecting a breach of the law, the company's management tries to minimize this by seeking to create circumstances that distract the attention of the board or government body on what actually happens in business management and do not pose corrective actions so that these facts do not recur.

It comes to my imagination, the case of payments to the authorities in charge of safeguarding the internal order and the arguments to justify this act of corruption from the mouth of the loud voice: "I did not know it was illegal to pay them", "although it has been done the payment does not exist evidence of it "or" the payment that was made was in reward for its good work and nobody can prohibit it ". Creative arguments remain, but the truth is one: making payments to the authorities before or after, simply, is corruption.

These arguments with which only seeks to cover the truth and not recognize the crime to avoid re-offending and stop belonging to the corrupting crust<sup>4</sup>, is what has possibly led to corruption is surreptitiously entrenched in the culture of some companies, in addition to the indifference of the governing body or board to put emphasis on what they call small "issues; indifference that would be a consequence of: (i) in the case of companies with matrices and directories abroad would be summarized in the famous saying "eyes that do not see, heart that does not feel", or (ii) better not to delve into the subject to avoid - paraphrasing Manuel Gonzales Prada<sup>5</sup> - that "bud pus" and not affect the good financial results.

We now know that the phrase "has always been done like this" and similar ones will not serve to prevent a criminal process from punishing the legal entity within the scope of the aforementioned Law No. 30424.

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<sup>3</sup> Cresceszi, Jr., Maurice. Effective ethics and compliance board reporting: The need for direct and autonomous access. En Revista Compliance & Ethics Professional. Society of Corporate Compliance and Ethics. Octubre 2017, pp. 41-44.

<sup>4</sup> Gonzales Prada, Manuel. Páginas Libres. En <https://www.biblioteca.org.ar/libros/211590.pdf>, p. 209.

<sup>5</sup> "Today Peru is a sick organism: where the finger is applied pus springs". Páginas Libres. En <https://www.biblioteca.org.ar/libros/211590.pdf>, P. 107. This phrase by Gonzales Prada to describe corruption in Peru was written in the 19th century; nevertheless, it remains fully valid in the 21st century Peru.