STUDIA PRAWNICZE THE LEGAL STUDIES

2018, No. 3 (215), pp. 89–102
ISSN 0039–3312
doi 10.5281/zenodo.2544984

Dr hab. Celina Nowak, prof. INP PAN
Institute of Law Studies of PAS
cnowak@inp.pan.pl

Compliance policy as a manifestation of legal pluralism

Abstract
The aim of article is to describe the role of 'compliance norms', which functions as a preventive tool, also deters potential perpetrators of crimes and protects private entities from liability. Author analyzes the system of compliance norms in the context of compliance with criminal law as part of the phenomenon of legal pluralism.

The social, cultural, and technological changes related to the processes of globalisation affect not only social events and interpersonal relationships, but also systems of norms. One situation which can be observed within this context is the development of normative spaces that function alongside state law. State law has never been isolated from external influences, but historically speaking – especially in recent centuries, at a time when nation-states were the basic forms of organising societies – it was state law that constituted the basic system of norms in a given territory. In addition to state law, there were other normative systems – often cross-border ones – in particular, canon law, common law, feudal law, Roman law, and *lex mercatoria*[1]. In the twentieth century, we can

1 Cf. B.Z. Tamanaha, *Understanding Legal Pluralism. Past to Present, Local to Global*, 'Sydney Law Review' 2008, vol. 30, p. 377 and others.

■ This publication was prepared as part of the research project 2016/21/B/HS5/02051 'Compliance as a tool of corruption prevention', funded by National Science Centre, Poland, carried out at the Institute of Law Studies of the Polish Academy of Sciences.

behaviour of the individual, and – since the mid-twentieth century, on the European continent – the growing importance of EU law.

In fact, contemporary man, when living in the territory of a given state, simultaneously operates within many normative spaces and is obliged to comply with norms resulting from different norm systems. Attempts to conceptualise this phenomenon on the grounds of legal science are made on the basis of the theories of legal pluralism.

Legal pluralism has been the subject of lively debate in legal literature for several decades around the world[2], and in Poland as well[3] So far, however, a uniform theory of legal pluralism has not been developed, which primarily results from discrepancies in the definition of the term 'law' by researchers dealing with legal pluralism.

Without entering into a discussion about the validity of the various theories of legal pluralism found in the literature, it is worth emphasising that a common feature is the way they draw attention to the issue of the multiplicity of legal systems, or more broadly speaking, normative systems[4]. Regardless of how one defines and understands the law, one cannot help noticing that today, in the same geographical area, several normative systems coexist in the social order. Law in a positive sense is only one of them. Some of these other systems have a supranational origin, while others originate outside of any state. All of them, however, impose on an individual some obligation regarding a particular manner of behaviour.

I have already taken on legal pluralism as a research subject[5]. This article, however, serves to broaden the scope of current research. The purpose of this study is by no means to attempt to define the concept of 'law' or to formulate a theory of pluralism, but simply to apply the conceptual framework and the theory of legal pluralism – or more broadly speaking, normative pluralism[6] – to an analysis of new trends in crime prevention.

---

2 Cf. Ibid., p. 376.

3 Cf. J. Winczorek, *Pluralizm prawny wczoraj i dziś. Kilka uwag o ewolucji pojęcia* [in:] *Pluralizm prawny: tradycja, transformacje, wyzwania*, eds. D. Bunikowski, K. Dobrzeniecki, Toruń 2009, p. 13.

4 Cf. S. Ehrlich, *Wiążące wzory zachowania. Rzecz o wielości systemów norm*, Warsaw 1995, passim; Idem, *Norma. Grupa. Organizacja*, Warszawa 1998, p. 62 and others.

5 C. Nowak, *Wpływ procesów globalizacyjnych na polskie prawo karne*, Warszawa 2014, p. 39 and others.

6 The concept of 'normative pluralism' was also used by J. Griffiths in the work: J. Griffiths, *The Idea of Sociology of Law and its Relation to Law and to Sociology* [in:] *Law and Sociology*, ed. M.D.A. Freeman, Oxford 2006, pp. 63–64 https://dx.doi.org/10.1093/acprof:oso/9780199282548.003.0004. This concept seems more accurate for the description of compliance norms.

The starting point for the following analysis is the claim that among the entities whose law-making authority is likely to determine people's conduct, the role of private-sector entities – especially transnational corporations[7] – has increased in recent decades. The rules of conduct created by international companies are growing in number and are simultaneously gaining more and more importance, in the context of criminal law as well. A special role in these organisations is played by the norms included under 'compliance', which functions as a preventive tool, meant to deter potential perpetrators of crimes and to protect private entities from liability. This article serves as an attempt to show the system of compliance norms as part of the phenomenon of legal (normative) pluralism. At the beginning of the discussion, however, it is necessary to clarify two points.

First of all, I must address the problem of terminology. In Polish legal language, different terms are used to describe the issue of compliance, including compliance, compliance policy, compliance culture, and compliance programmes. There are also the concepts of 'compliance norms' and 'adherence norms'. In turn, the Polish legislature uses the phrase 'the system of monitoring the compliance of activities with the law' or shorter: 'compliance supervision'. In this study, I will use the synonyms which most accurately reflect, in my opinion, the normative and systemic nature of the regulatory feature we are dealing with: compliance norms and compliance policy.

Secondly, it should be noted that compliance norms, which are intended to bring about compliance of the organisation's activities with existing laws, may cover a wide range of issues. However, due to my research interests, for the purpose of this study, compliance will be perceived only in the context of compliance with criminal law, as an instrument which serves to limit the liability of natural and legal persons for committing a prohibited act.

In my opinion, the genesis of compliance norms is connected with the growth of the processes of globalisation in the late 20th century[8]. Along with the economic expansion of private-sector entities, increased competition, and the pursuit of profit, these entities were willing to engage in illegal activities, which, in turn, was associated with a significant increase in legal risk for these entities. There is no doubt the basic risk associated with running a business is the risk of economic failure and, consequently, a lack of a profit, as securing a profit is,

7 This term will be used as T. Braun understands it: as a special type of enterprise which conducts business on an international scale, most often with a complex ownership structure consisting of interrelated entities and shared authorities at the highest level of consolidation. Cf. T. Braun, *Unormowania compliance w korporacjach,* Warszawa 2017, p. 57.

8 Some authors, however, compare their activities to the rules imposed on members of medieval merchant guilds. Cf. T. Braun, *Unormowania compliance w korporacjach…*, p. 23.

after all, the essence and the purpose of running a business[9]. However, the legal risks – in particular those related to liability of a repressive nature – have become more and more important in recent years for the activities of business entities (especially in the US, initially). Their greater importance was connected with, firstly, the growth in economic crime; secondly, the increased investigative output of state organs against perpetrators of white-collar crime; and thirdly, the birth and development of the concept of the criminal liability of legal entities. The compliance policy which originated in the United States, therefore, is a tool for limiting the legal risks related to running a business, both by companies and by the natural persons managing them. In the US, these risks emerged when it came to light that American corporations attempted to bribe foreign public officials and when federal legislation aimed at preventing and combating this type of behaviour was introduced[10].

In general, the risks associated with repressive liability can be divided into two categories. In the chronological development of the law, the criminal responsibility of natural persons came first – as responsibility based on culpability. Managers (including board members and supervisory board members) and employees, even associates of the company, are all subject to criminal liability.

The second form of responsibility, also related to running a business, is the liability of legal entities. The basic *ratio legis* of this form of liability is, firstly, the removal of any benefits arising from the offense committed from the entities that actually benefited from it, and, secondly, the need to hold to account those entities that in fact contributed to the commission of a prohibited act[11]. In Poland, the liability of legal entities is based *de lege lata* on the rules provided for in the Act from 28 October 2002 on the liability of collective entities for acts prohibited under penalty of law[12]. This responsibility in Polish law is currently constructed as a liability, which depends – in both financial and procedural terms –on the responsibility of a natural person associated with a collective entity.

The formation of the liability of legal entities for prohibited acts committed on their behalf was a turning point in the fight against economic crime. The sanctions which were applied to legal entities, especially in the US, were in fact

9 According to Art. 2 of the Act from 2 July 2004 on the freedom of economic activity, Dz. U. 2017, item 2168, as amended, business activity is an activity targeted at generating profit.

10 The 1977 Foreign Corrupt Practices Act. Cf. C. Nowak, *Korupcja w polskim prawie karnym na tle uregulowań międzynarodowych*, Warszawa 2008, p. 99 and the literature quoted there.

11 Dz. U. 2018, item 703 with amendments.

12 The reasons for introducing the liability of legal entities for crimes have been widely discussed by R.S. Gruner, *Corporate Criminal Liability and Prevention*, New York 2017, pp. 2–13 and others.

severe. On the other hand, managers of legal entities realised that most often, due to the number of staff employed and to practical considerations, they do not have the actual ability to control the behaviour of their employees at all times – even though the managers will be held accountable if their staff engage in illegal activities. Therefore, the managers, for themselves and on behalf of the companies they managed, were interested in developing tools that would protect them from allegations of illegal activity. Compliance is a response to their needs in this regard: it is a tool of exculpation, designed to reduce or even completely eliminate one's accountability.

Compliance means agreement. In legal contexts, the term compliance refers to the process of creating, adopting, and enforcing standards (rules and procedures) within an organisation which ensure its activities are in compliance with the law[13]. The main goal of this process is to make the organisation compliant with statutes of applicable positive law, in particular labour law, financial law, environmental law, repressive law, and especially criminal law. In addition, it can be pointed out that an organisation's implementation and adherence to compliance standards is designed to prevent financial losses or the loss of reputation and trust, but this is a secondary goal of compliance. From a legal point of view, conformity norms are the most important; nevertheless, one must remember compliance policy is also an element of corporate governance – that is, modern business management.

The content and scope of compliance norms in a company is determined by several normative areas. First of all, supranational regulations, including international law and EU law, play a role in their formulation. Secondly, a company must protect itself against the consequences of violating national law; therefore, compliance norms must refer to lower-level acts and any applicable laws of a regulatory nature. Thirdly, compliance standards include internal regulations – in particular, company policies and corporate charters, as well as soft law instruments, i.e., standards accepted by the company, which may include codes of ethics and best practices. It is also worth pointing out that private entities are self-regulated in the area of soft law[14] which in some sectors of the economy is very

13 B. Jagura proposes differentiating compliance in the material sense from compliance in the formal sense. Cf. B. Jagura, *Rola organów spółki kapitałowej w realizacji funkcji compliance,* Warszawa 2017, p. 32. In turn, T. Braun formulates a mixed definition. Cf. T. Braun, *Unormowania compliance w korporacjach…*, p. 13.

14 According to the definition proposed by P. Trudel, 'Self-regulation refers to standards voluntarily developed and adopted by those who are involved in some activity.' Cf. P. Trudel, *Quel droit et quelle regulation dans le cyberspace?*, 'Sociologie et Sociétés' 2000, No. 2, p. 205.

actively developed, not only independently by corporations but also by trade associations within particular spheres of the economy[15].

The standards that are subject to compliance policy usually concern three issues: the prevention of non-compliance, the detection and response to non-compliance, and improvements within the company which can avoid such non-compliance in the future. An important tool for building a compliance policy in an organisation is risk analysis, i.e., identifying critical points of the organisation's operations that may be used for fraud.

Therefore, compliance policy typically aims to regulate several areas of the company's operations. First of all, it refers to standards for settling matters (in particular, entering into contracts) which seek to ensure that the behaviour of employees and associates of the company in relations with others from outside of the organisation who cooperate with the company – such as contractors – remains consistent with applicable laws (e.g., regarding corruption, money laundering, and environmental protection). Secondly, compliance norms also apply to the rules of communication within the corporation to prevent an act of non-compliance with the potential for liability being committed or identified as part of the company's operations. In particular, this includes providing channels of communication (even anonymous ones) to the people in charge of the company and to those responsible for ensuring the company's activities adhere to the law[16]. Thirdly, compliance policy comprises a code of ethics in the company, which aims to internalise the provisions of state law and internal procedures defined by other standards of compliance.

As was already mentioned, the concept of introducing comprehensive compliance policies was originally developed by private-sector entities in the US as a tool to defend themselves against allegations from law enforcement agencies and the judiciary system. With time, however, with the progress of globalisation and the growing presence of American corporations in other countries, it began to spread. Initially, such policies were in force in the subsidiaries of US-based companies, as part of transnational corporations, and they later appeared in enterprises operating exclusively on a national scale as well. These companies employ 'compliance officers,' whose duties include drawing up drafts of legal instruments containing compliance standards, which are then adopted by the

15 For example, the Wolfsberg Group, which comprises 13 banks operating on a global scale, has significant law-making activity in the banking sector. See https://www.wolfsberg-principles.com (accessed on 11/10/2018).

16 In this context, attention should be paid to the problem of protecting whistleblowers, that is, employees who report non-compliance they discover within their organisation to superiors or state authorities. In Poland, the issue of whistleblower protection, especially in the workplace, is currently not regulated. For more, see: http://www.batory.org.pl/programy_operacyjne/przeciw_korupcji/wsparcie_i_ochrona_sygnalistow (accessed: 11/10/2018).

company's management, as well as ensuring compliance with these standards in the day-to-day work of the organisation. In addition, compliance norms are typically an element of employee training provided to new hires, and more broadly speaking, adherence to those norms is one of the basic duties of employees.

This essentially means that numerous groups of people employed by individual corporations are bound not only by the norms of universal law, but also by internal rules included in the compliance policies of their organisations, rules which define, among other things, the principles of employee behaviour and communication with others both within the organisation and outside of it. Compliance norms are binding and involve sanctions – not conventional ones, known from positive law, but no less severe – the most severe ones being the loss of one's job, and thus one's source of income. In this way, compliance policy shapes the conduct of those obliged to abide by it. As a result, in my opinion, the standards included in a compliance policy can be regarded as a normative system.

At the same time, compliance policy is an example of a transnational normative system: the standards of conduct that it comprises apply to the employees of a given enterprise (transnational corporation) regardless of their place of work. Therefore, compliance norms cross national borders, as well as cultural barriers, leading to uniformity in procedures and employee conduct within the organisation around the globe. As a consequence, they constitute a separate level of regulation[17] in the complicated modern structure of intersecting normative systems that regulate the operations of legal entities.

It is worth noting that the importance of compliance policy as a set of rules determining people's conduct – rules which were voluntarily and spontaneously developed by private-sector entities – is modified and transcends the scope of a given organisation. Internal compliance norms are typically shaped by the enterprise in question, though this undoubtedly happens in relation to state law. In time, however, trade associations started to play the role of lawmaker in this area, bringing together entities operating in a specific sector of the economy.

The most developed compliance standards apply to the financial sector – in particular, to capital markets – and this applies to Poland as well[18]. There are a number of legal instruments that recommend the implementation of a compliance policy, with varying degrees of obligation for those the policies would address.

One of the most important non-binding legal acts is undoubtedly 'Good Practices of Stock Exchange Listed Companies', the 2016 version of which

17 W. Twining, *General Jurisprudence. Understanding Law from a Global Perspective*, Oxford 2009, p. 70.

18 Cf. T. Braun, *Unormowania compliance w korporacjach…; B. Jura*, B. Jagura, *Rola organów spółki…*

stipulates, 'a listed company has effective systems of internal control, risk management, and supervision of compliance with the law, as well as the function of an effective internal audit, appropriate for the size of the company and the type and scale of its operations'. This general obligation is further specified in the following way: 'The system of supervision of compliance serves to examine the adherence of the company's activities in all areas and aspects of these activities with applicable law, internal regulations, and voluntary standards'.

In recent years, however, in Poland as well, we can observe the development of the state's involvement in the creation of compliance norms. This process has been most evident in the US, where the existence of a compliance programme, as laid out by federal guidelines[19], is a prerequisite for mitigating liability and penalties for criminal acts committed by legal persons[20].

In this respect, the Polish legislature has adopted two strategies. The first one is to introduce the obligation of private sector entities operating in certain sectors of the economy to implement a compliance policy, while refraining from regulating in detail the content of compliance standards that make up the compliance policy. The second strategy, however, is to introduce binding recommendations concerning the content of compliance norms.

An example of the first strategy is the rules that apply to banks. In the 2007 amendment to the Banking Law Act[21], the obligation for banks to set up an internal control system was introduced, the purpose of which, according to Art. 9c, was 'to support decision-making processes which contribute to ensuring: 1) the effectiveness and efficiency of the bank's operations, 2) the reliability of financial reporting, and 3) the compliance of the bank's operations with the law and internal regulations'.

The refinement of this norm was made pursuant to the 2015 amendment[22]. Art. 9c (1) of the Banking Law Act now states that 'the objective of the internal control system is to ensure: 1) the effectiveness and efficiency of the bank's operations; 2) the reliability of financial reporting; 3) compliance with the bank's risk management principles; and 4) compliance of the bank's operations with laws, internal regulations, and market standards'. In turn, according to Art. 9c (2), it is necessary to distinguish within the internal control system 'a compliance cell

19 United States Sentencing Commission, 2016. Chapter 8 – Sentencing of Organizations, § 8 B 2.1, https://www.ussc.gov/guidelines/2016-guidelines-manual/2016-chapter-8 (accessed: 11.10.2018).

20 United States Sentencing Commission, 2016. Chapter 8 – Sentencing of Organizations, §8C2.5.

21 The Act from 26 January 2007 amending the Banking Law Act, Dz. U. 2007, No. 42, item 272.

22 The Act from 5 August 2015 on macro-prudential supervision over the financial system and crisis management in the financial system, Dz. U. 2015, item 1513.

tasked with identifying, assessing, controlling, and monitoring the risk of non-compliance of the bank's operations with the law, internal regulations, and market standards as well as with submitting reports in this respect.'

The regulations relating to compliance policy in the field of trading in financial instruments are much more extensive. Within the EU, instituting a control system of compliance is the responsibility of investment firms, pursuant to Art. 6 of Commission Directive 2006/73/EC from 10 August 2006, which introduces implementation measures to Directive 2004/39/EC of the European Parliament and Council with regard to organisational requirements and operating conditions for investment firms and the concepts defined for the purposes of this Directive[23]. This provision was specified in Polish law in § 24 of the Regulation of the Minister of Development and Finance from 29 May 2018 regarding detailed technical and organisational conditions for investment companies and banks referred to in Art. 70 (2) of the Act on trading in financial instruments and fiduciary banks[24].

---

23 OJ L (Official Journal of the European Union) 241, 2 September 2006, pp. 26–58.

24 Dz. U. 2018, item 1111.

1. The legal compliance monitoring system adopted by investment firms includes:
   1) the type and scope of the activity carried out by the investment firm, including brokerage activities referred to in Art. 69 Paras. 2 and 4;
   2) technical and organisational solutions used to conduct brokerage activities;
   3) the number of persons performing brokerage activities;
   4) the number and categories of clients;
   5) the type of financial instruments being brokered; and
   6) risks related to the activities of the investment firm, including brokerage activities, risks related to the business model, and systems used in the business conducted by the investment company.
2. The investment firm shall separate in its structure a unit for the supervision of compliance with the law. If it is justified by the type and scope of activities carried out by the investment firm, the activities of monitoring compliance with the law may be performed as part of a single-person job. In such a case, the provisions of the regulation concerning the cell for compliance with the law are applicable to the one-person position of supervision of compliance.
3. Where justified by the circumstances specified in Art. 22 (4) of Regulation 2017/565, monitoring the compliance of activities may be performed by a member of the board of directors.
4. A person who performs legal compliance activities – in the case of a single-person position or the person who manages the compliance control unit (supervisor) – reports to the member of the board of directors who has been assigned such competence in the relevant internal regulations of the investment firm. […]
8. The supervisory inspector, depending on the needs, at least once a year, shall draw up a written report on the functioning of the monitoring system of compliance with the law, which shall include in particular:
   1) an assessment of the adequacy and effectiveness of the adopted system for monitoring the compliance of activities with the law in the period to which the report refers;

An example of the second of strategy of the Polish legislature – and, at the same time, the most far-reaching example of a national compliance policy – is the draft bill on transparency in public life from 12 December 2017[25]. Chapter 10 of this bill, entitled 'Counteracting corrupt practices', contains specific provisions requiring the implementation of specific compliance standards aimed at preventing corruption. According to the provisions of the draft bill, this obligation will apply to two types of entities: medium-sized or large enterprises as defined by the Act of 2 July 2004 on the freedom of economic activity (Article 70 of the draft) and persons managing an entity in the public finance sector (Article 71 of the draft).

The most interesting issue here is the provision which obliges entities in the public finance sector to implement an anti-corruption compliance policy. This is the clearest example of transplanting the concept of compliance standards from the private sector to the public sector.

The relevant provision in the bill is very detailed. The purpose of internal anti-corruption procedures was to counteract the crimes specified in Arts. 228, 230, 230a, 231 § 2, 246, 250a, 286, 296, and 305 of the Act from June 6, 1997 of the Penal Code; Art. 46 (1), Art. 46 (4) and Art. 48 of the Act from

2) a description of the actions taken during the period to which the report applies by the unit for supervising compliance as part of performing duties with reference to identified risks related to the activity of the investment company, including those related to brokerage, risks associated with the business model, and the systems used in the activities conducted by the investment company;
3) an indication of the measures taken or proposed in cases of non-compliance with legal provisions regulating the conduct of brokerage activity or the determination of the risk of such non-compliance;
4) a description of significant issues related to the functioning of the compliance monitoring system, other than those specified in Points 1–3, which occurred since the submission of the previous report.

9. The supervisory inspector shall simultaneously submit the report referred to in Para. 8 to:
1) the member of the bank's board of directors who supervises the conduct of brokerage activities and to the supervisory board, in the case of a bank conducting brokerage activities;
2) the board of directors and the supervisory board, in the case of a brokerage house established as a partnership or a limited liability company;
3) general partners who have the right to run the company's business and the supervisory board, in the case of a brokerage house established as a limited joint-stock partnership;
4) general partners or limited partners who have the right to run the company's business, in the case of a brokerage house established as a limited partnership, a limited liability partnership, or an unlimited partnership.

10. The provisions of Paras. 1–9 do not apply to a foreign investment firm.

[25] The draft bill is available (in Polish) on the website of the Government Legislation Centre: https://legislacja.rcl.gov.pl/projekt/12304351/katalog/12465401 (accessed 11.10.2018).

June 25, 2010 on sport; and Arts. 54 (1), 54 (2), 54 (3) of the Act from May 12, 2011 on the reimbursement of medicines, food for particular nutritional purposes, and medical devices. The content and purpose of compliance norms were defined as follows: 'The term «using internal anti-corruption procedures» means that organisational, personnel, and technological measures are taken to counteract the creation of an environment conducive to corruption crimes, in particular by 1) developing a code of ethics for the entity, a declaration rejecting corruption, signed by each employee, associate, or soldier in the unit; 2) familiarising employees with the principles of criminal liability for the offenses referred to in Para. 1; 3) identifying positions particularly vulnerable to corruption and identifying the inherent corruption threats for the entity; 4) defining an internal procedure and guidelines regarding gifts and other benefits given to employees; 5) refusing to take decisions based on corrupt activities; 6) developing procedures for informing the appropriate manager within the entity about corrupt offers and situations generating an increased risk of corruption; and 7) developing internal procedures for dealing with non-compliance'.

This draft bill has not yet been adopted, and the government has focused on preparing an amendment to the Act on the Liability of Collective Entities for Prohibited Actions. This amendment's objective is to change the procedural model for the liability of collective entities by making it independent from the liability of natural persons who commit an act for the benefit of a legal entity. It is also possible to tighten the sanctions imposed on collective entities. The amendment is meant to include provisions instating an obligation for an organisation to introduce a compliance policy.

The statement which I expressed elsewhere that in the context of criminal law, the state is still the strongest and most significant law-making entity[26], both at the national and supranational level, is still valid, as is the claim that the role of the state in the process of creating norms for preventing and combating crime is undergoing a transformation.

The state unquestionably remains the main creator and enforcer of criminal laws. However, faced with various forms of economic crime, the state must resort to new, non-traditional responses to crime, and to new mechanisms for the prevention of crime. A compliance policy is a private – though partly public – instrument for the prevention of crime, based on ethical principles and corporate governance within the organisation. However, corporations do not invest considerable effort into its creation and implementation selflessly. On the contrary, a compliance policy has a very pragmatic side: it is profitable for corporations because if the worst-case scenario occurs and a natural person associated with the organisation commits a crime, the organisation can discharge itself

26 Cf. C. Nowak, *Wpływ procesów globalizacyjnych…*, p. 46.

of liability thanks to its compliance policy. It can even be said that by creating a national compliance policy, that is, by introducing into state law the requirement of instituting such a policy, the state obliges corporations to monitor themselves and to voluntarily report non-compliance, including crimes, to the state. However, compliance policy also pays off for the state, because it leads to a decrease in the occurrence of crimes. We are dealing here with a transactional approach to law, characteristic of common law systems, where the preventive objective prevails over the repressive goal.

The normative system, which compliance norms make up and which was originally created spontaneously for the needs and activities of private entities, has undergone an interesting transformation, because it has been taken over by positive law as an effective and pragmatic crime prevention tool. However, the private entity is still the direct creator and enforcer of compliance norms within compliance policy, even if their content, at least in general terms, is specified in positive law. Thus, as a set of norms obliging the addressees to behave a certain way, compliance policy is another normative system that makes up a complicated picture of the normative pluralism with which an individual is faced.

Bibliography

Braun T., *Unormowania compliance w korporacjach,* Warszawa 2017.

Ehrlich S., *Wiążące wzory zachowania. Rzecz o wielości systemów norm*, Warsaw 1995, passim; Idem, *Norma. Grupa. Organizacja*, Warszawa 1998.

Griffiths J., *The Idea of Sociology of Law and its Relation to Law and to Sociology* [in:] *Law and Sociology*, ed. M.D.A. Freeman, Oxford 2006. https://dx.doi.org/10.1093/acprof:oso/9780199282548.003.0004

Gruner R.S., *Corporate Criminal Liability and Prevention*, New York 2017.

Jagura B., *Rola organów spółki kapitałowej w realizacji funkcji compliance,* Warszawa 2017.

Nowak C., *Korupcja w polskim prawie karnym na tle uregulowań międzynarodowych*, Warszawa 2008.

Nowak C., *Wpływ procesów globalizacyjnych na polskie prawo karne*, Warszawa 2014.

Tamanaha B. Z., *Understanding Legal Pluralism. Past to Present, Local to Global*, 'Sydney Law Review' 2008, vol. 30.

Trudel P., *Quel droit et quelle regulation dans le cyberspace?*, 'Sociologie et Sociétés' 2000, No. 2.

Twining W., *General Jurisprudence. Understanding Law from a Global Perspective*, Oxford 2009.

Winczorek J., *Pluralizm prawny wczoraj i dziś. Kilka uwag o ewolucji pojęcia* [in:] *Pluralizm prawny: tradycja, transformacje, wyzwania*, eds. D. Bunikowski, K. Dobrzeniecki, Toruń 2009.

SUMMARY

The aim of article is to describe the role of 'compliance norms', which functions as a preventive tool, also deters potential perpetrators of crimes and protects private entities from liability.

Author distinguishes two strategies, which have been selected by the Polish legislature, and deals with concrete examples and their peculiarities in Polish law. The first one is to introduce the obligation of private sector entities operating in certain sectors of the economy to implement a compliance policy, while refraining from regulating in detail the content of compliance norms.

Keywords
compliance norms, compliance policy, legal pluralism, criminal law