

MANAGER BETWEEN THE LAW AND ETHICS

Ivan S. KOSTADINOVIC¹, Zoran I. CVETKOVIC²

¹Faculty of Law, Security and Management "Konstantin Veliki" Nis, Serbia, ivan.kostadinovic@konstantinveliki.edu.rs

²Faculty of Law, Security and Management "Konstantin Veliki" Nis, Serbia, zoran.cvetkovic@konstantinveliki.edu.rs

Abstract— In order to develop managerial functions it is necessary the development of management role. Managers have an important role in the managing some of the functions and ensuring their effectiveness. When evaluating the effectiveness of management we must address the specifics of this circle of employees. In the sector of modern management it is necessary to develop awareness of profit, which should provide adequate and proper management. Profit in itself carries a series of contradictions and challenges in terms of ethics in governance and in particular implementing legal obligations that overlook the Labour Law, the Law on Enterprises, the Law on Bankruptcy, Criminal Code and others. Very dynamic social, business, family and economic relationships in the business world, with the problems they bear, speed of movement and the powerful changes in the socio-economic level, the obligation to respect legal provisions, are increasingly making dilemmas of man's ethics, his business ethics and overall ethical-moral attitude towards themselves and society as a whole.

Keywords— management, efficiency, profit, ethics, morality, legality

I. INTRODUCTION

MANAGER of the economic society is obliged to an economic society to respect all restrictions of authorizations on representation under the Law, Articles of Association or by a decision of the competent bodies of the society. A manager who exceeds the limitations of authority is responsible for the damage that occurred in the economic society or a third party with whom the job is dealt. Limitations in terms of authorizations an economic society can not stand to third parties. Legal affairs of a representative of the economic society outside the activities of the society mentioned in the memorandum of association, requires the company even when there are irregularities in their choice, and this can be invoked by third parties. All this should be seen in terms of general global trends in the world in all areas of human life, especially the developments that followed the last decades of the last century and the beginning of this century. Due to this reason, the "management system" is put under control or managerial professions in all living and working fields of human life.

In accordance with the new relations in the world, the

practice has shown that experts who lead the company in a variety of ways they build their relationship with the company, to its organizations, employees. The practice has also confirmed that only a productive management system into which are woven ethical principles and make true moral norms represent an important factor in managing relationships in the production and regulation of social relations in general. Managers are required in that capacity to carry out their duties in good faith, with due diligence, in the reasonable belief that they act in the best interests of economic society. Their estimates are required to be based on the information and opinions of experts in their respective fields that they believe that in this regard they're conscientious and competent. In the case of damage a manager who acts in accordance with the above shall not be liable for damages that arise from such assessments to the business organization [1].

A representative of the economic society, the manager is obliged towards the economic society to respect all restrictions on the authorizations of representation established by the founding act, partnership agreement, or members of the company, by Statute or by a decision of the competent bodies of the society. A representative of the company who exceeds the limits and authorities is responsible for the damage that occurred in the company or to a third party with whom the job is concluded. Legal affairs of a manager of the company outside the activities of the company mentioned in the founding act, requires the company, unless it proves that the third party knew or should have known the circumstances of the case that these jobs were outside those activities, provided that the disclosure is not in itself sufficient proof for this. All information regarding the persons authorized to represent the society, requires the company when there are irregularities in their choice, and this can be invoked by third parties if the company proves that the third party knew or should have known of those irregularities.

Particularly should be emphasized the provisions of the Law on economic societies, according to which duties to an economic society in accordance with this Law have: partners of a partnership and a limited partnership; persons in accordance with this law considered as control members of a limited liability company or a joint stock

company's controlling shareholders, the company representatives, board members, members of the executive board, supervisory board members, members of the board of auditors and the internal auditor of the company with limited liability and joint stock company, persons who have contractual authority to manage the affairs of the company, liquidation manager of a company. All listed persons are obliged to work in the interest of the company, as well as to carry out their duties in good faith, with due diligence, within a reasonable belief that they act in the best interests of the company [2].

II. THE JOBS OF THE DIRECTOR

Director or the Board of Directors is authorized to represent the company and the company management in accordance with law, the founding act and the agreement of members of society, determining the proposal of the business plan, convene the General Meeting of members of society and of the proposal on the agenda, implementing the decisions of the Assembly members, given the determination with which establishing the list of members of society with the right to notification, the day of determining the dividend and the date of payment of dividend, voting and other issues, the conclusion of the loan agreement, the determination of the date of acquisition of the right to participate in profits, and the date of payment of participation in profits, as well as the day of acquiring the right to vote and other rights of the members of society, granting and revocation of power of attorney, other issues determined by the founding act or contract of the members of society. If with the founding act of a limited liability is so determined, director or board of directors is responsible for: enforcement of the decision on acquisition of own shares and the withdrawal and cancellation of shares; determination of the amount of participation in profits; the issuance of bonds or other securities; for the orderly conduct of business books and internal overseeing of the business in accordance with the law.

Director General of Joint Stock Company is elected by board of directors, a director general of a joint stock company is also chairman of the executive board, who convene meetings of the Executive Committee and chairs them, arranges its work and takes care of keeping the minutes of these sessions, representing a shareholding company after the registration and publication of registration without special power of attorney [2].

Ethics is not a science because the discipline of Philosophy. It has to be subject to man's relation to good and evil, and man as a being who, unlike other creatures, has the ability to "such a relationship can be questioned-checks" and compares it with the process of realizing a sense of their existence. The question of a man is much broader: only by considering all philosophical disciplines can come to some understanding that only enlightens the

problem but it never can completely solve because of the very foundations of human development essence. Ethics of the field of "good" and "evil" is trying to relate to the issue of man and his nature (will or essence). "Good" is one of the subjects of ethics as a discipline of philosophy. It is necessary to expose and understand all the currently known Philosophy theories that, in agreement with them, explain the perception of good in relation to man's will, purpose and meaning. If is accepted only one theory and there is the possibility of a prediction of the many perceived elements that are found in the human capacity that only he has the notion of "good" and "evil". If you present all the theory can be erroneously concluded that the lack of general consensus is evidence that the problem of "good" and "evil" can not be solved because it is in the field of chance, anarchy, superstition, prejudice or religious beliefs.

"Good business practices" - business rules that created by the continuous and prolonged repetition of the same manner of behavior of businesses entities in a particular community. They are generally acceptable from the point of view of public policy because they maintain economic, social, ethical and other interests of business operators. They indicate how to apply a faceted legal regulation of trade - economic rights in this particular case. If the good business practices are collected, systematized in a consistent whole and published, then they appear in the form of usages. Usages create wider economic associations (associations, chambers of commerce, etc.) [3].

Only in the syntagmas "good man", "good people", "good behavior" or "well-functioning", the term "good" is used as an ethical category. In modern times, the concept of ethics is designed to include not only the characteristics of good people (excellent personality traits), but also good practical action in many professions, such as medicine, law, sports, and even activities in the war. Ethics and morality should be understood as the terms they use to describe a specific human consciousness of good (justice) and evil (injustice) and its operation to solve a large number of individual and collective problems related to time.

"The second model of the relationship between morality and ethics suggests an understanding of morality which is largely relative. The moral is a set of rules accepted in a given epoch and a given society, the effort invested in the adaptation of these rules, and to encourage their respect ". As for ethics, it is determined as a science whose subject is the decision-making which is an estimate in the sense that applies to distinguishing good from evil'. Ethics here is characterized in a way that it comprises requirements for systematization and criticizing the plan and leads to questioning in connection with foundations. This approach coincides with the understanding that represents the increasing number of contemporary authors, especially those authors who

claim to concatenate on the Anglo-Saxon tradition, establishing a distinction between normative ethics and metaethics. When things are set to such a point of view, establishes a distinction between regulatory functions (morality) and function of legitimation (ethics). Ethics can then be seen as an instance of which is higher than morality, because it gives legitimacy to the very moral foundations. On the basis of this second model, "deontology, or professional ethics, understood as a set of commitments that ensures the regulation of certain practices can only be derived from morality, it would, in this case, represent only a kind of narrow fields of such moral" [3].

Looking at this relationship from the aspect of general and individual actions in specific sociological or a community formed on the basis of the performance of a profession, it can be seen the dialectical relationship. Morals and ethics are interrelated and conditioned, constantly complement each other, extended and canceled simultaneously. Business ethics involves rights, duties, obligations towards individuals, their mutual relations, to all participants in business relations, with other organizations with which you do business, but also to the community at large.

Ethical dilemmas and concerns with which the managers encounter in their careers make up the core of any manager's job. Deviations from ethical norms are increasingly prominent and moral dilemmas more often.

Typical fields where there is the most common deviations from ethical norms are mobbing, corruption, theft and industrial espionage, conflicts of interest, misuse of media, collusion, fraud or other phenomena related to the development of modern society such as discrimination and cultural diversity [4].

III. WHAT IS LEGAL, WHAT IS MORAL AND WHAT IS ETHICAL?

Ethics and morality can be, in certain situations, completely irrational and incomprehensible. In such cases (as panic, terror, pogroms, etc.) no moral norms are valid and most of the people in the particular conditions and circumstances trample all their moral standards.

The term "Legality" shall mean the achieved level of "collective consciousness transformed into a legal norm" and the quality of relationships of people from the aspect of traditional or customary conceptions of good and evil (of right and wrong) in a particular social group, the acquired and inherited or newly built and the conditions and circumstances. Morality refers to the voluntary implementation of the accepted moral code in the procedures of group moral judgment (based on the current traditional moral codes and ethical practices of previous moral trials).

Human rights and freedoms are defined by the Universal Declaration, and later by other international conventions and other national legal acts. They can be

divided into two groups: the civil and political rights on the one hand and economic, social and cultural rights, on the other hand. These rights belong to every human being like the free development of his personality and the realization of human dignity. Human and Civil Rights define the legal status of the individual to the government. Human rights and freedoms are the boundaries that state authorities must not exceed. The scope and respect for human rights are the best indicators of the character of relations between the state authorities and the citizen. Human rights represent a zone reserved for the private activities of individuals and, on the other hand, they are a means of resistance to government authorities to prevent abuse and exceeding authority. However, the meaning of human rights is not only a limitation in opposition to the state and national authorities. The state as a social and cultural community also cares about the physical and cultural development of its citizens, so as to constitute them appropriate rights (economic and social), whose basic idea is to provide citizens the material conditions which enable them to carry out other public rights and freedoms.

Human rights and freedoms can be divided: by subject - holder of the individual (and collective (group)); according to the existence of the standards and the reality on the formal and real: from the standpoint of mutual relationship between the individual and the state the rights of negative status, status of positive law and the rights of active status; according to their subject of personal, political, economic, social and cultural rights; by the time the emergence of the rights of the first, second and third generation. [6]

The Universal Declaration of Human Rights is an important instrument in the development of human rights, adopted at a session of the United Nations in 1948, which provides: The right to life, liberty and security of person; the right to equality before the law; the right to human conduct to a legal personality and to be free from any arbitrariness; the right to use legal remedies; the right to a fair trial; the legal inviolability, honor and reputation and the right to freedom from arbitrary harassment in private life and family; the right to free movement; right to asylum; the right to a nationality; the right to marry and found a family; the right to property, to freedom of thought, conscience and religion; the right to freedom of gathering and association; the right to participate in public affairs and the exercise of public functions; the right to social security; the right to a decent material and cultural life; the right to freedom of work, the favorable conditions of work and to protection against unemployment; the right to equitable remuneration, the right to rest and leisure, the right to a level sufficient to ensure the health and well-being of man and his family; the right to education.

The right to participate freely in cultural life; copyright; entitled to a social and international order

which alone can provide the freedom and the rights proclaimed in the Universal Declaration.

The commission of the United Nations has in a long time drafted covenants on human rights, namely: the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. These covenants include provisions on measures for their implementation. In the theory of law, academic, Radomir Lukic (1914-1999), believes that the law primarily is a normative phenomenon, a set of norms. Like all norms and it is related to the fact that cannot be reduced to simple non-normative facts. One of the main fact of its attachment to the state as a social organization that it applies its coercion. Therefore, according to him, can not accept the notion that the right to a standard that is not state-sanctioned rather than social (non-government) coercion either of disorganized or organized society, although this type of social norms has close ties with law. These are social customs, sanctioned as disorganized and less frequently as an organized society, which exists and is particularly important before the creation of the state, although they exist and afterward. Among them there are also legal practices that are structurally consistent with the law, but still can not be considered law in a narrower sense than its predecessor, because in addition to deviations from the usual point of view of what the term law unites the two, although similar, though essentially different and practically very different norms. Namely, the norms that are sanctioned by countries have a much more effective sanction, well-organized, the state-supported monopoly of physical coercion and its great social authority. On the contrary to it, the social sanction norms are deprived of it. Academician Lukić distinguishes two types of rights in the philosophy of law, which is fundamentally different in its nature and often considerably in content. Thus, the notion of objective law, natural law, and similar means super experience right which is determined by the ontological essence of the world and includes those norms whose content is so determined. On the other hand, positive law (experiential law) did the right thing, which includes norms sanctioned by the state, it actually exists law, which is not just a concept but an actual fact, not only the pure ideal. Therefore, the positive law is the law that is applied, which is sanctioned, backed by an appropriate device which takes care of its application, and, if necessary, using coercion. Positive legal norm is a standard that is applied regardless of whether is applicable in general [6].

The term "justice" - In addition there is justice and its related value - justice. It was already well-determined by Aristotle. He believes that the law is the general norm, which envisages the abstract cases. However, each individual case is different from something abstract predicted cases in law. Therefore, the mechanical application of the law to specific cases which differ

somewhat from the law was in fact unfair, ie, illegal, because the content of the law is a reach justice. Here comes to the fore justice. It consists in the fact that the general legislation adapts to the specific case so that the application in this case does not bring injustice than justice. Justice is an unwritten law, but also the right, which includes what has been failed by the law: it is a supplement to the law. It is to improve the law. With it the law is applied in accordance with its spirit, and not in its letter [7].

This is the most characteristic text of Aristotle on justice, who is also the so concise, complete and accurate that can only cause admiration: "When, therefore, the law contains a general rule, but happens a case that does not coincide totally with it, then it will be treated properly if there where the legislator dropped from sight and with his general term mistaken omission corrected so as to the legislator, when there was to see the case, would say in himself and legally prescribed". The basis of justice is that "it cannot be regulated by any law, because the individual does not bring any law." "Who does not persist in his strict law to the detriment of another, that he is in favor of the law, treats fairly" [6].

The law is justice very significant value, but it is not absolute. It really is often realized by crude remedies that really damage human freedom, and endanger his life by the death penalty. Therefore, the righteousness is of great importance. Strict abstract and generalized principles of justice actually applied in specific cases require proper adjustment to nature of the case and setting the abstract legal norms to its characteristics. The authorities applying the right and specify the rules of justice have to, and therefore, the legislation to take account of this. As a rule, the justice is exercised in favor of the one who suffers most common sanction in case of infringement, but also in other cases.

Justice is, therefore, a social and legal value related to justice. It is an unwritten law, amendments to the law. It consists in the fact that the general legislation adapts to the particular case, so that the application of the law in this case does not bring more justice to injustice.

The term "human justice".- The term "justice" people usually understand in a way as "God's justice" and "human justice". Religious understanding of justice and fairness is based on the premise that this is a divine attribute, i.e. in the strict sense. God is the one who is absolutely righteous. Only God's revelation is the embodiment of truth and justice. He orders the men to be righteous, and that ruling to each other, be fair [8].

Justice, therefore, improves the law. By applying justice law applies in a better way, according to the 'spirit of the law "and not persist on strict adherence to the" letter of the law "to the detriment of one or the detriment of both parties to the dispute.

From the need for survival and communication with other people, a man is always interested in the motives of

their own behavior and the behavior of others. This is quite understandable, because human behavior can not be explained and much less predict if they do not know the motives that encourage him to do it. If we know the motivation, we come up with an answer to the question "why", which often put to explain the causes of one's behavior and actions.

There are definitions that define the moral rules that can be applied to the overall international business (Richard D. George). In this is stated the five basic moral norms: The first norm called "moral minimum" refers to the fact that they are not deliberately applied directly evil. This moral minimum should be respected by anyone, because it applies to all people, all corporations and all countries. Another norm means that in accordance with the basic rules of moral minima in the operations of multinational companies in underdeveloped countries must be taken into account the undeniable differences between the countries that export and the countries that import. At the same time, the activities of multinational companies need to be morally justified, or should the country to which exports to bring good. This is the second norm. The third norm is relating to respect for human rights of workers and consumers, the fourth on the improvement and development of the rightful background institutions within the country, as well as at the international level, while the fifth norm demands from multinational corporations to respect the laws of the host country, to respect its culture and local values provided they do not violate human rights or impose immoral law [8].

IV. ETHICAL - MORAL DILEMMAS AND CONCERNS

Business ethics involves rights, duties, obligations towards individuals, their mutual relations, to all participants in business relations, with other organizations with which you do business, but also to society at large.

Ethical dilemmas and concerns with which the managers encounter in their careers make up the core of any manager's job. Deviations from ethical norms are increasingly prominent and moral dilemmas more often.

The characteristic fields where there are the most common deviations from ethical norms are: corruption, theft and industrial espionage, conflicts of interest, misuse of media, collusion, fraud or other phenomena related to the development of modern society such as discrimination and cultural diversity.

Corruption is a major problem in the modern world. In the political and legal theory under corruption largely involves the misuse of entrusted public authorization for personal gain with conflicts of interest and nepotism, as well as side effects. According to numerous manifestations of this phenomenon in the World stand out activities that are most vulnerable to corruption, but

these are: public procurements, a collection of public revenues, appointments in the sphere of government, donations to political companies, etc. Politicians, political parties and public officials are designated as the most responsible for this obvious evil of modern society.

Corruption may be combated in different ways. One of the ways is to raise the level of ethical awareness, defining new moral standards of conduct and practice the integrity of public services. Of course, it is easy to avoid but it is difficult to enforce and regardless of what is an immoral and illegitimate phenomenon.

Conflicts of interest are very common in business practice. They occur due to the opposition of personal and organizational interests. In order to avoid conflicts of interest, employees should be able to separate their private interests from business contracts entered into, and organizations must avoid conflicts of interest when providing goods and services.

Conflict of interest, again, is a special characteristic of the public service. The main task of the government's public institutions is serving the public interest. In this sense, citizens have a right to expect that any official exercises his functions honestly to a fair and impartial manner. That's why officials who perform public functions that excessively emphasize their private interests may threaten this fundamental right, can destroy the reputation of the state of the public service, which leads to weakening of public confidence [5]. The special role of a manager is in the exercise of public office which shall: establish standards of personal and professional integrity and conduct, which should be observed by employees; to support employees in respect of these standards; to inform the citizens of what behavior have, the right to demand and expect from employees in the municipality and the city; to contribute to building public confidence in local government; to contribute to the establishment of effective and accountable local government [9].

The business of managers and entrepreneurs is to protect the interests and meet the needs of customers, employees and owners of capital. His overall performance, knowledge and skills will be focused on increasing the well-being of not only the employees and owners of capital, but also all those whose material position is dependent on the success of the enterprise. Profit has to be understood as earmarking resources today for a better tomorrow, so not only interest only for mere profit-making, but for such use that will create new jobs, increase the welfare of the community and ensure the sustainable development. Profit can not be achieved with the disgruntled associates, with dissatisfied customers and disgruntled owners of capital. As the profit is a necessary condition for prosperity, we will understand that the benefit can be achieved without money, using the immaterial goods, such as, for example, good business relations and satisfaction in the work.

The legal dimension of social responsibility - means the organization in its operations comply with the law governing competition, protect consumers, employees and the environment, promote positive values and security, and demonstrate initiative in the sense that they prevent mismanagement affairs.

Ethical dimensions of social responsibility - means that a company should in its operations and behavior take measures of positive character, despite the fact that these measures are not prescribed by laws and regulations. In order the ethics were implemented in social responsibility, business strategies must reflect an understanding of the values that are members of the organizations and investors, as well as the understanding of the ethical nature of the selection strategy.

The problem becomes even more significant if one bears in mind that the advocates of the new world order and the ethics medalist trying to subjugate the whole world in all spheres of human life, as well as ethical and moral authorities of human intellect and behavior. Thus "a created international ethics" imperatively - arguably will be valid also in the profession relating to the management. In this sense, the creators of a new ethical-moral behavior, trying to "prescribe" ethical-moral code of all professions, especially those that are very important for the preservation and operation of the western value system and civil society at large.

In no human lifestyle of human civilization today, where the man in the process of working to the utmost extent is dehumanized, without respect for ethical and moral standards worthy of man, man as the linchpin in the development of society and mankind as a whole, threatens to become robotized pendant of multinational companies and their reckless race for profit.

It is essential to man's ethics and his morality interpreted in keeping with all the problems that a man is forced to constantly fight. This is particularly necessary for the work process, since only satisfied, motivated and respected man in the process of work can contribute significantly to the progress of its corporations. This, of course, should be borne in mind in the working environment, where management has the greatest responsibility. For these reasons, the world as whole deals with, in addition to demands for more efficient and productive work of all, it is necessary to humanize everything that he does for himself and for the social community [9].

In such a world already "forgotten" concepts of ethics and morality are increasingly needed, not only of the ordinary employee, but, it would seem far more to managerial, management structure of the company. To this leads us a logical, a quite simple reason, as public affairs and occupation of a large number of people in this field, from their holders - managers, require the far greater application of ethical principles and moral standards. In order to achieve this, in addition to the

existing legal regulations necessary for the successful functioning of the organization, it is important to apply accepted, the true values of man and his community, ethical and moral codes, or codes which will equally apply to all employees, whether in terms of workers or administrative-managerial structure.

Code of Ethics "prescribes" what is unethical immoral behavior (personal benefit of the individual to the detriment of the people, the conflict of individual and organizational goals, neglecting the managerial values and attitudes, etc.), and what is ethical and moral conduct in business (benevolence, keeping promises, protection of the interests of individuals and organizations and society in general, respect the assumed rights, responsibilities and obligations, consistency, respect for subordinates in the structure of employees, respect and fair evaluation of employees by managers and owners).

V. CONCLUSION

Treatment of the aforementioned problem is trying to prove that ethical-moral behavior of leaders - managers in carrying out their professional activities must be in accordance with the law and should respect the ethical principles and moral norms applying the ethical-moral code. This is the only way to be one of the most important functions underlying the overall life of society, and executed lawfully and ethically-morally acceptable way.

The problem of - ethical and moral behavior in business organizations - enterprises, institutions, companies - should be further investigated. On the other hand, should not be glorified "old" ethical-moral values, bearing in mind that modern society should follow global trends. Particular care should be taken not to be followed by "orders" of the world, but that with the protection of others' ethical-moral values to ensure own native autochthonous development path.

REFERENCES

- [1] V. Veljković & M. Jovanović, Ethical and moral basis of security, College of Professional Studies in Criminology and Security, Niš 2010. (In Serbian)
- [2] Law on Companies of the Republic of "Serbia Official Gazette of RS" br. 36/2011, 99/2011, 83/2014 - dr. zakon i 5/2015. (In Serbian)
- [3] M. Vuković & P. Rastić, Business Ethics, College of Business Studies of Management in Traffic, Niš, 2010. (In Serbian)
- [4] R. Lukić, System of jurisprudence, Modern administration, Belgrade, 1992, pp. 309-322. (In Serbian)
- [5] P. Damjanović, Poslovna etika, Business Ethics, Faculty of Business Economics and Entrepreneurship Belgrade, 2009. (In Serbian)
- [6] J. Drummond & B. Bain, Business ethics, Clio, Belgrade, 2001. (In Serbian)
- [7] D. Živković, Lecturer in Business Ethics (slides); available on the Internet 2010. (In Serbian)
- [8] A. Kostadinović, General sociology, College of Business Studies of Management in Traffic, Niš, 2010. (In Serbian)
- [9] R. Lukić, Sociology of morality, Scientific Book, Belgrade, 1976. (In Serbian)