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ELIMINATION OF ANTI-CORRUPTION POLICY SHORTCOMINGS OF THE REAL THREAT TO NATIONAL SECURITY LEVEL BY USING THE RELEVANT EU COUNTRIES EXPERIENCE

The words of Bridget Brink, the U. S. Ambassador to Ukraine, are highly relevant today: in the future Ukraine, there can be no place for those who use state resources for personal gain. State resources must serve the people. People must understand their responsibility to each other and to the state. And these are not empty words. These are words deeply rooted in the values Ukraine upholds in its efforts to be part of the Euro-Atlantic community. The U. S. will continue to support Ukraine's efforts in establishing institutions that work for the interests of the many, not the few. The U. S. will be partner in the war against Russian aggression and will support Ukrainian nation in building a new future, one worthy of the sacrifices made by virtuous Ukrainians. The U. S. is very proud of its partnership with Ukraine (Brink 2023).

Concomitantly, throughout 2022, Ukraine demonstrated the persistence of corruption in customs clearance of goods, evasion of conscription into the Armed Forces of Ukraine, misuse of budget funds for procurement, and distribution of humanitarian aid from our partner countries, among other issues. The domestic legal environment is characterized by a lack of regulation in the promotion of individual or business interests through decisions or actions of public officials, an unclear mechanism for effectively identifying cases of illegal enrichment, and the rarity of court verdicts (whether acquittals or convictions) in high-profile top-level corruption cases. There are also other gaps and contradictions in the field of public-law integrity. In this context, freedom of speech becomes crucial for enabling citizens to hold dishonest persons of the public authorities and society accountable. Millions of Ukrainian citizens who are now taking refuge in European and other countries worldwide will return more actively

after the war if the domestic political and legal system becomes much more honest than it was before the war. The human-centered nature of domestic anti-corruption legislation, particularly criminal and criminal procedural practices, remains fragmented. International cooperation in this area is critically insufficient. Simultaneously, progress in the EU and military security alliances is achieved precisely through the incorporation of mechanisms that promote further utilize human virtues into formal legal requirements. The adequacy of legal consideration of changes in human nature allows Europeans to occupy a leading position in the world amidst contemporary challenges to integrity and to strengthen pan-European national security.

Corruption undermines accountable and effective institutions, hinders access to basic public services, and stifles economic growth. "Corruption in government bodies and administration necessitates the creation of additional structures that ensure the security of enterprises, commercial organizations, banks, other institutions, and their leaders" (Kopanchuk 2020, p. 75). It is widely recognized that the international aspects of corruption can have a decisive impact on national governance and development efforts. Corrupt practices by "corrupted and depraved persons" give rise to a shadow economy, weaken state capacity and legitimacy, and fuel social conflicts (Hansen 2012, p. 3).

Successful legal transformations in anti-corruption policy are based on an understanding of its subject matter, with all the evidence of its integrity and completeness, both in terms of its substantive and temporal components, described using a precise set of terminological concepts (Caragounis, p. 306, 316). The integrity of this perspective can be observed throughout the historical timeframe, with the civilization contexts characteristic of it. The exemplary management and legal procedures of the EU founding countries are akin to the collective manifestation of the highest standard of human virtues in the world, which, since the founding of the EU on April 18, 1951, have evolved in at least three dimensions of the European legal tradition: in these founding countries themselves; in the countries that became EU members; and in Ukraine and other

European nations aspiring to integrate into the EU. The focus on the diachrony (from the Greek dia – "through" and χρόνος – "time") of these changes allows researchers to keep in view the semantic shifts of lexemes and phrases through which lawmaking and enforcement were mediated to implement anti-corruption policy, as well as the parameters of clarity in legal semantics in its actual development. Combating corruption has been recognized as a priority by the leaders of the world's 20 largest economies. They emphasized that, although their forum is not designed to address security issues, such issues can have significant consequences for the global economy. It is important to focus on transparency and accountability in both the public and private sectors, as they form part of collective recovery efforts. Key aspects include audits, public participation in preventing corruption, and the obligation of countries to criminalize bribery, including the bribery of foreign officials, and to effectively prevent, combat, detect, investigate, prosecute, and punish bribery (G20 2022, p. 1, 16, items 3, 49).

The future progress of our nation, among other things, requires identifying the need for transformations in the relevant legal norms, particularly with the support of the EU, in matters of correlation between the cultures of European nations (external) and within the national culture (intériorisation), based on the degree of dominance of human virtues in ensuring public interests, as well as in the context of a functionally limited private legal interest (lim f (x – x0), collectively determined by reliable indicators of the range of maximum possible free development for each individual. If corruption is a manifestation of dishonesty that negates culture as such and has an anti-civilizational character, rapidly destroying high-tech complex civilizations, including the European one, then avoiding these illegal aberrations for European countries means further strengthening legal, administrative, and educational mechanisms for institutionalizing the environments of legal, political, economic, and other socialization of their citizens. After all, they actualize alternative to corruption stereotypes of values and patterns of behavior, based on the existing and promising levels of social progress.

Inspired by Portuguese and Italian anti-corruption legislation, particularly the institutions neutralizing the bribery of public officials by private companies, we see it as feasible for Ukraine to adopt rules regarding criminal liability for the harmful consequences of private corrupt practices that extend beyond the assets of corrupt individuals, ultimately affecting the interests of consumers and the state in maintaining reasonable economic order and free competition. Such and similar results of bribery constitute large-scale, systemic destructive consequences for the entire society and its external relations with other nations (Código Penal 1982; Freitas 2018, p. 428–429).

The formulations in the Ukrainian Criminal Code (CCU) from 05.04.2001, defining types of crimes as actions or omissions determined by bribery, committed in violation of functional duties, lack all necessary concepts and stricter sanctions for especially severe consequences of the distortion of public authority powers (law enforcement, etc.). The existing criminal legislation of Ukraine, in particular the specialized offenses of bribery, such as Article 354, “Bribery of an employee of an enterprise, institution, or organization,” Article 368-3, “Bribery of an official of a private legal entity regardless of organizational and legal form,” and Article 368-4, “Bribery of a person providing public services,” requires supplementation. Legislative definitions linking the consequences of bribery with liability would introduce a new criminal element: the “objective side of the crime.” This would organically complement the current norm in Ukraine regarding increased criminal liability for receiving undue benefits by an official holding a “responsible position” or a “particularly responsible position,” which reflects the criterion of the “subject of the crime.” In conclusion, we will have a framework with two criteria for differentiating punishment for criminal corruption.

The composition of crimes described in Article 368, “Acceptance of an offer, promise, or receipt of undue benefit by an official” of the CCU, requires division into at least three separate articles, as the social danger of an “offer,” “promise,” and “receipt” of a bribe is fundamentally different. The offer/promise of a bribe does not

financially, economically, or organizationally enrich the bribe-taker in any way. The consequences of these actions may amount to zero, with the bribe-taker never receiving the proposed/promised undue benefit, and society does not experience any injustice. As they say in Ukraine: “A fool gets rich by his thoughts.” However, receipt poses an absolute danger to public interests, with consequences directly opposite to the offer/promise of a bribe (Portuguese “oferta indevidos”; Italian “promette denaro o altra utilità non dovuti” – offering money or other undue benefits), highlighting the element of “acceptance of a promise” (Italian “accettano la promessa”). It should also be noted that the “objective side” of the “offer, promise, and receipt” of a bribe differs. In the first two cases, this is a very easily committed crime, essentially an incomplete offense of “receiving a bribe/undue benefit” (Portuguese “recebimento indevido de vantagem,” “corrupção”; Italian “denaro o altra utilità non dovuti” – money or other undue benefit). For example, a lengthy conversation about the offer/promise of a bribe, recorded by covert investigative actions, with clear, unambiguous, and irrefutable serious intentions regarding the transfer/receipt of the bribe, may serve as a sufficient basis for initiating criminal proceedings for this type of crime. Such criminal proceedings for receiving a bribe would require the recording of the actual transfer of the bribe and cannot be exhausted by mere conversation about it. It may indicate that the stages/elements of the crimes of offering/promising a bribe have already occurred within a shortened timeframe or in advance.

Useful for borrowing from the Republic of Portugal could be the criminal offenses of “influence peddling,” “economic participation of public officials in business,” “inefficient management of an economic unit in the public sector,” “fraud in obtaining or redirecting subsidies, grants, or loans,” and “corruption harmful to international trade or the private sector” (Portuguese “tráfico de influência,” “participação económica em negócio,” “administração danosa em unidade económica do setor público,” “fraude na obtenção ou desvio de subsídio, subvenção ou crédito,” “corrupção com prejuízo do comércio internacional ou no setor privado,” respectively). Some of these offenses are defined by the National

Agency for the Prevention of Corruption (NAPC): influence peddling is a form of corruption where an individual trade the possibility of real or potential influence on decision-making by a public official for unlawful benefits. The crime is similar to bribery, but influence peddling involves a "mediator" or person acting as an intermediary between the decision-maker and the party seeking an unlawful advantage (Makarenkov 2023, p. 206).

"Inefficient management of an economic unit in the public sector," "corruption harmful to international trade or the private sector," and other forms of corruption offenses are eradicated from society through collective efforts of public authorities, civil and other private organizations, scholars, and other competent/ethical citizens. These efforts include: 1) integrity pacts, which concern a specific project or operation between contracting parties, such as between a client (usually a government body) and a bidder (usually a company), where the parties agree to adhere to a fair and transparent procurement process for public contracts; 2) anti-corruption declarations, which are statements of intent regarding specific projects or transactions to ensure compliance with anti-corruption obligations; 3) certification of business coalitions for a country, region, or industry to confirm their commitment to anti-corruption principles, adherence to legal and ethical standards of business conduct, and regular independent audits and monitoring processes; 4) training for raising awareness and capacity-building in the fight against corruption, such as the educational course "Pan-European Convergence of Legal, Economic, and Cultural Foundations for Corruption Prevention" (UN Global Compact 2021, pp. 11–13).

The anti-corruption legislation of the Republic of Italy, no less comprehensive and valuable than that of Portugal, deserves the attention of lawyers responsible for improving the specialized legislation of our homeland, particularly in the field of civil relations, which should be unified according to EU standards. This includes provisions for "doubling fines for corruption in companies whose securities are listed on regulated markets in Italy or other EU states or widely distributed among the public" (Italian "Le pene … raddoppiate se si tratta di società con titoli quotati in mercati

regolamentati italiani o di altri Stati dell'Unione europea o diffusi tra il pubblico"); the criminal liability of directors, general managers, and other executives responsible for preparing corporate accounting documents; other individuals performing management functions (Italian "esercita funzioni direttive"); state auditors; insolvency administrators, liquidators of companies or private organizations who, directly or through third parties, demand or receive money or other undue benefits for themselves or others, or accept promises to act or refrain from acting in violation of their duties or obligations of loyalty, punishable by imprisonment from 1 to 3 years; corruption between private individuals (Italian "corruzione tra private"); and several other provisions of Section XI "Criminal Provisions on Companies and Consortia" Articles 2621–2642 of the Civil Code from 16.03.1942 (Codice Civile 1942).

The organizational implementation of criminal prosecution for corruption in Ukraine highlights the relevance of utilizing the experience of prosecutorial and law enforcement bodies in conducting comprehensive police measures and court proceedings to investigate political corruption crimes and related criminal offenses, as seen in the 1992–1993 "Operation Clean Hands" (Italian Mani Pulite) of the Republic of Italy. This also applies to the Kingdom of Denmark (State Prosecutor for Serious Economic and International Crime, 1973; The Agency provides preventative measures to prevent bribery in international relations with foreign counterparties), the Kingdom of the Netherlands (The National Police Internal Investigations Department; The National Public Prosecutor on Corruption), and the Kingdom of Belgium (The Belgian Central Office for the Repression of Corruption, 1998). For adapting and adopting relevant foreign experience in Ukraine, the regulatory frameworks on anti-corruption measures (criminal codes in the absence of specialized anti-corruption laws) and corresponding organizational and legal solutions of the Kingdom of Norway can be taken into account, where the pre-trial investigation body (ØKOKRIM, Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime) specializes in socially dangerous economic