

CORRUPTION COUNTERACTION IN POST-WAR UKRAINE IN THE CONDITIONS OF ITS INTEGRATION TO THE EUROPEAN UNION: CRIMINAL LEGAL AND CRIMINOLOGICAL ASPECTS

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INTRODUCTION

The issue of combating corruption in Ukraine has consistently attracted the attention of not only academics, politicians and representatives of NGOs, but also the international community. It is the state of corruption in Ukraine that is of concern to partner states in the context of countering Russian aggression during the period of a full-scale invasion of our country. As some scholars have noted, “under martial law, the impact of corruption on national security is one of the most urgent and complex problems facing Ukrainian society”¹.

In 2024, according to Transparency International’s Corruption Perceptions Index (CPI), Ukraine received 35 points out of 100 and ranked 105th out of 180 countries, which means that our country has lost one point compared to 2023. At the same time, even today, when the aggressor state continues to destroy Ukrainian cities, strike at critical infrastructure, kill civilians and torture prisoners of war, the issue of combating corruption remains among the most pressing issues of concern to society. In particular, according to the survey, 63 % of respondents believe that the level of corruption has increased during the full-scale invasion of Russia, whereas 24 % believe that it has not changed, 5 % – that it has decreased and 9 % of respondents found it difficult to assess².

A fairly powerful anti-corruption mechanism has been established in Ukraine including the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes, the National Anti-Corruption Bureau of Ukraine, the National Agency for the Corruption Prevention, the Specialised Anti-Corruption Prosecutor’s Office and the High Anti-Corruption Court. However, despite this number of anti-corruption actors, corruption continues to prevail in our society, causing quite high-profile “corruption scandals”, including, for example, the exposure in 2024 of Tetiana Krupa, the head of the Khmelnytsky Regional Centre for

¹ Бондаренко , О. С., & Миргород, В. В. (2024). Корупція та національна безпека: виклики та шляхи реформ. *Академічні візії*, (28). вилучено із <https://www.academy-vision.org/index.php/av/article/view/899>.

² Богданюк О. 63 % вважають, що під час повномасштабної війни в Україні рівень корупції зріс – опитування для «Нового відліку». URL: <https://suspilne.media/725442-63-vvazaut-so-pid-cas-povnomasstabnoi-vijni-v-ukraini-zris-riven-korupcii-opituvanna-dla-novogo-vidliku/>

Medical and Social Expertise, and her son, who holds a senior position in the local Main Department of the Pension Fund of Ukraine. This indicates that the problem of combating corruption remains relevant and requires further research.

1. Definition of corruption: controversial issues

There is no single approach to defining the concept of corruption. As of December 23rd, 2024, the National Repository of Academic Texts has 206 dissertations for the degrees of Doctor of Sciences, Candidate of Sciences and Doctor of Philosophy, dedicated to the study of corruption, freely available since 2000, including:

2 – in the specialty 08.00.01 – economic theory and history of economic thought;

1 – in the specialty 08.00.02 – world economy and international economic relations;

2 – in the specialty 08.00.03 – economics and management of national economy;

1 – in the specialty 08.00.08 – money, finance and credit;

1 – in the specialty 08.00.11 – mathematical methods, models and information technologies in economics;

1 – in the specialty 09.00.03 – social philosophy and philosophy of history;

1 – in the specialty 12.00.03 – civil law and civil procedure; family law; private international law;

2 – in the specialty 12.00.05 – labour law; social care law;

1 – in the specialty 12.00.06 – land law; agrarian law; environmental law; natural resource law;

86 – in the specialty 12.00.07 – administrative law and procedure; financial law; information law;

22 – in the specialty 12.00.08 – criminal law and criminology; penal law;

6 – in the specialty 12.00.09 – criminal procedure and criminalistics; forensic examination; operational investigative activities;

1 – in the specialty 12.00.10 – judiciary; public prosecution and advocacy;

4 – in the specialty 12.00.11 – international law;

1 – in the specialty 12.00.12 – philosophy of law;

1 – in the specialty 19.00.05 – social psychology; psychology of social work;

1 – in the specialty 19.00.06 – legal psychology;

1 – in the specialty 19.00.09 – psychology of activity in special conditions;

1 – in the specialty 21.04.01 – economic security of the state;

2 – in the specialty 21.04.02 – economic security of business entities;

1 – in the specialty 22.00.04 – specialized and sectoral sociologies;

1 – in the specialty 23.00.01 – theory and history of political science;

3 – in the specialty 25.00.01 – theory and history of state management;

10 – in the specialty 25.00.02 – mechanisms of state management;

- 3 – in the specialty 25.00.03 – public service;
- 3 – in the specialty 25.00.05 – public service in the field of state security and public order protection;
- 1 – Doctor of Philosophy in the specialty 051 «Economics» of the field of knowledge 05 «Social and behavioral sciences»;
- 1 – Doctor of Philosophy in the specialty 052 «Political science» of the field of knowledge 05 «Social and behavioral sciences»;
- 1 – Doctor of Philosophy in the specialty 053 «Psychology» of the field of knowledge 05 «Social and behavioral sciences»;
- 1 – Doctor of Philosophy in the in the specialty 054 «Sociology» of the field of knowledge 05 «Social and behavioral sciences»;
- 1 – Doctor of Philosophy in the specialty 073 «Management» of the field of knowledge 07 «Management and administration»;
- 29 – Doctor of Philosophy in the specialty 081 «Law» of the field of knowledge 08 «Law»;
- 6 – Doctor of Philosophy in the specialty 281 «Public management and administration» of the field of knowledge 28 «Public management and administration»

This quantity of defended dissertations alone, not including published scientific articles, monographs and abstracts at conferences of various levels, demonstrates that each scholar is trying to make a personal contribution to improving the fight against corruption and to identify as many specific features of this phenomenon as possible. This, in our opinion, has negative consequences: the proposed definitions include only general, vague and sometimes mutually exclusive wording and indicates that the definition of corruption requires a clear answer to at least four key questions:

- the scope of corruption,
- the nature of the acts that form this phenomenon,
- the subject of corruption
- and the motivation and purpose of corrupt behaviour.

The reason for this is that corruption is a multidimensional phenomenon that manifests itself in various forms in different spheres of social relations. Here are the approaches of some scholars to the definition of corruption (see Table 1).

Table 1

Scientific approaches to definition of corruption

Author of definition	Definition of corruption	Main aspects
Nevmerzhytskyi Ye.V. ³	a system of negative views, beliefs, attitudes and actions of individual citizens, officials of government institutions, state, public and private organizations, political parties aimed at satisfying selfish interests through bribery, abuse of power, bribery, granting benefits and advantages contrary to public relations	when defining corruption, considers it a social phenomenon that manifests itself in political, economic and legal aspects
Melnyk M.I. ⁴	a type of social corrosion that corrodes and destroys public authorities, the state and society as a whole based on such age-old traditions of interaction in society as “quid pro quo”, « <i>do ut des</i> »	not an exclusively legal concept, but rather a complex sociological and criminological one which has both political and economic expression and legal description
Shvedova H.L. ⁵	a model of political and economic relations that is not limited to bribery but is used as a way of conducting political and economic affairs in the state	an indicator of the economic, social, and political state of the state, leads to violation of the rule of law, destruction of the rule of law in the state, violates the laws of social justice and destroys the principles of fair justice
Mykhalchenko O.M. ⁶	selfish, socially dangerous, deeply concealed under economic processes and transactions, naturally latent acts (action or inaction), which due to the ill-conceived reforms have become widespread and socio-politically colored, determined by a complex of criminogenic organizational, socio-	criminological definition of the concept of corruption

³ Невмержицький С. В. Корупція в Україні: причини, наслідки, механізми протидії : монографія. Київ: КНТ, 2008. С. 62.

⁴ Мельник М. І. Хабарництво: загальна характеристика, проблеми кваліфікації, удосконалення законодавства. Київ: Парламентське вид-во, 2000.

⁵ Шведова Г. Л. Корупція (політико-кримінологічне дослідження) : дис... к-та юрид. наук: 12.00.08 / Інститут держави і права ім. В. М. Корецького Національної академії наук України. Київ, 2013. С. 88.

⁶ Михальченко О. М. Корупція в Україні: кримінологічна характеристика, детермінація та запобігання : дис... к-та юрид. наук (доктора філософії): 12.00.08 / Державний науково-дослідний інститут МВС України. Київ, 2017. С. 81.

Author of definition	Definition of corruption	Main aspects
	economic, legal, political, cultural and educational factors, the reproductive impact of which can be stopped only through timely identification and elimination of the causes and conditions that determine and facilitate the commission of corruption acts aimed at illegal, intentional use of official powers to obtain illegal income, other illegal benefits or satisfaction of other personal interests or interests of third parties	
Trepak V.M. ⁷	a complex, entrenched, massive, systemic socially dangerous phenomenon caused by political, economic, socio-psychological and other factors, which consists in the unlawful use of public authorities and opportunities to satisfy private interests, as well as inducing such use or facilitating it	criminological definition of the concept of corruption
Bondarenko O.S. ⁸	intentional violations of a disciplinary, civil, administrative, criminal nature manifested in the unlawful use by a person referred to in Part 1 of Article 3 of the Law of Ukraine “On Corruption Prevention” of the official powers or opportunities related to them	the concept of corruption is being improved for the needs of the Law of Ukraine “On Corruption Prevention”
Komissarchuk Yu.A., Franchuk V.I. ⁹	use of official position by officials to provide various kinds of material goods, benefits, services or other advantages for remuneration	use of state power to a selfish purpose
Tereshchuk O.V. ¹⁰	activity of a person authorized to perform state functions or a person equated to him/her aimed at the	corruption as a phenomenon is viewed in two aspects – as

⁷ Трепак В. М. Теоретико-прикладні проблеми запобігання та протидії корупції в Україні : дис... д-ра юрид. наук: 12.00.08 / Львівський національний університет імені Івана Франка Міністерства освіти і науки України; Інститут держави і права імені В. М. Корецького НАН України, Київ, 2020. С. 11.

⁸ Бондаренко О. С. Концепція кримінально-правової протидії корупції в Україні : дис... д-ра юрид. наук: 12.00.08 / Сумський державний університет; Дніпропетровський державний університет внутрішніх справ. Дніпро, 2021. С. 32.

⁹ Комісарчук Ю. А., Франчук В. І. Корупція: теоретико-методологічні засади дослідження. Львів, 2011. С. 7.

¹⁰ Терешук О. В. Адміністративна відповідальність за корупційні правопорушення. Одеса, 2000. С. 14

Author of definition	Definition of corruption	Main aspects
	unlawful use of the powers granted to him/her or his/her official position and related opportunities for the illegal receipt of material goods, services, benefits, advantages or other benefits of a material or non-material nature from individuals and legal entities (bribery), as well as bribery of the said persons by individuals and legal entities	illegal actions of persons authorized to perform state functions aimed at personal enrichment and as a stable connection of representatives of power and administrative structures with the criminal environment and assistance to it in conducting illegal activities through the use of powers granted by the state
Nonik V.V. ¹¹	a negative phenomenon that “poisons” the public life of any state	the main task for any state is to identify the causes and conditions of corruption offenses and develop a mechanism to minimize them
Kostenko O.M. ¹²	a form of criminal exploitation of society	a concept of “active justice” in combating corruption as well as the concept of “moral and legal counteraction to corruption crime”

Summarizing the existing approaches to the concept of corruption as an object of counteraction, V. Yu. Zayets, through the prism of sociological, public administration, economic, political science and legal approaches, distinguishes the following groups of concepts of corruption: the first group of scholars considers corruption as a crime – a socially dangerous, criminalized act; the second group of scholars understands corruption as a social phenomenon and notes that this point of view is the most common¹³. At the same time, this approach to the criteria for dividing the concept of “corruption” is debatable and, in our opinion, does not take into account, in

¹¹ Нонік В. В. Дослідження сутності та трактування поняття «корупція»: еволюційний аспект. *Інвестиції: практика та досвід*. 2019. № 3. С. 104.

¹² Костенко О. У світі соціального натуралізму (вибране): вибрані твори. Київ: ПАЛІВОДА А. В., 2020. С. 67.

¹³ Заєць Ю. В. Деякі теоретичні аспекти поняття (сутності) корупції як об’єкта протидії. *Право та державне управління*. 2022. №2. С. 338-348. DOI <https://doi.org/10.32782/pdu.2022.2.49>.

particular, the fact that such acts are committed by officials for the purpose of enrichment and such acts are not always criminal, and a person may be brought to administrative or civil responsibility.

As for the definition of corruption in international law, there is also no single approach to its interpretation. Let's analyze the existing definitions of corruption declared in international and domestic legal acts in more detail (see Table 2).

Table 2

Definition of corruption in the international and domestic legal acts

Legal act	Definition	Main aspects
Domestic legislation		
The Law of Ukraine "On Combating Corruption" ¹⁴ (repealed by the Law of Ukraine No. 1506-VI of June 11, 2009 "On Principles of Prevention and Counteraction to Corruption")	activity of persons authorized to perform state functions aimed at unlawful use of the powers granted to them to obtain material goods, services, benefits or other advantages	In 2001, the Criminal Code of Ukraine provided for criminal responsibility liability only for receiving, giving, offering and provoking bribes
Law of Ukraine No. 1506-VI of June 11, 2009 "On Principles of Prevention and Counteraction to Corruption" ¹⁵ (repealed by the Law of Ukraine No. 2808-VI dated December 21, 2010 "On the Repeal of Certain Laws of Ukraine on Prevention and Combating Corruption")	use by a person of the official powers and related opportunities granted to him/her in order to obtain an unlawful benefit or acceptance of a promise/offer of such benefit for himself/herself or other persons, or, accordingly, a promise/offer or provision of an unlawful benefit to such person or at his/her request to other individuals or legal entities in order to induce such person to unlawfully use the official powers and related opportunities	introduction of the terminology related to unlawful benefit, changes in the subjects of anti-corruption
Law of Ukraine "On Corruption Prevention" ¹⁶	use by the person referred to in part one of Article 3 of this Law of the official powers or opportunities related thereto for the purpose of obtaining an unlawful benefit or acceptance of such benefit or acceptance of a promise/offer of such benefit for himself/herself or other persons,	a person authorized to perform the functions of the state or local self-government aims to obtain an unlawful benefit, namely, money or other property, advantages, benefits, services, intangible assets that are

¹⁴ Про боротьбу з корупцією : Закон України від 5 жовтня 1995 року № 356/95-ВР. URL: <https://zakon.rada.gov.ua/laws/show/356/95-%D0%B2%D1%80#Text>.

¹⁵ Про засади запобігання та протидії корупції : Закон України від 11 червня 2009 року № 1506-VI. URL: <https://zakon.rada.gov.ua/laws/show/1506-17#Text>

¹⁶ Про запобігання корупції : Закон України від 14 жовтня 2014 року № 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

Legal act	Definition	Main aspects
	or, accordingly, a promise/offer or provision of an unlawful benefit to the person referred to in part one of Article 3 of this Law or at his/her request to other individuals or legal entities in order to induce this person to unlawfully use the official powers or opportunities related thereto	promised, offered, provided or received without legal grounds
International legal acts		
Practical measures to combating corruption ¹⁷	violations of ethical (moral), disciplinary, administrative, criminal nature, which is manifested in the illegal use of their official position by the subject of corruption activities	Resolution of the Eight UN Congress on Crime Prevention (Havana, 1990)
Civil Law Convention on Corruption dated November 4, 1999 ¹⁸	direct or indirect solicitation, offering, giving or receiving of a bribe or any other undue advantage or opportunity to obtain it, which violates the proper performance of any duty by the person receiving the bribe, undue advantage or opportunity to obtain such advantage, or the behaviour of such person	the concept of a wide range of corruption violations – ethical, disciplinary, administrative and criminal
UN Convention Against Corruption dated October 31, 2003 ¹⁹	Article 3 does not provide a clear and unified definition of corruption, only lists the types of corrupt practices	only certain manifestations of corruption are reflected, without fully disclosing its nature and complexity
UN background paper on the international fight against corruption ²⁰	abuse of state power for personal gain	
Code of Conduct for Law Enforcement Officials ²¹	any action or omission by an official in the scope of his/her official powers for remuneration in any form in the interests of the person giving such remuneration, both with or without violation of job descriptions	

¹⁷ United Nations. Handbook on practical anti-corruption measures for prosecutors and investigators vienna, September 2004. URL: <https://www.unodc.org/documents/treaties/corruption/Handbook.pdf>

¹⁸ Про ратифікацію Цивільної конвенції про боротьбу з корупцією: Закон України від 16.03.2005 № 2476-IV. *Відомості Верховної Ради України*. 2005. №16. Ст. 266.

¹⁹ Цивільна конвенція про боротьбу з корупцією: ратифікована Законом України від 16 березня 2005 року № 2476-IV. URL: https://zakon.rada.gov.ua/laws/show/994_102#Text.

²⁰ Довідковий документ про міжнародну боротьбу з корупцією: підготовлений Секретаріатом ООН, № 169/14. Каїр: ООН, 1995. 47 с.

²¹ Кодекс поведінки посадових осіб з підтримання правопорядку: Резолюція 34/169 Генеральної Асамблеї ООН. URL: https://zakon.rada.gov.ua/laws/show/995_282#Text.

Legal act	Definition	Main aspects
Council of Europe Interdisciplinary Group on Corruption ²²	bribery and any other remuneration to a person entrusted with certain duties in the public or private sector, which leads to violations of the obligations imposed on him/her by the status of a public official, private employee, independent agent, or other kind of relationship in order to obtain any illegal benefits for himself/herself or others	the experience of other countries was taken into account when formulating the definition
Model Law on Corruption Combating ²³	acceptance of property benefits and advantages by public officials and persons equated to them, personally or through intermediaries, not provided for by law, using their official powers and related opportunities, as well as bribery of these persons by unlawfully providing them with these benefits and advantages by individuals and legal entities	adopted by the Inter-Parliamentary Assembly of the Member States in 1999
Inter-American Convention Against Corruption ²⁴	<ul style="list-style-type: none"> – attempting to obtain, directly or indirectly, from a government official or person performing public functions, any item of monetary value, as well as other benefit, such as a gift, favor, promise, or advantage for oneself or another person or organization in exchange for any act or omission in the performance of public functions; – offer or provision of such benefit directly or indirectly; – any act or omission in the performance of his/her duties by a government official or person performing public functions with the purpose of unlawfully obtaining profit for himself/herself or a third party; – fraudulent use or concealment of property obtained as a result of one of these acts 	adopted on March 29, 1996, on the Third Plenary Session of the Organization of American States

Thus, based on the analysis of existing approaches to the definition of “corruption”, it can be noted that both scientific works and international

²² Мазур І. Корупція як інститут тіньової економіки. *Економіка і право*. 2005. № 8. С. 37.

²³ Модельний кодекс поведінки державних службовців країн Ради Європи (схвалено Рекомендацією Кабінету Міністрів Ради Європи Європейським країнам «Про кодекс поведінки для державних службовців», травень 2000 р., № R (2000)10).

²⁴ Камлик М. І. Корупція в Україні / М. І. Камлик, Є. В. Невмержицький. К. : Товариство «Знання», КОО, 1998. 187 с.

documents do not identify specific features that would allow developing a universal concept of this phenomenon. For example, focusing only on the fact that corruption is inherent in public officials leaves out ordinary citizens who offer undue benefits for committing or not committing certain acts to this category of persons. This confirms the need to study criminal responsibility for criminal corruption offenses and criminal offenses related to corruption.

2. Criminal responsibility for criminal corruption offences and criminal offences related to corruption: certain issues of qualification

According to sociological surveys, 73 % of Ukrainian citizens consider corruption to be the biggest problem in our country. But the real number of Ukrainians who face corruption is 19 %. These figures demonstrate the desire of Ukrainian society to live in a country without corruption²⁵. In addition, on 23 June 2022, the European Union member states voted to grant Ukraine the status of a candidate country for accession to the European Union and put forward a number of requirements, including strengthening the fight against corruption. The European Council emphasised such an important aspect as the existence of a conflict between the Criminal Code (hereinafter referred to as the CC) of Ukraine and the Law of Ukraine of 14 October 2014 No. 1700-VII “On Prevention of Corruption”. In our opinion, the very existence of such a conflict leads to ineffective work on bringing to justice persons for corruption criminal offences and corruption-related criminal offences.

In the Law of Ukraine of October 14, 2014, No. 1700-VII “On Prevention of Corruption”, the legislator defined the main terms, among which we will highlight those related to the subject of our study, namely:

corruption offense – an act containing signs of corruption committed by a person referred to in part one of Article 3 of this Law, for which the law establishes criminal, disciplinary and/or civil liability²⁶;

corruption-related offense – an act that does not contain signs of corruption, but violates the requirements, prohibitions and restrictions established by this Law, committed by a person referred to in part one of Article 3 of this Law, for which the law establishes criminal, administrative, disciplinary and/or civil liability²⁷.

Taking the abovementioned into consideration, it can be noted that criminal liability is provided for both corruption offenses and corruption-related offenses.

²⁵ Корупція – не наш спадок, тому маємо впровадити системні зміни, аби не передати його наступним поколінням, – Голова НАЗК. Офіц. сайт НАЗК. Публ. 08.11.2024. URL: <https://nazk.gov.ua/uk/koruptsiya-ne-nash-spadok-tomu-maemo-vprovadyty-systemni-zminy-aby-ne-peredaty-yogo-nastupnym-pokolinnyam-golova-nazk/>

²⁶ Про запобігання корупції : Закон України від 14 жовтня 2014 року № 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

²⁷ Там же

In the note to Art. 45 of the CC of Ukraine, the legislator has set forth the definition of corruption criminal offenses and corruption-related criminal offenses. In particular, corruption-related criminal offenses are criminal offenses under Articles 191, 262, 308, 312, 313, 320, 357, 410, if committed through abuse of office, as well as criminal offenses under Art. 210, 354, 364, 364-1, 365-2, 368-369-2. Criminal offenses related to corruption are criminal offenses under Art. 366-2 and 366-3 of the CC of Ukraine.

In addition, certain scholars have expressed the view that the legislator divides corruption criminal offenses into two groups, where acts belonging to the first group may be recognized as corruption if committed by a specific subject, while the offenses that make up the second group and contain an exclusive corruption component²⁸. However, such an approach to the definitions of “corruption criminal offenses” and “corruption-related criminal offenses” does not allow identifying any specific features of these criminal offenses that have led to their assignment to one or another group. This causes discussions not only among scholars, but also among special anti-corruption actors.

For example, quite interesting and ambiguous in this aspect is the approach of the CC of Ukraine to the term “official”, which is defined in paragraphs 1 and 2 of the note to Art. 364 and in part 3 of Art. 18. The difference between them is that: a) the first one mentions state or municipal enterprises, institutions or organizations, while the second one does not have such a limitation; b) the first definition refers to a narrow and exhaustive range of crimes, namely those provided for in Art. 364, 368, 368-5, 369 of the CC of Ukraine, while the second one applies to all other corruption crimes, except for the offense, which is punishable under Art. 410, since in the latter case the subject of the crime will be a military official, which is defined in para. 1 note to Art. 425 of the CC of Ukraine²⁹.

According to part 3 of Art. 18 and paragraph 1 of the note to Art. 364 of the CC of Ukraine, officials are persons who permanently, temporarily or by special authority perform the functions of representatives of government or local self-government, as well as permanently or temporarily hold positions in state authorities, local self-government bodies, enterprises, institutions or organizations related to the performance of organizational and administrative or administrative and economic functions, or perform such functions by special authority, which the person is vested with by an authorized body. Thus, based on the above, it can be noted that this definition contains special features inherent in an official as a special subject, which indicate its peculiarities and distinguish it from other special subjects.

²⁸ Колодін Д. О., Абакіна-Пілявська Л. М. Окремі питання кваліфікації кримінальних корупційних правопорушень та правопорушень, пов'язаних з корупцією. *Юридичний бюлетень*. 2023. Вип. 29. С. 312.

²⁹ Мезенцева І. Кримінологічна характеристика особи корупційного злочинця. *Науковий часопис Національної Академії Прокуратури України*, 2014. № 3. С. 66-67.

According to part 4 of Art. 18 and paragraph 2 of the note to Art. 364 of the CC of Ukraine, officials of foreign states (persons holding positions in the legislative, executive or judicial body of a foreign state, including jurors, other persons performing state functions for a foreign state, in particular for a state body or state enterprise), foreign arbitrators, persons authorized to resolve civil, commercial or labor disputes in foreign states in an alternative to judicial procedure, officials of international organizations (employees of international organizations or any other persons authorized by such an organization to act on its behalf), as well as members of international parliamentary assemblies to which Ukraine is a member, and judges and officials of international courts).

In this aspect, the practice of bringing to criminal liability those guilty of committing criminal corruption offenses and corruption-related offenses is interesting. In particular, the local and appellate courts concluded that a college teacher appointed as a member of the examination board was not an official, did not hold a managerial position, and therefore was not a subject of the crime under Part 3 of Art. 368 of the CC of Ukraine, and therefore should not be held criminally liable for obtaining an undue advantage for himself for committing any act of abuse of office combined with extortion in the interests of the person providing the undue advantage. The Supreme Court disagreed with this conclusion and stated that the subject of the criminal offense under Art. 368 of the CC of Ukraine is a person who, as a member of the examination board, takes exams, gives grades, i.e. carries out temporary activities that are of an organizational and administrative nature, since the right to continue education, the right to receive a scholarship depends on the results of the exams ³⁰.

As for employees of educational institutions, here is another example. The pre-trial investigation body charged an associate professor of a university department with committing a criminal offense under Part 3 of Art. 354 of the CC of Ukraine. As it was established in the indictment, the associate professor, being the supervisor of the student's diploma project, unlawfully received an undue benefit from him in the amount of USD 400. He received USD 400 for completing the student's diploma project and for assisting in his successful defense before the examination committee. The local court, whose decision was upheld by the appeal court, found the associate professor not guilty under Part 3 of Art. 354 of the CC and acquitted him under paragraph 3 of Part 1 of Art. 373 of the CPC for lack of corpus delicti. The Supreme Court stated that an associate professor of a higher education institution, as the supervisor of a student's thesis, is authorized to prepare the student for the defense of this work, provide advice on its writing, point out the scientific literature to be used in the work, and provide a review that may be taken into account during the defense of the work. In case of receiving an undue benefit from a student for completing a thesis instead of him/her and for facilitating its successful

³⁰ Постанова колегії суддів Першої судової палати ККС ВС від 21.11.2023 у справі № 461/3472/17 (провадження № 51-3166км22). URL: <https://reyestr.court.gov.ua/Review/115168389>.

defense before the State Examination Commission, the associate professor of the department is a subject of a criminal offense under Art. 354 of the CC of Ukraine³¹.

In addition, the appeal court overturned the acquittal of the head of the district department of the executive service and convicted him under Part 3 of Art. 368 of the CC of Ukraine. In the cassation appeal, the convicted person argued that he was not the subject of the crime, since he acted as an individual and his powers did not include resolving the issue of debt collection in enforcement proceedings. The Supreme Court stated that the actions of the head of the district department of the executive service, who received an undue benefit from the debtor in the enforcement proceedings headed by the department under his jurisdiction for not collecting the debt from the latter, constitute a criminal offense under part 3 of Art. 368 of the CC, and he himself is the subject of this criminal offense, since he has the status of a category “B” civil servant (an official holding a responsible position), who, in accordance with Art. 74 of the Law “On Enforcement Proceedings”, is authorized to request enforcement proceedings for verification, transfer them to another state enforcement officer, and accept them into his proceedings³².

So, it can be argued that special characteristics of the subject play an important role in the qualification of criminal offenses classified as criminal corruption offenses and corruption-related criminal offenses. In addition, the above rulings of the panel of judges of the first instance also highlight the problems of application of the law on criminal liability, namely the problems of differentiation of criminal liability based on the subject. Instead, V. Navrotskyi noted that “establishing the type of official, taking into account his status, usually does not cause difficulties, except for three aspects:

1) should the size (scale, scope of activities, taking into account the number of subordinates, territory served, etc.) of the state or local self-government body, relevant departments, divisions, groups be taken into account when determining whether or not the respective employees hold responsible, especially responsible positions? The answer to this question should be negative – the head of the village council, the head of a sector of two employees, according to the law, is a relevant manager, and therefore holds a responsible position;

2) do persons who do not hold full-time positions, but who actually decide on extremely important issues, have a responsible position? These are, in particular, chairmen, deputy chairmen, secretaries of permanent deputy commissions of local councils, leaders of political parties and other public organizations, persons “close” to the leaders of the state or local territorial communities. However, the responsible or especially responsible status,

³¹ Постанова колегії суддів Першої судової палати ККС ВС від 18.10.2022 у справі № 444/930/16. URL: <https://reyestr.court.gov.ua/Review/106869176>.

³² Постанова колегії суддів Першої судової палати ККС ВС від 26.01.2023 у справі № 532/1020/20 (провадження № 51-3103км22). URL: <https://reyestr.court.gov.ua/Review/108686181>.

according to the CC, is directly related not to the scope (importance, significance) of powers, but to the formal aspect – holding a certain position. Therefore, these persons, being public officials and subjects of the simple corpus delicti of the analyzed crime, nevertheless, cannot be classified as holding a responsible position;

3) the CC contains a number of articles that contain features that fully or partially coincide with the signs of acceptance of an offer, promise or receipt of an unlawful benefit by an official or a request to provide such a benefit. Moreover, it is the characteristic of the subject that is crucially differentiating”³³.

Speaking about the subject of a criminal offense under Art. 368 of the CC of Ukraine, we note that such persons:

1) belong to public officials (i.e., fall under the characteristics specified in paragraph 1 of the note to Art. 364)

2) hold relevant positions – i.e., there is an employment relationship of an employee who holds a responsible or particularly responsible position with a certain institution;

3) are in the civil service or service in local self-government bodies or hold positions of judges, prosecutors and investigators, or hold positions specified in the list provided for in subparagraph 1 of paragraph 3 of the note to Art. 368;

4) in the case of civil service or service in local self-government bodies, hold positions belonging to the respective categories (“B”, “A”, the first and second) or are heads or deputy heads of state authorities, local self-government bodies, their structural subdivisions and units.

At the same time, in case No. 5-109кc15 the Supreme Court of Ukraine noted that holding a position in a government agency is not enough to recognize a person as an official; if he or she is not vested with power and has not used his or her official position, he or she is not a subject of a crime under Art. 368 of the CC³⁴. This suggests that not every person working in state or municipal bodies, institutions, or enterprises is an official and may be hold criminally responsible under this article.

Summarizing the above, we believe that the question of which employees of enterprises, institutions, organizations are not officials; whether persons who are not in an employment relationship with an enterprise, institution, organization can be recognized as officials on the basis of performing organizational, administrative or administrative and economic duties by special authority of a person who is not in an employment relationship with an enterprise, institution, organization, in the case of performing such duties under a contract, court decision or in other cases provided for by law, or on behalf of a legal entity (representative); whether private notaries, auditors,

³³ Корупційні схеми: їх кримінально-правова кваліфікація і досудове розслідування / За ред. М.І. Хавронюка. К. : Москаленко О. М., 2019. С. 141.

³⁴ Писаренко О. О. Щодо захисту при звинуваченні в одержанні неправомірної вигоди (ст. 368 КК). Правові аспекти корупційного злочину – отримання службовою особою неправомірної вигод. URL: <https://fides.com.ua/our-publications/shchodo-zahystu-pry-zvynuvachenni-v-oderzhanni-nepravomirnoyi-vygody-st-368-kk>.

experts, doctors, teachers and some other persons authorized to issue or certify certain documents certifying certain facts that entail legally significant consequences can be recognized as officials (on the basis of performing organizational and administrative tasks) or any other persons authorized to perform certain actions that entail the same consequences, and therefore are recognized as subjects of corruption criminal offenses and corruption-related criminal offenses, has not been unambiguously resolved either in the theory of criminal law or in law enforcement practice. In addition, the issues of whether it is possible to perform the functions of a representative of the authorities under special powers; what should be understood as temporary performance of functions and duties specified in part 3 of Art. 18 of the CC of Ukraine; the correlation of the concepts of “functions” and “duties” are resolved differently.

When establishing an official as a subject of a criminal offense, it is necessary to distinguish between official functions and professional duties. In order to bring an official to criminal liability for a corruption criminal offense and a corruption-related criminal offense, it is necessary to clearly and unambiguously indicate in the procedural documents which category of officials the person belongs to in connection with the act, since holding a certain (specific) position may be associated with the performance of both the functions of a representative of the authorities and organizational, administrative or economic duties.

3. The state of corruption counteraction in Ukraine

Corruption remains one of the key factors hindering the country's socio-economic development and undermining trust in government institutions. The involvement of people in high or strategically important positions in corrupt practices is particularly outrageous. This intensifies criticism of state institutions, especially in the context of military conflict and external aggression, which seriously affects Ukraine's internal stability and international image. For example, from November 2023 to October 2024, our state suffered losses of \$483 million (about 20 billion hryvnias) due to large-scale corruption in the construction of fortifications. Law enforcement is currently investigating 30 criminal cases related to these abuses³⁵. And this is only a small percentage of such corruption schemes and corruption-related scandals.

Even before the full-scale invasion of Ukraine by the Russian Federation, the main task that our government had and still has as a priority was to overcome corruption. It is worth noting that Art. 3 of the EU-Ukraine Association Agreement states that the rule of law, good governance, the fight against corruption, the fight against various forms of transnational organized crime and

³⁵ Україна втратила \$ 483 мільйони через корупцію у будівництві фортифікацій: що відомо? URL: <https://igs.org.ua/tag/korupsiijni-skandaly-2024/>

terrorism, the promotion of sustainable development and effective multilateralism are the main principles for strengthening relations between the Parties.

According to some researchers, the implementation of the recommendations, which include the implementation of the reform of the Constitutional Court of Ukraine, taking into account the conclusions of the Venice Commission, the election of independent leaders, the disclosure of data that does not harm the interests of security and defense, the restoration of political party reporting and the submission of electronic declarations and their verification by the National Agency for the Corruption Prevention, control and monitoring of public procurement, public involvement, and the use of the Prozorro electronic system, are components of Ukraine's effective economic and military development ³⁶, contribute to preventing and combating corruption.

As for court cases and sentences, it is worth noting that in the first half of 2024, court decisions in 148 [138] criminal proceedings on corruption-related criminal offenses against 184 [164] persons were reviewed in cassation. Their share of the total number of persons in respect of whom court decisions were reviewed on cassation appeals is 13.4 % [12.6 %]. Based on the results of the cassation review, the court decision was upheld in respect of 88 [93] persons (47.8 % [56.7 %] of the number of persons in respect of whom court decisions in criminal proceedings on corruption-related criminal offenses were reviewed). The cassation appeal was upheld and the court decision was reversed in respect of 92 [67] persons, or 50 % [40.9 %]. These included reversals with a new trial in the court of appeal in relation to 64 [60] people, with a new trial in the court of first instance in relation to 28 [6] people, and with the closure of proceedings in relation to 0 [1]. Court decisions were changed in 4 [4] cases, or 2.2 % [2.4 %]. The largest number and share in the structure of court decisions on corruption criminal offenses reviewed in cassation during the first half of 2024 were criminal proceedings on misappropriation, embezzlement or seizure of property through abuse of office (Art. 191 of the CC of Ukraine) – 32.6 % (60 persons); acceptance of an offer, promise or receipt of an unlawful benefit by an official (Art. 368 of the CC of Ukraine) – 29.9 % (55 persons); abuse of power or position (Art. 364 of the CC of Ukraine) – 9.2 % (17 persons); theft, misappropriation, extortion of documents, stamps, seals, obtaining them by fraud or abuse of office or damaging them (Art. 357 of the CC of Ukraine) – 7.6 % (14 persons) ³⁷.

³⁶ Обіход Т. В., Біленчук П. Д. Засоби запобігання та протидії корупції як складова економічної і воєнної ефективності України. *Національна безпека України в умовах сучасних викликів*. Збірник матеріалів Міжнародної науково-практичної конференції (м. Чернігів, 22 серпня 2023 року). Чернігів : ГО «Науково-освітній інноваційний центр суспільних трансформацій», 2023. С. 81.

³⁷ Аналіз здійснення правосуддя Касаційним кримінальним судом у складі Верховного Суду у першому півріччі 2024 року.
URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/sud_pract/Analiz_zdiisnennia_pravosuddia_KKS_VS_per_pivr_2024.pdf

Table 3

**Analysis of the number of registered corruption criminal offenses
and corruption-related criminal offenses and the number of these types
of criminal offenses sent to court with an indictment in 2021-2024**

	2021			2022			2023			2024		
	Criminal offenses registered	Criminal offenses in which persons	Criminal offenses for which proceedings	Criminal offenses registered	Criminal offenses in which persons	Criminal offenses for which proceedings	Criminal offenses registered	Criminal offenses in which persons	Criminal offenses for which proceedings	Criminal offenses registered	Criminal offenses in which persons	Criminal offenses for which proceedings
Art. 191	110 92	604 0	516 4	669 8	3074	1903	9222	4171	2847	7743	3776	2888
Art. 210	17	2	2	3	0	0	12	0	0	12	3	2
Art. 262	48	12	12	174	34	29	58	21	17	57	33	20
Art. 308	356	338	240	338	322	315	1333	1275	1187	5301	5170	4491
Art. 312	2	1	1	0	0	0	0	0	0	0	0	0
Art. 313	98	87	73	63	55	46	107	91	65	74	70	58
Art. 320	211	161	135	189	143	136	67	40	32	425	401	140
Art. 354	36	27	22	33	24	15	54	51	49	58	46	29
Art. 357	191 6	148 3	138 6	163 8	1347	1232	2474	2171	1996	2792	2537	2381
Art. 364	395 5	260	183	221 4	220	160	2983	699	634	2345	260	188
Art. 364-1	266	49	34	114	14	9	130	46	43	106	28	25
Art. 365-2	422	86	55	239	38	29	227	61	28	179	47	37
Art. 366-2 ³⁸	No data available in the Unified Criminal Offences Register			78	7	3	39	8	3	358	33	20
Art. 366-3 ³⁹	No data available in the Unified Criminal Offences Register			138	71	68	31	21	20	309	137	112
Art. 368	156 6	456	255	988	244	121	1403	422	237	1640	590	365
Art. 368-3	59	40	35	42	16	11	38	20	16	50	29	17
Art. 368-4	19	9	4	14	6	2	10	5	2	12	8	5
Art. 368-5	18	0	0	17	1	0	77	4	0	102	7	0
Art. 369	157 7	115 7	102 7	151 2	1215	1018	2041	1659	1416	2136	1725	1512
Art. 369-2	249	159	125	220	136	91	411	273	177	707	403	293
Art. 410	191	18	11	250	30	24	229	20	10	243	45	32

³⁸ Кодекс доповнено ст. 366-2 відповідно до Закону України від 04.12.2020 № 1074-IX «Про внесення змін до деяких законодавчих актів України щодо встановлення відповідальності за декларування недостовірної інформації та неподання суб'єктом декларування декларації особи, уповноваженої на виконання функцій держави або місцевого самоврядування»

³⁹ Кодекс доповнено ст. 366-3 відповідно до Закону України від 04.12.2020 № 1074-IX «Про внесення змін до деяких законодавчих актів України щодо встановлення відповідальності за декларування недостовірної інформації та неподання суб'єктом декларування декларації особи, уповноваженої на виконання функцій держави або місцевого самоврядування»

In 2023 court decisions in 280 [208] criminal proceedings on corruption-related criminal offenses against 330 [257] persons were reviewed in cassation. In recent years, there has been a tendency to increase both the number of persons in respect of whom court decisions in criminal proceedings on corruption-related criminal offenses were reviewed in cassation and their share of all persons in respect of whom the Cassation Criminal Court of the Supreme Court reviewed court decisions during the year. Thus, while in 2021 their share was 10.2 %, in 2022 – 11.8 %, and in 2023 – 13.6 %. Based on the results of consideration of cassation appeals in criminal proceedings on corruption-related criminal offenses, the court decision was upheld in respect of 164 [134] persons, or 49.7 % [52.1 %] of the number of persons whose court decisions in cases of this category were reviewed in cassation. The cassation appeal was upheld and the court decision was reversed in respect of 151 [116] persons, or 45.8 % [45.1 %]. This included the closure of proceedings against 2 [1] people; the appointment of a new trial in the court of appeal against 130 [103] people, and in the court of first instance against 19 [12] people. Court decisions were changed in the case of 15 [7] people, or 4.5 % [2.7 %]. The largest number and share in the structure of court decisions reviewed in cassation in criminal proceedings on corruption-related criminal offenses were proceedings on misappropriation, embezzlement or seizure of property through abuse of office (Art. 191 of the CC of Ukraine) – 33.3 %, or 110 persons [27.6 %, or 71 persons]; acceptance of an offer, promise or receipt of an unlawful benefit by an official (Art. 368 of the CC of Ukraine) – 25.8 %, or 85 persons [27.2 %, or 70 persons]; abuse of power or position (Art. 364 of the CC of Ukraine) – 9.4 %, or 31 persons [7.8 %, or 20 persons]⁴⁰.

But these figures hide the specific individuals who committed these criminal acts. Thus, for example, A. Polishchuk, analyzing the personality of a criminal (corrupt official), draws attention to the fact that this theoretical and legal category should be considered as “a set of social, psychological and national moral characteristics inherent in criminals who commit corruption crimes”⁴¹. In addition, some scholars note that the most characteristic feature of a corrupt person is the presence of a mercenary motive. According to experts, the most common motives of corrupt officials are: “1) the desire to improve household comfort – 31.4 %; 2) the desire to have additional funds for their own needs – 24.1 %; 3) illegal enrichment in large amounts – 20.3 %;

⁴⁰ Аналіз здійснення правосуддя Касаційним кримінальним судом у складі Верховного Суду у 2023 році. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/sud_pract/Analiz_pravosud_KKS_2023.pdf

⁴¹ Поліщук А. Кримінологічна характеристика особи корупціонера у системі правосуддя: соціально-демографічні ознаки. *Підприємництво, господарство і право*. 2016. № 10. С. 146.

4) the urgent need for basic material goods – 13.9 %; 5) the desire to acquire a high social status – 7.4 %; 6) other motives – 2.9 %”⁴².

O. Yu. Shostko in her research divided corrupt officials into the following types: 1) petty corrupt officials (who receive small amounts of illegal benefit for solving everyday problems of citizens); 2) habitual corrupt officials (who receive illegal benefit, part of which is transferred to their superiors in exchange for continuing to work as a civil servant); 3) proactive corrupt officials (who use their social position to create corruption “schemes” and involve their acquaintances, friends, relatives, etc.); 4) malicious (political) corrupt (which due to high social status paralyzes the work of certain bodies of state power and local self-government in order to increase his/her own wealth and obtain additional privileges)⁴³.

D. Yu. Kondratov singles out several important characteristics of the person of the official criminal and notes, in particular, his/her **socio-demographic** features: a) such crimes are committed by citizens of Ukraine; b) culprits are persons at a more mature age (over 30 years old) – this is explained by the age characteristics of persons working in the respective positions; c) the part of women who committed these crimes is higher than average overall number; d) the educational level of these criminals is much higher than of persons who commit other crimes. **Social and Role Characteristics of an Official Offender:** a) executives of enterprises, institutions, or organizations; b) employees vested with authoritative powers; c) employees with direct access to property; d) employees performing supervisory functions. Officials within the administrative apparatus constitute a relatively small percentage of the total number of individuals who have committed official offenses. **Moral and Psychological Characteristics of an Offender:** such individuals often exhibit traits such as greed, a tendency to abuse power, disregard for the law, a formal or careless attitude toward the consequences of their actions and decisions, and disdain for others. A propensity for alcohol abuse and a reckless lifestyle is also frequently observed. **Criminal-Legal Characteristics of an Official Offender:** a) approximately 13-15% of such individuals commit official offenses as part of a group; b) every eighth group-based official offense is committed by an organized group or a criminal organization; c) 5-6% of individuals who have committed official offenses do so repeatedly; d) the share of individuals who,

⁴² Запобігання та протидія корупції : навч.-метод. посіб. для проведення навч. курсу в учб. закладах прикордонних і митних відомств Республіки Молдова та України / за ред. А. Хюдіка ; Нац. центр по боротьбі з корупцією Республіки Молдова ; Держ. прикорд. служба України. Одеса, 2013. С. 43.

⁴³ Шостко О. Ю. Типологія осіб, які вчиняють корупційні злочини. *Транскордонна співпраця: проблеми та шляхи їх вирішення* : матеріали II Регіон. круглого столу (м. Одеса, 28-29 верес. 2017 р.). Київ, 2017. С. 204.

at the time of committing a new offense, had an unexpunged or unpardoned conviction is about 1% ⁴⁴.

Thus, it can be argued that the desire to combat corruption in Ukraine is primarily focused on establishing criminal liability for corruption-related offenses and offenses associated with corruption, approving the state anti-corruption policy for 2021-2025 and adopting other regulatory legal acts, including drafting laws aimed at strengthening criminal liability for corruption-related crimes and introducing amendments and additions to other legal acts concerning anti-corruption measures. However, this indicates an approach that primarily addresses corruption “on paper”.

In reality, the practice of prosecuting corruption criminal offenses and corruption-related criminal offenses demonstrates that initiating a pre-trial investigation and bringing a case to court are distinct stages of criminal proceedings, and a court verdict in such cases is not always achieved. This is confirmed by the abovementioned statistical data on the number of recorded corruption offenses and cases referred to court with an indictment. Moreover, the characterization of a corrupt official remains rather vague and, in our opinion, is largely based on researchers’ subjective perceptions rather than objective criteria.

CONCLUSIONS

In conclusion, it can be noted that the issue of combating corruption and developing the most effective mechanism to counter it requires the adoption of certain urgent measures. Despite the fact that the legislator has defined a list of corruption-related criminal offenses and offenses associated with corruption, debates regarding their interpretation persist. This is due to the restrictions on classifying only specific criminally unlawful acts as such offenses, which narrows their scope based on interpretation of the Law of Ukraine of October 14, 2014, No. 1700-VII “On Prevention of Corruption”.

We believe that the effectiveness of anti-corruption efforts in Ukraine remains relatively low and is primarily legislative in nature. This is reflected in the refinement of provisions of the CC of Ukraine, the expansion of the powers of anti-corruption bodies, and an increase in their number. However, real effectiveness in combating corruption should be measured by the number of individuals actually held accountable for such offenses. Legal enforcement practice indicates that significant challenges remain in this regard.

SUMMARY

In the context of the full-scale invasion of the Russian Federation into Ukraine, the issue of combating corruption remains highly relevant, despite the priority of restoring territorial integrity. Despite the existence of a robust

⁴⁴ Кондратов Д. Ю. Кримінологічна характеристика сучасної корупційної злочинності в Україні. *Вісник Кримінологічної асоціації України*. № 2 (19). 2018. С. 148-149.

anti-corruption framework (comprising specialized anti-corruption bodies) corruption continues to persist in Ukrainian society, often leading to high-profile corruption scandals.

The author notes that as of December 23rd, 2024, the National Repository of Academic Texts has made publicly available 206 dissertation studies on corruption-related topics, completed between 2000 and the present, for the attainment of doctoral and PhD degrees. Various academic approaches to defining “corruption” and its interpretation in international documents have been analyzed. It has been observed that neither academic works nor international legal instruments provide distinct characteristics that would allow for the development of a universal definition of “corruption”.

Attention has been drawn to certain aspects of qualifying corruption-related criminal offenses, particularly regarding the subject of such offenses. The study examines the state of anti-corruption efforts in Ukraine from 2021 to 2024 and highlights specific characteristics of individuals committing corruption-related criminal offenses.

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