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CRIMINAL LIABILITY FOR CORRUPTION OFFENSES: A COMPARATIVE LEGAL ASPECT

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Abstract

Combating corruption offenses is one of the priorities of public policy not only in Ukraine but also in many foreign countries. The object of the study is the criminal law measures to combat and resistance corruption in Ukraine and some foreign countries. In carrying out this research, a comparative legal method is widely used. This method allows for a two-level analysis (empirical and theoretical) of legal systems of Ukraine and some foreign countries in terms of combating corruption by criminal law means. It also allows identify regularities of development of the criminal legislation of several countries and to establish correlation with the international standards of counteraction and prevention of a corruption criminal offense. During the conducted research it is revealed some disadvantages and advantages of Ukrainian legislation in terms of criminal law supply of effective means of preventing and combating corruption in Ukraine, it is found that modern criminal law of Ukraine meets international standards of anti-corruption policy generally, but there are some disadvantages in terms of unambiguous understanding of the elements of compositions of criminal corruption offenses, definition of terminological features, lack of a single conceptual approach within the legislative regulations at the level of criminal law and legislation.

Keywords: criminal corruption offenses, illicit gain, significant harm, grave consequences, subject of corruption criminal offense.

I. INTRODUCTION

Nowadays the issue of combating corruption is remaining relevant in Ukraine. What is more, it is one of the most important in the reformation of the public authorities, the of which is to bring the country out of the economic and political crisis. Criminal law can be called one of the effective means of ensuring national security in both the economy sphere and the public administration sphere. The effectiveness of this mean depends on compliance with the principles of criminal law enshrined in the Constitution of Ukraine /**1**/ and in the Criminal Code of Ukraine /**2**/. The main of these principles are the accuracy and consistency of criminal law, their system, interconnection and terminological unity. Unfortunately, the current Criminal Code of Ukraine is not perfect, has many disadvantages, including systemic ones. The regulation of criminal liability for corruption offenses is problematic especially. This has been repeatedly pointed out by Ukrainian scientists and practitioners.

The public danger of corruption criminal offenses is quite high. The fight against this phenomenon is determined as one of the priority areas of criminal law policy of the state. According to the Ministry of Justice of Ukraine, the annual amount of material damages from corruption offenses reaches several hundred million UAN. However, such figures could not reflect the real indicators of social harm of corruption, because the corruption is the most latent phenomenon in the modern legal society. Currently, there are quite a few foreign countries that counter and prevent corruption offenses effectively. First of all, the main causes of such a positive result are the systemic legislation in the field of anti-corruption and coordinated work of anti-corruption state bodies. Nowadays, Ukraine has quite serious problems in these areas. This is evidenced by the results of an annual survey conducted by the International Anti-Corruption Organization Transparency International.

The main problems are the imperfection of the criminal legislation, which provides for liability for corruption offenses, ambiguity of terms and terminology and problems of law enforcement, which are closely related to the conceptual chaos in the legislation of Ukraine. In this regard, it is important to study the criminal legislation of some foreign countries in order to identify the advantages and disadvantages of the anti-corruption criminal legislation. After such study the Ukrainian criminal legislation should be analyzed in this context. Comparative legal study of any legal phenomenon makes it possible to identify ways to improve legislation and offers ways to solve problems that have become large-scale. The anti-corruption criminal legislation of Ukraine is no exception. Criminal corruption offenses have acquired transnational nature and have been adequately countered at the international level. Corruption negatively affects the economic security of the state /**3**/, creates preconditions for the emergence of other criminal offenses and background phenomena.

The purpose of this research is to analyze the anti-corruption criminal legislation of Ukraine and the legislation of some foreign countries in terms of establishing criminal liability for certain manifestations of corruption offenses. The tasks of scientific research should include:

- the analysis of international treaties ratified by the Verkhovna Rada of Ukraine, which establish legal guidelines for national legislation in terms of establishing liability for corruption offenses;

- the study of the criminal legislation of some foreign countries in terms of the structure of corruption offenses, their place in the system of criminal offenses, a specific list of corruption offenses and their ability to cover all manifestations of corruption; the identification of specific components of corruption criminal offenses; the identification of subjects and their features under the criminal law of some foreign countries;

- the coverage of the most relevant issues of the anti-corruption criminal legislation of Ukraine related to law enforcement practice; the analysis of the system of corpus delicti; the research on the concept of corruption; the delimitation of the subject of the analyzed offenses and the analysis of specific corpus delicti in terms of law enforcement practice.

To sum up, identifying gaps and disadvantages in the anti-corruption criminal legislation of Ukraine is extremely relevant. Paying attention to this problem will make it possible to set tasks for further improvement of the criminal legislation of Ukraine, to combat corruption offenses more effectively and efficiently and to influence the development of the Anti-Corruption Strategy of Ukraine. The problem of criminal corruption offenses is multifaceted and therefore its various aspects are reflected in many scientific papers on criminal liability for such offenses. In particular, these issues were investigated by P.P. Andrushko /**4**/, O.S. Bondarenko /**5**/, O.O. Dudorov /**6**/, V. Ya. Nastyuk /**7**/, A.M. Novak /**8**/, E.V. Nevmerzhutskyi /**9**/, K.K. Ovod /**10**/, M.I. Havronyuk /**11**/ and others. At the same time, some issues of anti-corruption legislation of

Ukraine in terms of criminal liability for corruption offenses remain insufficiently analyzed, they contain many systemic and terminological disadvantages and need to be improved in order to apply them effectively in further law enforcement.

In carrying out this research, a comparative legal method is widely used. This method allows for a two-level analysis (empirical and theoretical) of legal systems of Ukraine and some foreign countries in terms of combating corruption by criminal law means. It also allows identify original and specific manifestations of such supply; identify regularities of development of the criminal legislation of several countries and to establish correlation with the international standards of counteraction and prevention of a corruption criminal offense. In addition, a formal-legal method is used to classify and systematize the studied criminal law norms, and a method of interpretation, which allows clarify the content of certain norms of criminal law.

Thanks to the general scientific method of generalization, it is possible to identify common features of the mechanism of criminal law supply of anti-corruption policy of states in different legal systems, to identify common features of certain criminal offenses that violate on the mentioned benefit under the criminal law of some foreign countries. The method of abstraction allows to separate specific manifestations of criminal corruption offenses and to focus on the main and the most characteristic features of this group of violations. It should be mentioned that methods of generalization and abstraction are used in combination, which allows analyze and study the object of scientific research more meticulously.

Modeling methods and analogies are used to make proposals for improving Ukrainian legislation in terms of criminal law supply for combating corruption. The method of certain sociological research, namely the analysis of international anti-corruption standards, official reports on condition of compliance with the legislation and cases of violation of anti-corruption legislation, case law studying, public opinions on the condition of criminal law counteraction to corruption in Ukraine and in the world, made by authorized persons, is used while analyzing and selecting the necessary information on the condition of the supply of religious freedom at the international level. An important contribution to this research is made with the help of using the method of content analysis, which is used in the study of conceptual categorical apparatus, conflicts and paradoxes of a group of illegal acts that have corruption nature, study of the criminal legislation of Ukraine and some foreign countries that have established criminal liability for mentioned crimes.

The method of legal statistics is used to identify the dynamics of criminality in the field of combating corruption by criminal law means, officially documented information that gives a quantitative description of social events and phenomena. This method made it possible to analyze the factors influencing this legal phenomenon with the help of quantitative data. Especial attention is paid to the logical legal method, which includes the means and methods of studying and interpreting law, based on the methods of formal logic. With the help of this method it is possible to avoid contradictions and inconsistencies in the construction of this research, to illustrate the mechanism of construction of criminal law norms that establish liability for corruption offenses in some foreign countries and to propose effective changes to the current Criminal Code of Ukraine. A comparison of opposite, contradictory and inconsistent approaches to understanding certain evaluation categories that are signs of corruption offenses is made when applying the method of alternative analysis in this research.

II. INTERNATIONAL STANDARDS FOR COMBATING CRIMINAL CORRUPTION OFFENSES

The issue of participation in international cooperation against corruption of Ukraine has been studied by Ukrainian scholars /**12**/. Ukraine

is a party to international treaties that oblige to ensure the proper level of anti-corruption legislation. The key treaties are The Council of Europe Criminal Law Convention on Corruption /**13**/ (ratified by Ukraine on 18.10.2006, entered into force on 01.03.2010) and The United Nations Convention against Corruption (UNCAC) /**14**/ (ratified by Ukraine on 18.10.2006, entered into force on 01.01.2010).

The Council of Europe Criminal Law Convention on Corruption is an important legal basis for improving the legislation of Ukraine, because it reveals the meaning of a number of terms ("official", "judge", "legal entity"); establishes a wide range of acts of corruption, in particular acts of giving and receiving of bribes by national and foreign government officials, officials of the private sector, international organizations, judges; provides explanations and recommendations on criminalization of abuse of influence, laundering of proceeds from criminal offenses related to corruption, and provides a definition of financial criminal offenses committed for the purpose of committing, concealing or masking corruption offenses; recommends to establish criminal liability for aiding and abetting the commission of any of the criminal offenses provided for in the Convention; provides for the establishment of criminal liability of legal entities, sanctions and measures, ensuring the possibility of confiscation of property. In addition, the Convention recommends a number of measures aimed at:

1) ensuring the specialization of staff and anti-corruption bodies;
2) cooperation of public authorities with national authorities, which are responsible for the investigation and prosecution of criminal offenses;
3) ensuring effective and proper protection of "assistants to justice" and witnesses;
4) facilitating the collection of evidence of corrupt criminal offenses and taking measures to identify, track, freeze and seize funds and proceeds from corruption or from property the value of which corresponds to such corrupt proceeds, and confiscation of proceeds;

The international anti-corruption organization Transparency International has published an annual survey – "the Corruption Perceptions Index" (CPI) for 2020. Ukraine along with Nepal, Egypt, Esvatini (formerly Swaziland), Sierra Leone, and Zambia ranks 117-122nd place among the 180 countries or territories, which were surveyed /**15**/. According to experts, "Corruption is a systemic issue in Ukraine, with 93.7% of Ukrainians reporting that it is one of the three most important issues in the country (almost as many as who report the violent conflict to be one) (Pact 2018). Grand political corruption is perceived as the most entrenched form of corruption, followed by corruption at the level of interaction between state and citizen and corruption in business (Pact 2018)" /**16**/.

It is necessary to mention that the position of Ukraine is improving somewhat, but extremely slowly. Thus, in 2013 the CPI was 25 and now we have a CPI 33. This fact indicates an increase in the index of perception of corruption and improving the effectiveness of the fight against this phenomenon. In 2020 Ukrainian index improved due to the launch of the Supreme Anti-Corruption Court with the relevant jurisdiction and the relaunch of the National Agency for the Prevention of Corruption. It is these events that have finally "completed the chain" of creating an anti-corruption infrastructure in Ukraine that could work only partially before /**17**/. In addition, the situation has improved due to the introduction of new legislation, in particular on granting the right to carry out covert investigative actions to NABU, returning responsibility for illicit enrichment, strengthening the protection of whistleblowers and necessary changes in public procurement.

However, today there are quite serious risks that can worsen the situation significantly. Thus, in particular, it is a "delay" of judicial reform, constant pressure on anti-corruption institutions and the public sector, etc /**18**/. It is seen that in

order to regulate public relations effectively, attention should be paid to the current legislation of Ukraine in the field of anti-corruption. "More than 80% of Ukrainians believe that corruption is possible because there are no adequate punishments, and a majority believe that the key to countering corruption more effectively is to create more efficient criminal mechanisms" /**19**/. Factors in successfully combating corruption have been known and tested by the international community long ago. These are, first of all, open government, transparency and clarity of state decision-making procedures, effective mechanisms of control over the activities of state bodies by civil society, freedom of speech, freedom and independence of the media.

III. LEGAL ESTABLISHMENT OF THE CONSTITUTIVE FEATURES OF CRIMINAL CORRUPTION OFFENSES: THE EXPERIENCE OF FOREIGN COUNTRIES

A comparative analysis of the criminal legislation of some foreign countries in terms of anti-corruption criminal legislation will make it possible to highlight the main tendency in the legal regulation of this issue and to analyze the experience of foreign countries in solving major problems. Successful experience in combating corruption offenses is demonstrated by a number of European countries. First of all it is connected with the creation of effective interdepartmental anti-corruption state bodies. These issues relate to each other and have been studied in detail by scientists /**20**/, /**21**/. First of all, it should be mentioned that criminal law for almost all countries of the world contains the basic principles of combating corruption. Amendments to the legislation may be accompanied by a systematic statement of aspects, terminological features and a list of specific corruption offenses and their constitutive features. One of the positive features of some of the criminal codes of foreign countries is the separation of corruption offenses in a separate section (chapter).

The experience of Israel

The Israel Penal Law /**22**/ is contains a separate Chapter "hey" "Bribery Offenses", consisting of the art. 290 "Bribe taking", the art. 291 "Bribery", the art. 291A "Bribing a Foreign Public Official", the art. 292 "Bribery in connection with contest", the art. 295 "Bribery intermediaries or prohibited consideration for a person with significant influence" In addition, the chapter contains rules that reveal the content of certain provisions of this chapter. In the art. 293 the methods of obtaining and giving bribes are defined in details. The legislator clarifies that bribes can be in cash or in kind, a service or any other benefit; the purpose of bribery may be to commit or terminate an act, to suspend, expedite, detain, favor or discrimination. Liability arises regardless of whether the bribe was given for a particular action or to show protectionism in general, or whether the bribe was directly for an act of the person who took the bribe or for his influence on an act of another person.

This article states that a person is held liable regardless of whether it was given by the person himself or through another person; whether it was given directly to the person who took it or to another person for him; whether it was given in advance or after the event; and whether it is enjoyed by the person who took it or by another. In addition, the legislator states that it does not matter whether the position of the person who took a bribe was authority or service, permanent or temporary, ordinary or for a specific case, whether its performance was with or without remuneration, voluntarily or in the discharge of an obligation. Qualification is not affected by the fact that the bribe was received in order to deviate from the direct performance of his obligation or for an act which the public servant must perform by virtue of his position. As you can see, the Israel Penal Law regulates in detail the basis of criminal liability for corruption offenses, pays special attention to the methods of committing the analyzed crimes, assumes a detailed description of all possible manifestations of socially dangerous acts.

The experience of Spain

The Spanish Criminal Code /**23**/ is contains a number of anti-corruption articles (Articles 419-431 of the Criminal Code) in Title XIX of the Book I contains a separate Chapter V "On corruption", which is entirely devoted to criminal liability of an authority or public officer. Thus, the art. 419 of the Criminal Code of Spain provides for criminal liability for solicit or receipt by an authority or public officer for his own advantage or for the advantage of a third party directly or through an intermediary, handouts, favors, remuneration of any kind or accepting an offer or promise to perform in his official activity an action or inaction that constitutes a crime. If such an act is not a crime, a milder liability arises under the art. 420 of the Criminal Code of Spain. If the solicited, received or promised handout will be aimed at the refusal of an authority or public officer from the actions that he was obliged to perform due to his official duties, the responsibility arises under the art. 421 of the Criminal Code of Spain. In addition, the legislator notes the list of subjects of a criminal offense to which these norms also apply – juries, arbitrators, experts and any other persons acting to carry out the public duty.

For persons who provide such handouts, favors or remuneration of any kind the responsibility arises under the art. 423 of the Criminal Code of Spain. At the same time, the legislator emphasizes that even an attempt to commit such actions is punishable along with a completed crime. The Criminal Code defines giving a handout under the influence of coercion by an authority or public officer a mitigating circumstance. Quite interesting is the specific provision contained in the art. 425 of the Spanish Criminal Code: when bribery takes place in a criminal case in favor of the accused, perpetrated by the spouse or another person who is in a close relationship with him, similar to marriage, from any person in a family relationship, the guilty is punishable by a imprisonment of six month to one year. Another important thing is the clarification of the Spanish legislator on the types of handouts. Thus, if an authority or public officer accepts a handout or gift that is offered to him as a respect for his activities or the commission of an act not prohibited by law, he is still punished as for the felony of corruption (The art. 426 of the Spanish Criminal Code).

The experience of France

The French Penal Code /**24**/ contains several sections containing anti-corruption norms. Thus, Section III "Breaches of the Duty of Honesty" of Chapter II "Offences Against the Government Committed by Civil" in the Title III «Violation of the Authority of the State» contains the art. 432-10 of the Penal Code of France, which establishes liability for an act committed by a person a person holding public authority or discharging a public service mission, which is expressed in acceptance, request or order to pay as public duties, contributions, taxes or impositions of any sum known not to be due, or known to exceed what is due. The article 432-11 of the Criminal Code provides for liability for passive corruption and influence peddling committed by persons holding public authority. Passive corruption is understood as request or acceptance without right at any time, directly or indirectly, donations, promises, gifts, presents or any other benefits. The art. 432-12 of the Criminal Code of France punishes illegal profit.

Section I "Active Corruption and Trafficking in Influence Committed by Private Persons" Chapter III "Offences Against the Public Administration Committed by Private Persons" contains a number of norms established to combat corruption. Thus, the art. 433-1 of the Penal Code provides for liability for active corruption, expressed in a direct or indirect proffering of any offer, promise, donation, gift or reward, in order to induce a person holding public authority, discharging a public service mission, or vested with a public electoral mandate. It is necessary to determine the complex structure of the French Penal Code and the detailed determination of legislation, which is made with the constitutive features of corruption offenses.

The experience of China

In the Criminal Law of the People's Republic of China /**25**/ a separate Chapter VIII of the Special Part (Articles 382-396 of the Criminal Law of the People's Republic of China) is devoted to corruption criminal offenses. Criminal law distinguishes between graft and bribery. Thus, graft is equated with misappropriation, steal, swindle or use other illegal means to acquire state properties by a state personnel using his official powers (Part 1 of Article 382 of the Criminal Code). If an official takes advantage of their office to demand money and things from third parties or illegally accept the property of third parties, illegally give favors belonging to these persons, they are considered to have committed a crime defined as bribery (The art. 385 of the Criminal Code).

It should be mentioned that the penalties for these two types of acts are the same and quite severe – imprisonment up to 10 years or indefinite imprisonment with or without confiscation of property. In particularly aggravating circumstances, they are punishable by death and confiscation of property. Extortion of a bribe is punished most severely. The art. 389 of the Criminal Law establishes criminal liability for an act of giving state functionaries articles of property in order to seek illegitimate gain, which is considered a crime of offering bribes. At the same time, the legislator determines that the absence of the specified purpose and coercion to give illegal benefits is not considered as a bribe. A separate norm provides for criminal liability for introducing bribery to state functionaries (The art. 392 of the Criminal Code).

The Criminal Law of the People's Republic of China contains an extraordinary disposition, which obliges civil servants to turn over the gifts to the state in accordance with state provisions (The art. 394 of the Criminal Code of the People's Republic of China). In case of non-submission, liability arises as for corruption or bribery. The responsibility for exceeding the value of property and expenses of the amount of legal income is regulated in detail. State personnel are obliged to explain the source of their property. When state functionaries fail to explain the legitimacy of their property, that part of property shall be considered an illegal income. This entails liability in the form of imprisonment for up to 5 years or criminal detention, and the difference must be handed over to the state (The art. 395 of the Criminal Code). In conclusion, in China, criminal liability for corruption offenses is regulated in detail, contains a number of certain specific dispositions and quite severe sanctions. Crimes of this category are allocated in a separate chapter, are clear and unambiguous.

The experience of Argentina

The Criminal Code of the Argentina Nation /**26**/ contains a separate section 11 of Chapter VI (Articles 256-259 of the Criminal Code of the Argentina Nation), which establishes the liability of a public official for receiving money or any other gift. For request or receipt of money or gift or accept a direct or indirect promise to do, slow down or stop doing something relating to its functions. If the conduct was intended to assert a unduly influence before a magistrate of the judiciary or the Public Prosecutor, in order to obtain the issuance, dictation, delay or omission of an opinion, decision or ruling in matters under its jurisdiction, the maximum punishment of imprisonment or detention shall be increased to twelve years (The art. 256/2 of the Criminal Code of the Argentina Nation).

The art. 258 of the Criminal Code of the Argentina Nation provides for criminal liability of the person who directly or indirectly gives or freewill gifts for the above purpose. A separate norm provides for liability for the offer or bestow to a public official from another State or a public international organization of an object or service that has monetary value or benefits (the legislator specifies that it may be gifts, favors, promises, or benefit) in exchange for which the official perform or skip perform an act in relation to the exercise of public functions in a matter related to a transaction of Nature economic, financial or commercial (The art. 258/2 of the Criminal Code of the Argentina Nation). The art. 276 of the

Criminal Code of the Argentina Nation contains a specific norm establishing the criminal liability of special subject for bribery. These include witnesses, experts or interpreters false, whose declaration is provided through bribery. Thus, such payers are equated to false witnesses.

The experience of Bulgaria

The Criminal Code of the Republic of Bulgaria /**27**/ in the Chapter 8 "Crimes against Activities of State Bodies and Public Organizations and Persons Performing Public Functions" contains a separate Section IV "Bribery", consisting of ten articles (Articles 301-307a). The object of criminal offenses is a gift or any other undue benefit. The purpose of providing the object of the crime is the commission (non-commission) by an official of certain actions in the future or for a committed (not committed) act post facto. If an official violates his service and such violation does not constitute a crime, the offense is considered a qualified offense; if the official has committed an act that is a crime in such a situation, this circumstance would be considered particularly aggravating and would entail a rather severe liability - imprisonment for up to 10 years and a fine of up to BGN fifteen thousand (art.301 of the Criminal Code of the Republic of Bulgaria). The art. 302 of the Criminal Code of Bulgaria contains a list of aggravating circumstances, which include receiving a bribe:

1) by a person holding a responsible official position;
2) through blackmail with abuse of one's official position;
3) for a second time;
4) on a large scale.

A separate norm provides for increased criminal liability for receiving a bribe in particularly large amount, which is severely punished by imprisonment from 10 to 30 years with confiscation of the whole or part of the culprit's property and deprivation of rights (the art. 302a of the Criminal Code). A specific norm is provided in the art. 303 of the Criminal Code of the Republic of Bulgaria. It establishes the liability of an official when a gift or other property benefit is provided to another person with his consent.

A separate norm regulates liability for bribery. What is more, the violation of official duties in connection with a bribe (the art. 304 of the Criminal Code of the Republic of Bulgaria); mediation for giving or receiving bribes (the art. 305a of the Criminal Code of the Republic of Bulgaria); creating a situation or conditions conducive to the offering, giving or receiving of a bribe for the purpose of causing harm to a person who gives or receives the bribe (the art. 307 of the Criminal Code of the Republic of Bulgaria) entail more severe liability. In addition, there are grounds for exemption from criminal liability: (a) if he has been blackmailed by the official or by the expert and (b) if of his own accord he has immediately informed the authorities (the art. 306 of the Criminal Code of the Republic of Bulgaria).

The experience of Turkey

The Penal Code of Turkey /**28**/ contains Chapter IV "Offences against Nation and State and Final Provisions". One of the most dangerous corruption offences is embezzlement. Under the separate article any public officer who embezzles property, for the benefit of himself or another, which is under his custody or control or which is held by him as a consequence of his duty are subjects to a criminal liability (the art. 247 of the Penal Code of Turkey). However, there is a possibility of imposing of the penalty by two thirds in the case of effective remorse (the art. 248 of the Penal Code of Turkey). Where the value of the subject of the offence is minimal, then the penalty to be imposed shall be reduced by one third to one half (the art. 249 of the Penal Code of Turkey). The liability for extortion (compelling somebody to make a promise or provide a benefit for him or another by misusing the influence derived from their office) is established with a certain norm (the art. 250 of the Penal Code of Turkey).

Under the art. 251 of the Penal Code of Turkey any person who secures, directly or through other persons, an undue advantage to a public official

or another person indicated by the public official to perform or not to perform a task with regard to his duty is a subject of penalty. The specific norm is contained in the p. 3 of the art. 251 of the Penal Code of Turkey, which entail the liability for an action where the parties agree upon a bribe. In the case where the public official requests a bribe but it is not accepted by the person, or the person offers or promises an undue advantage to the public official but it is not accepted by the public official, the penalty to be imposed on the offender shall be reduced by half.

Any person who mediates, any third person who is provided with the benefit or authorized person of a legal person who accepts the benefit shall be punished as accomplice, irrespective of being a public official. The subjects of forced criminal liability are a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor. In the p.p. 9-10 of the art. 251 of the Penal Code of Turkey there is a detailed list of special subjects. One of the forms of corruption offences is securing a benefit for a task outside the scope of authority: Any public officer who secures a benefit by giving the impression that he is able to perform a task, either by himself or through another, which is outside the scope of his duty and is unauthorized shall be sentenced to a penalty of imprisonment for a term of two years to five years and a judicial fine of up to five thousand days. If this person is a public officer, then the imprisonment sentence to be imposed shall be increased by one half (the art. 251 of the Penal Code of Turkey).

The experience of Switzerland

The Swiss Criminal Code /**29**/ contains the Title Nineteen "Bribery" of the Second Book “Specific Provisions” (Articles 322ter-322decies 389). Despite the rather concise statement, the title contains the main components of corruption offenses and general instructions. The title is conditionally divided into two parts:

1) bribery of a Swiss official;

2) bribery of a foreign official. The general requirements provide reservations on the concept of "undue advantage" (this concept does not cover the advantage that was allowed to be obtained ex officio, as well as insignificant generally accepted advantage); establish the grounds for exemption from criminal liability in connection with the insignificance of the act (if both the gravity of the act and the guilt of the person are so insignificant that the punishment in case of its appointment would be disproportionate, the competent authorities refuse to prosecute or sentence) and clarify the concept of official, who should be understood as private individuals who perform public duty).

The art. 322ter of the Swiss Criminal Code establishes liability for an offer, promise or giving to a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces an undue advantage in connection with his official activity which is contrary to his duty. Criminal liability arises for demands, secures the promise of or accepts an undue advantage (The art. 322quater), giving an undue advantage (The art. 322quinquies) and accepting an advantage (The art. 322sexies).

The experience of Japan

The Penal Code of Japan /**30**/ in the second part of "Crimes" contains a separate Chapter XXV "Crimes of Corruption" (Articles 193-198). However, a number of articles in this chapter establish liability for purely official criminal offenses that do not have a corruption component: abuse of Authority by public officers (the art. 193), abuse of authority by special public officers (the art. 194), assault and cruelty by special public officers (the art. 195), abuse of authority causing death or injury by special public officers (the art. 196). Liability is established for accepting, soliciting or promise to accept a bribe (the art.197), mediation in receiving a bribe (the article 197-IV), giving a bribe (the art. 198). A separate norm defines the aggravating circumstances of accepting a bribe (the art. 197-

III) and the procedure for confiscating a bribe (the art. 197-V).

The experience of Sweden

The Swedish Criminal Code /**31**/ in Part Two "On Offences" contains Chapter 20 "On Abuse of Office etc.", which contained one norm on the liability of an employee for receiving a promise or demanding a bribe or other illegal remuneration for performing his official duties (the art. 2). However, in 2012 the list or criminal corruption offences were divided into the separate chapter. Nowadays the Swedish Criminal Code contains the Chapter 10 «On embezzlement, other breaches of trust and bribery». Under the Section 5a of mentioned chapter, a person who is an employee or performing a commission, and receives, accepts a promise of, or requests an undue advantage for the performance of their employment or commission is guilty of taking of a bribe and is sentenced to a fine or imprisonment for at most two years. The same applies to a person who is a participant in or official at a competition about which public betting is arranged, and an undue advantage for their performance of tasks in the competition is involved.

It is necessary to mention that this norm covers actions when the act was committed before the perpetrator obtained a position referred to in that paragraph, or after that position had ended. A person who receives, accepts a promise of, or requests a benefit for someone other than themselves is also guilty of taking of a bribe. The liability for giving bribes is established in the Section 5b. The aggravated circumstances are listed in the Section 5c: abuse of or an attack on a position of particular responsibility, concerned considerable value or was part of criminal activities conducted systematically or on a large scale, or was otherwise of particularly dangerous nature. The trade in influence entails the liability if the subjects 1. receive, accept a promise or request an undue advantage to influence a decision or measure taken by someone else in the exercise of public authority or public procurement; or 2. give, promise or offer someone an undue advantage so that they will influence a decision or measure taken by someone else in the exercise of public authority or public procurement (Section 5d). Special norm that establishes liability for promoting giving of a bribe through gross negligence, gross giving of a bribe or trading in influence (Section 5e).

The experience of Norway, Austria and Denmark

In many of the Criminal Codes of foreign countries, the norms of corruption are not separated into a separate section, but are placed among other official criminal offenses. For example, the Norwegian Penal Code /**32**/ in the Chapter 30 "Fraud, tax fraud and similar financial crime" establishes liability for corruption offenses (the section 387 of the Norwegian Penal Code), aggravated corruption (the section 388 of the Norwegian Penal Code) and for the trading in influence (the section 389 of the Norwegian Penal Code).

The Austrian Criminal Code /**33**/ in the Chapter 22 "Criminal violation of official duties and related criminal offenses" contains several paragraphs providing for liability for corruption offenses. The Criminal Code distinguishes between gifts and bribes. A gift is considered to be a benefit that an official (§304), senior officials (§305), experts (§ 306) or staff and expert consultants (§ 306a) solicit, accept or promise to accept as an act contrary to his duties. Persons who provide such a benefit, promise to provide it or guarantee its provision to the above-mentioned persons are liable for bribery (§307). Thus, according to Austrian criminal law, bribery can only be committed by a person who provides an illegal benefit to a certain group of people. The existence of an explanatory norm in the Austrian Criminal Code "The concept of a public institution and a leading official" (§ 309) can certainly be considered positive.

The Danish Criminal Code /**34**/ contains only one paragraph in the Chapter 14 "Offences Against Public Authorities, etc." establishes liability for granting, promise or offer some other person,

who is working in Danish, foreign or international public service or functions, a gift or other favor in order to induce that other person to do or fail to do anything in the service (§122).

The experience of Latvia

The Criminal Law of the Republic of Latvia /**35**/ in Chapter XXIV "Criminal Offences Committed in State Authority Service" contains four anti-corruption articles:

1) accepting bribes (the art. 320), which provides for liability for accepting a bribe by a public official, that is, material values, properties or benefits of other nature, committed for illegal act or for permition failure to act in the interests of the bribe-giver with the use of official position. Aggravating circumstances include the commission of an act for a second time or on a particularly large scale, or related to a bribe, and particularly aggravating circumstances include extortion of a bribe, the commission of a crime by a group of persons according to a prior agreement or committed by an official in a responsible position;

2) misappropriation of a bribe (The art. 321) - receipt of a bribe by a public official;

3) intermediation in bribery (The art. 322 of the Criminal Code) - actions expressed in the handing over of a bribe or the promising or the offering thereof from the giver of the bribe to a person accepting the bribe;

4) giving of bribes (The art. 323 of the Criminal Code). The Criminal Code of the Republic of Latvia contains a provision on exemption from criminal liability of a person who gave a bribe. if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence, a person who has given a bribe may be released from criminal liability (The art. 324 of the Criminal Code).

In general, we can state that the Criminal Code of the Republic of Latvia denotes corruption criminal offenses, gives an interpretation of the terms "public official", "extortion of bribes", indicates the grounds for exemption from criminal liability very clearly and unambiguously.

The experience of Germany

In German law, certain components of corruption offenses are set out in the German Criminal Code /**36**/ and the Anti-Corruption Act, which entered into force in 1997. As noted in the German literature, this law significantly expanded the list of corruption crimes: taking bribes (§ 331 of the Criminal Code of Germany); taking bribes meant as an incentive to violating one's official duties (§ 332 of the Criminal Code of Germany); bribery (giving a bribe) (§ 333 of the Criminal Code of Germany); giving bribes as an incentive to the recipient's violating his official duties (§ 334 of the Criminal Code of Germany); taking and giving bribes in commercial practice (§ 299 of the Criminal Code of Germany); restricting competition through agreements in the context of public bids (§ 298 of the Criminal Code of Germany) /**37**/. Circumstances that constitute particularly severe cases of sale and bribery include cases of large profits; constant receipt of the benefit that the person demanded as a service in response to the fact that they would perform an official act in the future; when receiving a bribe, the person acts in the form of fishing or as a member of a gang that was organized for the permanent commission of such acts (§ 335 of the Criminal Code of Germany). Paragraphs of anti-corruption content are contained, among other types of criminal offenses in the field of official activity in the Chapter Thirty "Offences Committed in Public Office ". The anti-corruption norms also include certain criminal offenses of the Chapter Four "Offences Against Constitutional Organs and in the Context of Elections and Ballots" in addition to the provisions, mentioned above. Among them are: §108b, which provides for liability for bribing voters; § 108e, which establishes liability for bribery of delegates, etc.

If corruption criminal offenses are understood more broadly, they can even include fraud (§ 263 of the Criminal Code of Germany), abuse of trust (§ 266 of the Criminal Code of Germany), money laundering (§ 261 of the Criminal Code of Germany). According to some scholars, the Criminal Code of Germany contains 37 corpus delicti of corruption /**38**/.

IV. PROBLEMS OF LEGISLATIVE REGULATION OF CORRUPTION CRIMINAL OFFENSES IN UKRAINE

In recent years, law enforcement and Ukrainian scholars have often discussed the issue of criminal liability for corruption offenses. The legislation of Ukraine in this part is characterized by the dynamics of changes and clarifications, which requires researchers to respond and comment it in a timely manner. Currently, in the legal field of Ukraine the lack of legal certainty regarding the concept of corruption criminal offense should be stated. It leads to ambiguous interpretation of the law on criminal liability and gives rise to different practices of its application. The variety of scientific definitions is due to the lack of a legislative definition of the concept of "corruption criminal offense" /**39**/.

A.V. Savchenko /**40**/ indicates that in the theory of criminal law, corruption criminal offenses were defined differently: as the crimes that consist in the misuse (abuse) by officials of public authorities or local governments of the power given to them or their official position in personal interests or the interests of third parties /**41**/; as any intentional crime committed by an official of a public authority or local government using his official position for personal interest or to satisfy the interests of third parties /**42**/; provided in the Special Part of the Criminal Code of Ukraine socially dangerous act, which contains signs of corruption and corruption offenses. Such a variety of scientific definitions is due to the lack of a legal definition of the term "corruption offense". In general, the corruption offense is a criminal offense committed by an official who provides public services using the opportunities of his special status in order to obtain illegal benefits. In the Criminal Code of Ukraine there are about 100 such encroachments /**43**/.

In our opinion, it is necessary to identify and consolidate not only the definition of a corruption offense, but also its main features at least at the level of law enforcement practice. This will allow improving common approaches to the systematization of corruption offenses, to determine an exhaustive list of criminal offenses that will meet these uniform features. It is seen that the systematization of types (varieties) of corruption criminal offenses arose under the complex and "confusing" system caused by unsystematic amendments to the Criminal Code of Ukraine. The development of a unified and accurate approach is a very important area not only for research, but also for practical and accurate law enforcement. Nowadays this issue is being discussed at the doctrinal level. Thus, the features of corruption offenses include:

1) abuse of office;
2) intentional mental attitude to the act;
3) accepting or providing an undue benefit;
4) in most cases the subjects of committing corruption criminal offenses are officials of both public and private law, and persons providing public services;
5) the list of corruption criminal offenses is exhaustive and could not be interpreted widespread /**44**/.

Some scholars attribute to the signs of corruption offenses:

a) the presence of a special subject, which should be understood as an official;
b) connection of the act with the official position of the subject, deviation from his direct rights and duties;
c) it is obligatory for the subject to have a personal interest, because the act is connected with obtaining property benefits for himself or third parties;
d) committing a criminal offense only with direct intent /**45**/.

Other scholars point to the constitution features of corruption offenses:

1) connection with a person's use of power, official position or opportunities arising from such official position;
2) not only the use of official position, but also its abuse;
3) exclusively intentional mental attitude to the committed act;
4) involve the accept or giving (including the offer and promise of such actions) of undue benefit;
5) the subject of their commission /**46**/.

A number of caveats should be made regarding these signs of corruption offenses. First of all, it should be emphasized that corruption offenses are committed not only in connection with abuse of power or official position. The subject of the criminal offense may accept an undue benefit for legal actions, but which were committed in the interest of the person providing the undue benefit (for example, the person providing the undue benefit for tender or procurement was chosen from several possible options). That is, the subject of the offense commits an act against the interests of the office. According to the Council of Europe Criminal Law Convention on Corruption /**47**/, the characteristic features of corruption crimes are:

1) damage to the object – the interests of the state and society;

2) illegal actions (passive or active);

3) special subject – officials, as well as general subject – any persons who promise or provide undue benefit to special subject;

4) intent;

5) personal interest.

Despite the rather specific and meaningful list of signs of corruption offenses, some of them need to be clarified through the prism of national criminal law. Thus, the legal guideline, which is regarding the selfish motive as an obligatory sign of a corruption criminal offense, needs to be clarified. We will not deny that in the vast majority of cases the commission of corrupt criminal offenses is accompanied by a personal interest, but we cannot exclude cases of committing the analyzed offenses on the grounds of careerism, revenge, personal needs, other personal interests or the interests of third parties. This thesis is supported by the analysis of the concept of "illegal benefit", which should be understood not only as money or other property, but also as benefits, privileges, services, intangible assets, any other benefits of intangible or non-monetary nature that offer, promise, give or accept without legal grounds "(Note to the art. 364-1 of the Criminal Code of Ukraine).

In summary, we can identify the following constitutional features of corruption offenses:

1) a high degree of public danger of corruption offenses, characterized by encroachment on the interests of the state and society;
2) a corruption offense is related to acts (action or omission) committed against the interests of the office;
3) the subject (special and general) commits a corruption criminal offense intentionally; the purpose and motive for qualification do not matter;
4) the object (and in some cases of criminal offenses - the purpose of the commission) of these acts is an illegal gain.

The absence of a system of corruption criminal offenses in the current Criminal Code of Ukraine

The Chapter 17 of the Special Part of the Criminal Code covers the majority (but not all) of corruption-related offenses. In addition, not all criminal offenses in this section are corrupt. It is incomprehensible to place a list of corruption criminal offenses and criminal offenses related to corruption in the Note to the article 45 of the Criminal Code of Ukraine, which establishes the legal grounds for release from criminal liability in connection with effective repentance. Ukrainian scholars have repeatedly noted that this list is imperfect, as some criminal offenses involving

the so-called "corruption risk" were not included. For example, legalization (laundering) of property obtained by criminal means is not endowed with the "status" of a corruption criminal offense (The art. 209 of the Criminal Code of Ukraine). It can be unequivocally stated that legalization is one of the typical components of corruption schemes.

Other examples are the art. 210 "Misuse of budget funds, budget expenditures or loans from the budget without established budget allocations or with their excess" and the art. 211 "Issuance of normative legal acts that reduce budget revenues or increase budget expenditures contrary to the law", which contain a direct indication that these actions are committed by officials. In addition, while forming a list of so-called corruption offenses, the legislator partially took into account criminal offenses committed by "an official using of an official position", but the rest are left without proper attention (for example, part 2 of the art. 149, part 3 and 4 of the art.157, part 4 of the art. 158, part 2 of the art. 169, part 3 of the art. 176, part 2 of the art. 189, part 2 of the art. 201, part 3 of the art. 206-2 of the Criminal Code of Ukraine etc.). Currently, corruption criminal offenses are criminal offenses under the art. 191, 262, 308, 312, 313, 320, 357, 410, in case of their commission by abuse of office, and also the criminal offenses provided by the art. 210, 354, 364, 364-1, 365-2, 368 - 369-2 of the Criminal Code of Ukraine (2001).

The Decision of the Constitutional Court No. 7-r / 2020 of 11.06.2020 is of particular concern. According to this Decision, the art. 375 of the Criminal Code of Ukraine, which provides for liability for the decision of a judge unjust sentence, decision, ruling or resolution, is recognized as inconsistent with the Constitution of Ukraine (unconstitutional). The paradox of such abolition is that the criminal offense is a "classic" corruption manifestation of criminal illegal behavior of judges, is a characteristic feature of many European countries (Austria, Germany, Poland). This is evidenced by a number of studies conducted by domestic scientists /**48**/.

The postponement of the repeal of the Article for six months from the date of the Constitutional Court's decision has led to serious problems in law enforcement, in particular, the criminal proceedings, which had been opened under the art. 375 of the Criminal Code were investigated and considered by courts for six months. The competent authorities were opening criminal proceedings during this period. In other words, the Constitutional Court allowed pre-trial investigation bodies and courts to continue to apply an unconstitutional norm, postponing the expiration of the art. 375 of the Criminal Code. The Verkhovna Rada was not bringing in accordance with the Constitution the art. 375 of the Criminal Code for 6 months. Then the article expired with the corresponding legal consequences.

The main arguments of declaring the art. 375 of the Criminal Code unconstitutional were that the art. 375 of the Criminal Code is built in violation of the principles of the rule of law, it is devoid of legal certainty, as it uses evaluative characteristics. Other arguments were that it encroaches on the independence of the judiciary in terms of sentencing, decision, ruling or resolution. Unfortunately, the prosecution under the art. 375 of the Criminal Code is often used by law enforcement agencies, politicians and the public to illegally influence judges in Ukraine. Scholars believe that legal terms such as "awareness" and "injustice", which are constitutional features of the mentioned article, are doctrinal. They are quite clear to experts, and therefore their doctrinal interpretations do not require legal enshrinement. This is the practice of civilized countries of law /**49**/. It is difficult to disagree with these arguments. It should be mentioned that providing an exhaustive list of corrupt criminal offenses in the Criminal Code is not apposite. In our opinion it should be widen with constitutional specific features of corrupt criminal offenses.

In addition, we note the discrepancy in the interpretation of the basic concepts related to corruption in criminal and administrative law,

the Law of Ukraine "On Prevention of Corruption" of October 14, 2014, the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" of October 14, 2014. These legal acts are a continuation of the negative practice of unsystematic legislation in Ukraine in the absence of common approaches to the formation of the legal conceptual and terminological apparatus. According to researchers, this is reflected in the practice of narrowing the content of universal legal categories to the scope of regulation of a single law by applying the normative formula: "in this law, the following terms are used to a meaning, mentioned in…"/**50**/.

However, this approach contradicts the understanding of law as a holistic and systemic phenomenon. Currently, there is a discrepancy between the list of corruption offenses contained in the Note to the art. 45 of the Criminal Code, and the concept of "corruption offense for which criminal liability is provided" in the Law of Ukraine "On Prevention of Corruption" /**51**/, as some corruption offenses under the Criminal Code of Ukraine are not corruption offenses within the meaning of the Law, and, conversely. For example, the art. 368-3, the art. 368-4, the art. 369 of the Criminal Code can be committed by a general subject, while the Law indicates that corruption offenses are committed only by a special subject, an exhaustive list of which is given in the Part 1 of the art. 3 of the Law "On Prevention of Corruption".

All these subjects, which are endowed with special features related to the performance of official duties, functions of the state or local self-government, are equated to persons authorized to perform the functions of state or local self-government, persons who permanently or temporarily hold positions related to the implementation of organizational administrative or economic administrative duties, or specially authorized to perform such duties in legal entities of private law, regardless of organizational and legal form, as well as other persons who are not officials and who perform work or provide services under the contract with the enterprise, institution, organization in the cases provided by this Law; candidates for People's Deputies of Ukraine registered in accordance with the procedure established by the Law of Ukraine "On Elections of People's Deputies of Ukraine", candidates for President of Ukraine registered in accordance with the Law of Ukraine "On Elections of the President of Ukraine", candidates for the Verkhovna Rada of the Autonomous Republic of Crimea regional, district, city, district in cities, village, settlement councils, candidates for positions of village, city mayors and elders.

What is more, there are lots of complexes because of the simultaneous existence of the terms “corruption offence” and “offence connected with corruption” in one legal system. The Law "On Prevention of Corruption" distinguishes these two terms. A Corruption offence is an action that contains the features of corruption; an offence connected with corruption is an action that does not contain the features of corruption, but it violates prohibitions, requirements and restrictions, established by the law (p. 1 art. 1). It is seen that these terms should be improved by forming the universal approach to their understanding, interpretation and enforcement.

Criminal and other types of liability have been established for committing a corruption criminal offense and for an offense related to corruption. This provision of the Law gives grounds to claim that the Criminal Code of Ukraine contains not only corpus delicti of corruption offenses (analyzed above, the note to Article 45 of the Criminal Code), but also corpus delicti related to corruption. The scientific concept of isolating criminal offenses related to corruption was proposed by A.V. Borovik /**52**/. The author determined an approximate list of requirements, prohibitions and restrictions from the analysis of the provisions of the Law of Ukraine "On Prevention of Corruption" and formulated the conclusion that the analyzed criminal offenses should include offences provided for in articles 149, 157, 158, 158-2, 159, 169, 171, 176, 177, 189, 201, 205-1, 206, 206-2, 229, 248, 258-1, 258-4, 298,

298-1, 303, 332, 332-1, 343, 344, 376, 397, 447 of the Criminal Code of Ukraine if they are committed with the use of the position (power) by the official. Other criminal offenses provided by the Criminal Code of Ukraine, the subject of which can be the official and the criminal offenses provided by articles 384, 385, 386, 387, 388, 396, 159-1, 160, if any of these criminal offenses violates the requirements, prohibitions and/or restrictions established by the Law of Ukraine "On Prevention of Corruption", could also be included in this category /**53**/. We believe that this gap should be solved in a similar way. That is to indicate the features of criminal offenses related to corruption in the Criminal Code of Ukraine by clarifying the requirements, prohibitions and restrictions that are violated.

In addition, attention should be paid to the lack of a unified anti-corruption strategy of public policy in the sphere of combating this negative phenomenon. This directly affects those terminological "gaps" in all areas of legislation that regulate public relations related to corruption risks. The work on the Anti-Corruption Strategy has not been completed yet. Currently, the Verkhovna Rada has covered the basis of the draft law on the Anti-Corruption Strategy for 2020-2024.

Problem of classification and a unified approach to determining the subject of a corruption criminal offense

First of all, this problem was caused with legislative inconsistencies, as the term is used in the Criminal Code and the Law of Ukraine "On Prevention of Corruption" of 2014 in different meanings. The legislator made an attempt to separate the components of criminal offenses in the Criminal Code depending on the subject of its commission on six groups: offences committed:

a) by officials of legal entities under public law (for example, the article 364 of the Criminal Code of Ukraine);

b) officials of legal entities of private law (for example, the article 364-1 of the Criminal Code of Ukraine);

c) persons who are not public officials, officials of local self-government, but carry out professional activities related to the provision of public office (for example, the article 365-2 of the Criminal Code of Ukraine);

d) employees of the enterprise, institution or organization who are not officials, or persons working for the benefit of the enterprise, institution or organization (for example, parts 3 and 4 of the art. 354 of the Criminal Code of Ukraine);

e) general subjects (for example, parts 1 and 2 of the article 354 or the article 369 of the Criminal Code of Ukraine);

f) a military official (for example, the article 410 of the Criminal Code of Ukraine), etc. However, the legislator did not provide a precise definition and did not provide an exhaustive list of these subjects.

We do not mean a factual list of persons who are officials and officials of private law, but specific legal guidelines that would allow to easily classify these subjects and clearly indicate that they belong to a category of special subjects of corruption criminal offenses. In addition, as it was noted by researchers, the specific characteristics of such officials, depending on the scope of their activities should be taken into account /**54**/.

It creates serious problems in law enforcement. For example, the officials of legal entities under private law should be recognized as the subjects of official forgery (a criminal offense under the article 366 of the Criminal Code), despite the fact that the definition of the term "official", which is given in the note to the article 364 of the Criminal Code for certain criminal offenses in the field of official activities, does not apply to persons who have committed official forgery. The provisions

of the part 3 of the art. 18 of the Criminal Code of Ukraine, which provides a general (universal) definition of "an official", should be applied to this criminal offense. An official of a legal entity of private law who forged official documents is erroneously not recognized as a subject of official forgery due to the incorrect application of the substantive law /**55**/, /**56**/.

The act provided for in the art. 366 of the Criminal Code belongs to criminal offenses in the field of official activity by a general object. The definition of the term "an official" is given for some of them in the note to the article 364 of the Criminal Code and the list to which this definition applies is given. Forgery is not included in this list.

According to the normative definition, the subject of a criminal offense under the article 366 of the Criminal Code is an official. The General Part of the Criminal Code gives the concept of an official, which has a general character (it applies to all articles of the Special Part of the Criminal Code, except for those for which the law on criminal liability provides a separate definition (Articles 364, 365, 368, 368-2, 369 of the Criminal Code)). This definition is given in the third part of the article 18 of the Criminal Code. According to it officials are persons who, inter alia, hold positions in enterprises, institutions or organizations related to the performance of organizational or administrative functions. The general definition of an official applies to all organizational legal entities, regardless of a form of ownership.

It follows that the definition contained in the general norm (the part 3 of the article 18 of the Criminal Code) is used for the term "an official" used in a specific article of the Special Part of the Criminal Code, for which there is no separate definition. This definition also applies to the concept of "an official" given in the article 366 of the Criminal Code.

In a specific criminal case, it was established that the convict as a director of a limited liability company (hereinafter - LLC), (an official of a legal entity of private law) using the powers of the position he held, forged an official document and used it. These actions fell under the features of an act provided for in the article 366 of the Criminal Code by their legal nature, as the criminal result was a consequence of the convict's use of the powers of the director of the LLC.

During the retraining of the act from the part 2 of the article 366 to the part 1 of the article 358 of the Criminal Code, the concept of "an official" was interpreted contrary to its exact content. This approach was that since official forgery was not included in the list of criminal offenses in the field of official activity covered by the definition of "an official" in the note to the article 364 of the Criminal Code, persons, who had committed such an act, should not be recognized as the subject of an official criminal offenses.

Such law enforcement is incorrect. It contradicts the normative definition of the term "an official", which is given in the article 366 of the Criminal Code in a systematic connection with the provisions of the third part of the article 18 of the Criminal Code /**57**/.

It is necessary to establish not only the subject of the criminal offense, but also the so-called opposite side of the criminal illegal corruption legal relations in order to construct corpus delicti in many cases. The guilty person is usually opposed to the victim. In the criminal offenses of a corrupt nature (for example, accepting an offer, promise or receiving an illegal benefit – the article 368 of the Criminal Code of Ukraine), the giver of an illegal benefit cannot be recognized as a victim in terms of criminal law, as he also commits a corruption criminal offense (an offer, promise or receiving an illegal benefit to an official – the article 369 of the Criminal Code of Ukraine). It is impossible to consider them a so-called "paired" subject.

For example, by analogy with human trafficking (the article 149 of the Criminal Code of Ukraine), where both persons: a seller and a buyer of a person are guilty. Another example is an illegal

purchase and sale of narcotic drugs (the article 307 of the Criminal Code), under which both sellers and buyers of narcotic drugs, psychotropic substances, their analogues are prosecuted. There is one more instance – the acquisition or receipt, storage or sale of property, which was knowingly obtained criminally unlawfully without the signs of legalization (laundering) of property obtained criminally unlawfully if it was not promised in advance (the article 198 of the Criminal Code of Ukraine), for which both persons selling such property and persons who purchase it are liable, etc. In these cases and in similar situations, the subjects involved in such criminal "agreements" are liable for these criminal offenses within a single corpus delicti.

In the case of committing a corruption offense, such "parity" is excluded, because corruption offenses are a kind of the agreements involving two parties: the party to whom the undue benefit is obtained and the party who provides such an illegal benefit /**58**/ (a "counter-subject" /**59**/). The last term is more appropriate. Scientists suggest referring it to the object as an element of a criminal offense, as well as the victim /**60**/. If the corpus delicti is constructed in such a way that it is necessary to establish the characteristics of the "counter-subject", it indicates that the qualification of the criminal offense depends on its characteristics, and the "counter-subject's" actions should be assessed as a criminally punishable action and qualified under the relevant article of the Criminal Code.

The analysis of the norms of the Special Part of the Criminal Code of Ukraine allows us to identify a number of criminal offenses, which "appear" the so-called "counter-subject" (for example, the art. 160, the art. 222-1, the art. 354, the art. 368, the art. 368-3, the art. 368-4, the art. 369, the art. 369-3 of the Criminal Code of Ukraine), because the composition of a criminal offense would take place only if the undue benefit is transferred (received) to the appropriate persons ("counter-subject"). What is more, the characteristics of this "counter-subject" do not belong to the characteristics of a particular corpus delicti. They characterize the targeting of the act, the circumstances of the criminal offense, but they must be covered by the intent of the perpetrator, and must be related to public relations, which are guarded by the criminal law, at the same time. The perpetrator transfers an undue benefit to an official, violates legal relations in the sphere of official activity, and the features of a counter-subject (official) cause him to be prosecuted /**61**/.

Some gaps in law enforcement content

Certain difficulties are caused by the interpretation of the art. 368-5 of the Criminal Code, which establishes liability for illicit enrichment despite the new version. As we remember, the art. 368-2 of the Criminal Code in the reduction of 07.04.2011 with numerous changes was recognized as inconsistent with the Constitution of Ukraine, according to the Decision of the Constitutional Court No. 1-r / 2019 of 26.02.2019. However, on October 31, 2019, the Criminal Code was supplemented with the art. 368-5 with the similar name "Illegal enrichment" under the Law No. 263-IX. In our opinion, "the transformation" of this norm is not significant and does not remove the main problems that took place in the previous version.

The current version of the article removes the violation of the principle of presumption of innocence, but eliminates one of the main elements of the principle of the rule of law – the principle of a legal certainty. The Constitutional Court of Ukraine stressed the importance of the requirement of certainty, clarity and unambiguity of a legal norm, as otherwise it cannot ensure its uniform application, it does not exclude unlimited interpretation in law enforcement practice and inevitably leads to arbitrariness (second paragraph of subparagraph 5.4 of paragraph 5 of the Reasoning) /**62**/.

The European Commission for Democracy through Law (the Venice Commission) stated that one of the essential elements of the rule of law is legal certainty in its Rule of Law Report, approved at its 86th plenary session on 25-26 March 2011 (the paragraph 41). The legal

certainty requires that legal norms have to be clear and precise and aimed at ensuring that situations and legal relations remain predictable (the paragraph 46) (italics are outlined by the author) /**63**/. Similar instructions are contained in the decisions of the European Court of Human Rights in /**64**/, /**65**/, /**66**/. These decisions refer to the "quality of the law", which means that where a national law provides for the possibility of deprivation of liberty, such a law must be sufficiently accessible, clearly worded and predictable in its application in order to eliminate any risk of arbitrariness (paragraph 111) (italics are outlined by the author).

Compliance with the requirements of clarity and unambiguity of the norms, that establish criminal liability, is particularly important, because of the specifics of criminal law and the consequences of criminal prosecution, as this type of prosecution is connected with possible significant restrictions on human rights and freedoms /**67**/.

V. CONCLUSIONS

Thus, serious gaps in the current criminal legislation in the sphere of regulation of the social relations with the "corruption element" could be stated. This fact arose serious problems with unambiguity of the interpretation of the Criminal Code of Ukraine, which have to apply the principles of legal certainty and terminological accuracy, affects the state of the combating criminal corruption offences. What make the matter worse is the absence of the universal anti-corruption strategy and problems and serious inaccuracies and inconsistencies in anti-corruption legislation in general. All these terminological complexes could be combated in the way of forming the universal approach to definition of the cross-cutting and interdisciplinary concepts and the system of corruption offenses. What is more, the current list of the corruption offences should be improved and placed in the Chapter 17 of the Special Part of the Criminal Code of Ukraine in accordance with the principle of systematic.

In our opinion, making changes certain specification to the current Criminal Code of Ukraine, especially the Note to the art. 364 of the Criminal Code of Ukraine in terms of determination of the terms "significant harm", "grave consequences", "subject of a corruption criminal offence" will solve disadvantages of the Criminal Code of Ukraine, which are connected with qualification of corruption criminal offences. In addition, the approaches of definition of the special subject of a corruption criminal offence should be review carefully. The clear legal guidelines, that would allow classifying these subjects easily and indicating that they belong to a particular category of special subjects of corruption offenses clearly, have to be noted. To conclude, the solution of the issues outlined in this study will solve the difficult problems in the current criminal legislation in terms of establishing criminal liability for corruption criminal offenses.

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