CRIMINAL LIABILITY FOR ACCEPTANCE OF AN OFFER, PROMISE OR RECEIPT OF AN UNLAWFUL BENEFIT BY AN OFFICIAL UNDER INTERNATIONAL LAW

Abstract. In today's environment, corruption has become a factor that poses a real threat to national security, democratic development of the state and society, and the constitutional order, namely: it undermines the country's authority, harms the functioning of the state apparatus, restricts constitutional rights and freedoms of man and citizen, violates the rule of law, the established procedure for exercising powers by officials and employees of state authorities, local governments, and private sector management structures, and destroys moral and social values. In 2022, a new stage in relations between Kyiv and Brussels began - Ukraine received EU candidate status, and most importantly, the prospects of joining the European community and promoting further reforms, which became an incentive for the government and citizens of the country, a positive signal for European and global investors. Obtaining candidate status is an important, but not the final stage of European integration, as it is necessary to keep up the pace on the way to the EU, take advantage of the new status, implement the reforms necessary for EU membership and ensure conditions for Ukraine's post-war recovery in line with European norms and standards. The Partnership and Cooperation Agreement between the European Communities and Ukraine, signed in Luxembourg on June 14, 1994, launched a new level of relations between Ukraine, on the one hand, and the European Communities and their Member States, on the other. The Agreement was ratified by the Law of Ukraine No. 237/94-BP dated November 10, 1994 and entered into force on March 1, 1998. The Agreement is aimed at strengthening Ukraine's relations with Europe, which are based on the existing historical ties between them.

In order to implement Ukraine's strategic course of integration into the European Union, ensure Ukraine's comprehensive entry into the European political, economic and legal space and create the preconditions for Ukraine's membership in the European Union, the Strategy of Ukraine's Integration into the European Union was approved by Presidential Decree No. 615/98 on June 11, 1998. This document
defined the main provisions of the foreign policy strategy for Ukraine's integration into the European legal space, the purpose and stages of legislative adaptation. Recently, Ukraine has been making significant efforts to realize its aspirations to become a full-fledged member of the international and, especially, the European community. However, the requirements for EU membership are quite serious. In particular, the effectiveness of the fight against corruption in the country must be at the proper level, and in this regard Ukraine should be guided by international experience in fighting this criminal phenomenon.

**Keywords:** criminal liability, unlawful benefit, official, bribe, receipt, international law, acceptance, offer.

**Formulation of the problem.** On June 23, 2022, the European Council decided to grant Ukraine the status of a candidate for EU membership, and this event requires our country to bring its legislation in line with EU resolutions, directives and other regulations. The main principle of Ukraine's foreign policy is to ensure Ukraine's integration into the European political, economic, and legal space with a view to gaining membership in the European Union. Article 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 terrorism, the promotion of sustainable development and effective multilateralism are the main principles for strengthening relations between the Parties.

Although today the issue of combating corruption in the context of countering Russian aggression remains one of the state's urgent challenges, taking into account the international commitments undertaken, as corruption is recognized as the main factor in restraining the country's socio-economic development, which affects the level of its defense capability, undermines public confidence in the government, and damages the image of the state in the international community. The European Commission has published proposals to strengthen anti-corruption measures at both the national and EU levels and their coordination between member states and European institutions, as well as to improve the sanctions regime against those guilty of corruption. Such legal instruments are set out in the proposals to the Communication (a regulatory document of the European Commission) on the fight against corruption and will identify "risk areas" for possible corruption. As stated in the European Commission's regulatory document, there is zero tolerance for corruption within the European institutions, so the European Commission is detailing the rules of ethics, integrity and transparency to prevent corruption in the EU institutions. The second area of the European Commission's proposals is the introduction of stricter rules for fighting corruption.

The second area of the European Commission's proposals is the introduction of stricter rules for fighting corruption. These measures include raising public awareness of corruption, ensuring open access to information on the use of budget
funds, disclosure and verification of officials' assets, introducing clear rules for interaction between public authorities and the private sector, creating specialized anti-corruption bodies and providing them with the necessary resources and training. But the most important aspect is that the Proposals provide for the unification of anti-corruption legislation and its consolidation around one legal document - the UN Convention against Corruption, the provisions of which should be integrated into the national legislation of the EU member states.

In addition, the Criminal Code should be brought in line with international standards that define which acts constitute corruption offenses, which entities should be held liable for them, which criminal law penalties should be provided for them, in which cases a criminal law compromise is possible, and under what conditions criminal law penalties are applied to legal entities. First of all, we are talking about the standards of the UN Convention against Corruption, the UN Convention against Transnational Organized Crime (articles), the Council of Europe Criminal Convention on Corruption, its Additional Protocol and the Council of Europe Convention on the Fight against the Manipulation of Sports Competitions. Bring the provisions of the Criminal Code of Ukraine regarding corruption and corruption-related offenses in line with international standards, in particular, determine the list of foreign officials (in accordance with the standards of the OECD Anti-Bribery Convention) who may be involved in international trade transactions; increase liability for corruption offenses by civil servants and persons holding positions in government, exclude the possibility of their further participation in government, even if they are convicted of corruption.

Thus, the above list of areas for improving anti-corruption legislation in Ukraine is conditioned by the issues of harmonization of anti-corruption legislation with EU legislation.

The purpose of the article: study of domestic literary sources, regulations, and case studies on the legal aspects of criminal liability for accepting an offer, promising, or receiving an unlawful benefit in light of international law. Contributions to the development of this issue of criminal liability for committing official criminal offenses related to obtaining undue advantage were made by O.M. Dzhuzha, O.O. Dudorov, O.M. Zhelik, Kvasha, Y. Kirichko, Y. Kurilyuk, and M. Melnyk. Dzhuzha, O. Dudorov, O. Zhelik, O. Kvasha, V. Kyrychko, Y. Kurilyuk, M. Melnyk, I. Roshchyna, A. Savchenko, O. Svetlov, T. Slutsk, E. Streletsov, D. Tychyna, M. Khavroniuk, V. Shakun, N. Yarmysh and others.

Presenting main material. First of all, it should be noted that foreign criminal legislation uses the terms "active and passive bribery", which are not used in Ukrainian legislation. At the same time, these terms have a well-established legal nature in EU legislation. Active bribery can be defined as the promise, offer or giving, either personally or through an intermediary, of an undue advantage to any person who manages or works in any position in a private sector organization, for
such person or another person, to do or refrain from doing anything in breach of his or her duties (Article 21(a) of the United Nations Convention against Corruption) [1].

The Inter-American Convention against Corruption (1996), which has the following objectives: to promote and strengthen the development by each of the participating countries of the mechanisms necessary to prevent, detect, punish and eradicate corruption; to promote, facilitate and regulate cooperation between the participating countries in order to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and corrupt practices directly related to such activities. This Convention establishes a number of preventive measures; criminalizes certain acts of corruption, including transnational bribery and illicit enrichment; and contains a number of provisions aimed at strengthening cooperation between its States Parties in such areas as mutual legal assistance and technical cooperation, extradition and recognition, detection, freezing, seizure and confiscation of property or proceeds derived from or used in the commission of corrupt acts, among other actions.

According to Article 6 of the Inter-American Convention against Corruption, the following types of corruption are defined - the attempt to obtain or receipt, directly or indirectly, by a government official or person performing a public function, of anything of monetary value, or anything of value such as a gift, favor, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission to act in the exercise of his or her public function; - the offer or giving, directly or indirectly, to a government official or person performing a public function, of anything of monetary value, or anything of value such as a gift, favor, promise or advantage [1]

Measures to combat corruption are also being taken on a global scale. Thus, the adoption of the UN Convention against Corruption in 2003 is a significant step in the fight against corruption at the international level. This Convention has become a key instrument in the fight against corruption at the global level, obliging countries to take measures to combat corruption in its various forms.

These measures reflect the growing global interest in fighting corruption and strengthening trust in public institutions. However, success in the fight against corruption requires active will and effective implementation of measures by the participating countries, as well as cooperation with international partners to address global corruption challenges.

The UN Convention against Corruption (2003) [3] requires countries to establish criminal and other offenses that cover a wide range of corrupt practices that are not already crimes under national law. In some cases, states are legally obliged to establish the existence of an offense; in other cases, in order to accommodate differences in national legislation, they should consider criminalizing not only the basic forms of corruption, such as bribery and embezzlement of public funds, but also the abuse of office and the concealment and laundering of the proceeds of
corruption. The Convention goes beyond previous instruments of this kind by criminalizing not only the basic forms of corruption, such as bribery and embezzlement of public funds, but also the abuse of office and the concealment and laundering of the proceeds of corruption. Crimes committed in support of corruption, including money laundering and obstruction of justice, are also covered. The Convention also addresses problematic areas of corruption in the private sector.

The implementation of the UN Convention against Corruption into national legislation allows countries to fight corruption more effectively and ensure accountability for those who commit corruption. Such international initiatives contribute to strengthening the principles of transparency, accountability and democracy around the world.

The Council of Europe Criminal Law Convention on Corruption (2004) is aimed at ensuring coordinated criminalization of a large number of corrupt acts and improving international cooperation in the prosecution of corruption offenses. The Convention is open for accession by states that are not parties. Its implementation is monitored by the Group of States against Corruption (GRECO), which was established in May 1999 to monitor compliance with the Council of Europe's anti-corruption standards. States must ensure effective and dissuasive sanctions and measures, including imprisonment, which may lead to extradition. Legal persons will also be held liable for crimes committed for their benefit and will be subject to effective criminal or non-criminal penalties, including financial sanctions. The Convention also includes provisions relating to aiding and abetting, immunity, criteria for determining the jurisdiction of states, liability of legal persons, establishment of specialized anti-corruption bodies, protection of persons cooperating with investigations or prosecutions, collection of evidence and confiscation of proceeds. It provides for the expansion of international cooperation (mutual assistance, extradition and provision of information) in the investigation and prosecution of corruption offenses.

Experts note that a clear and effective system of fighting corruption, which is based on an effective legal framework and public support and operates in Finland. The International non-governmental organization for international anti-corruption organization Transparency International International, an international non-governmental organization fighting corruption, defines it as one of the least corrupt countries in the world. According to the provisions of the Criminal Code of Finland, for committing acts that can be qualified as corruption, are punishable by fines ranging from imprisonment for up to four years depending on the degree of public danger of the crime. Finnish legislation is not characterized by the use of the term "struggle" in relation to the commission of a particular type of crime. Basically, such crimes are mainly prevented and warned against in the relevant legal act are generally prevented and
warned in the relevant legal act. In Finland, actions qualified as "corruption" are punishable by either a fine or imprisonment for up to four years, depending on the degree of public danger of the crime. It is obvious that the Finnish system of fighting against corruption does not classify corruption as a crime, but mainly qualifies them as administrative offenses, for the commission of which it is possible to criminal liability for the commission of which can be incurred only in case of their particular gravity [14].

Corruption crime is a phenomenon characteristic of the vast majority of modern countries. It is well known that this phenomenon is a significant problem, to solve which states direct significant potential of internal resources. It is important to understand that corruption crimes and corruption itself are characteristic not only of third world countries, but also of advanced countries that claim to be world leaders. Cases of corruption in varying degrees are found in the United States of America, China, Germany, the United Kingdom and other countries.

The Biden-Harris administration is committed to fighting corruption as an economic and national security priority, and has pledged to lead international efforts to ensure transparency in the global financial system and eliminate loopholes that undermine democracy. As stated in the document "Interim Strategic Guidance on National Security Issues".

The Biden-Harris Administration is committed to taking new steps to hold corrupt individuals, transnational criminal organizations, and other actors engaged in illegal activities accountable. This includes strengthening and adding targeted anti-corruption sanctions under the Global Magnitsky Act and similar authorities; and enhancing the enforcement of criminal or civil liability, such as through the Department of Justice's Asset Forfeiture Initiative.

U.S. law contains a number of ethical rules and standards for public officials aimed at preventing conflicts of interest and corruption. These may include the prohibition of accepting bribes, renunciation of personal interests, transparency and accountability, and adherence to ethical standards [14].

The UK anti-bribery legislation defines the following corruption offenses: demanding, agreeing to receive or accepting a bribe by a public official; offering, promising or giving a bribe to a public official; bribery of a foreign official; failure to prevent bribery by a representative of an organization or the entire organization. A corruption offense is deemed to be committed if a person gives a bribe to a public official, as well as offers benefits with the intention of influencing the official or gaining an advantage in conducting transactions. The law establishes liability for violation of the applicable anti-corruption legislation: imprisonment for up to ten years for individuals; large fines, the amount of which is not limited by law and which may be applied to both individuals and legal entities; confiscation of illegally
obtained profits; the company may be excluded from the list of suppliers to government agencies; the company faces serious reputational risks that may affect the company's market value. Both the company's employees involved in the offense itself (e.g., the management who gave the order or the employees who entered into the agreements, etc.) and the company itself are liable [12].

The UK Bribery Act has extraterritorial effect and criminalizes both the acceptance and giving of bribes. It applies to organizations that do business or have a part of their business in the UK, as well as to public officials, regardless of where the corrupt acts were committed. The UK Bribery Act came into force on July 1, 2011. This is a law on combating bribery and commercial bribery that applies to all companies that have at least some business in the UK. The Bribery Act considers the following actions to be manifestations of corruption: a) offering a bribe, b) receiving a bribe, c) offering a bribe to a public official of any foreign state, d) connivance of a commercial organization to bribery [7].

In the anti-corruption legislation of most European countries and the United States, the term "corruption crimes" refers to white-collar crimes, primarily bribery, abuse of office, abuse of power, extortion, theft and fraud (Criminal Codes of Germany, France, Italy and the United States) [11].

In particular, the French criminal law makes it a crime to give and receive bribes by persons exercising public authority in the above-mentioned country or holding a public or elected office (Articles 433-1 and 432-AA of the Criminal Code). Article 434-9 of the said Code establishes liability for bribery of magistrates, arbitrators, experts or any persons entrusted by the judiciary with the functions of reconciliation and mediation, as well as for receiving bribes and bribing a witness. The French criminal law is composed of the French Criminal Code, which in Chapter 5 "Corrupt acts of persons not performing public functions" provides for liability for active and passive commercial bribery (bribery in the private sector) (Article 445-1 of the Criminal Code). Active bribery in the private sector is defined as an unlawful offer, promise, gift, gratuity or any other advantage (benefit) to a person who is not a public official and who, within the framework of his or her professional or social activities, holds a managerial position for any person or organization in order to persuade such a private party to perform (bribery for future actions or reward for actions already performed) or not to perform certain actions within his or her authority or through his or her full or partial use of his or her influence. In particular, under French criminal law, it is an offense to give or receive a bribe by persons exercising public authority in the above-mentioned country or holding a public or elected office (Articles 433-1 and 432-AA of the Criminal Code). Article 434-9 of the said Code establishes liability for bribery of magistrates, arbitrators, experts or any persons entrusted by the judiciary with the functions of reconciliation and mediation, as well as for receiving bribes and bribing a witness [12].
The main corpus delicti that could be considered as corruption offenses are set forth in the provisions of the German Criminal Code as amended by the Anti-Corruption Act, which came into force in 1997 and significantly expanded the list of corruption offenses: obtaining benefits (§ 331 of the German Criminal Code); bribery (§ 332); giving benefits (§ 333); bribery (bribery) (§ 334); receiving and giving bribes in business activities (§ 299); agreements restricting competition in tenders (§ 298). At the same time, the legislator transferred the provision on bribery in private law from the Law Against Prohibited Competition (bribery of an official - § 12) to the German Criminal Code. Nine paragraphs of the German criminal law are devoted to corruption, including obtaining benefits, bribery for forgery, bribery in the economic sphere, and the maximum penalty for bribery in the German Criminal Code is imprisonment for up to ten years or a fine. Corruption offenses literally include white-collar crimes (§§ 331-335 of the German Criminal Code), competition offenses (§§ 298-300 of the German Criminal Code), bribery of voters (§ 108b of the German Criminal Code), and bribery of deputies (§ 108e of the German Criminal Code). If corruption offenses are understood more broadly, they can even include fraud (§ 263 of the German Criminal Code), breach of trust (§ 266 of the German Criminal Code), and money laundering (§ 261 of the German Criminal Code) [12].

Singapore's criminal law stipulates that, if the bribery is proven, the perpetrator is subject to imprisonment or a fine (five years in prison or USD 100 thousand, respectively). If a knowingly false report is made against a public official regarding the commission of the relevant illegal acts, the person who disseminated the false information faces a one-year prison sentence or a fine of USD 10 thousand for knowingly giving false testimony [14].

In Denmark, anti-corruption activities are mainly focused on preventive measures. Creating a culture of "zero tolerance" for corruption. Danida, the Danish International Development Agency, develops a zero-tolerance policy within the company and in the process of cooperation with external partners. All Danida contracts include an anti-corruption clause that applies to all contract terms, meaning that companies must sign a declaration prohibiting bribery as a form of corruption. Violation of the relevant provision leads to the termination of the contract and refusal of further partnership [13].

It is worth noting that the Criminal Code of Ukraine has adopted provisions replacing the concept of bribe with the concept of unlawful benefit. It is worth noting that in countries where corruption and bribery are much lower than in Ukraine, the criminal code contains not only the article "Bribery" but also the article "Giving a Bribe". Moreover, the penalties for these offenses are quite severe. Some countries have abandoned the concept of bribery, such as Israel, Latvia, and Georgia.

In the national legislation, criminal liability for acceptance of an offer, promise or receipt of an unlawful benefit by an official is provided for in Article 368
of Chapter XVII "Crimes in the Field of Official Activity and Professional Activities Related to the Provision of Public Services" [9] of the Criminal Code of Ukraine and in some ways similar to it is Article 338 "Bribery" of Chapter XXXIX "Official Crimes" of Title Eleven "Crimes against the State" of the Criminal Code of Georgia [8].

According to Art. 338 "Bribery" [8] of the Criminal Code of Georgia, the receipt or demand by officials or persons equal to them in direct or indirect form of money, securities, other property, property benefit or any other unlawful advantage, as well as the receipt of offers or promises of such in their favor or in favor of other persons for the performance or refraining from performance by these officials or persons equal to them of any actions in favor of the bribe-giver or other person, or the use of their official authority to achieve similar goals shall be punishable by imprisonment for a term of six to nine years.

Part 2. Bribery: a) by a person holding a public or political office; b) in a large amount; c) by a group of persons by prior conspiracy shall be punishable by imprisonment for a term of seven to eleven years.

Part 3. Actions envisaged by parts one and two of this Article committed: a) by a person convicted of bribery; b) repeatedly; c) with extortion; d) by an organized group; e) in a particularly large amount - shall be punishable by imprisonment for a term of eleven to fifteen years.

Note. A large amount of bribery is defined as the amount of money, value of securities, other property or property benefits exceeding ten thousand GEL, and a particularly large amount of bribery is defined as the amount exceeding thirty thousand GEL [].

Article 338 of the Criminal Code of Georgia also provides for criminal liability for the use of one's official authority for the purpose of bribery, which is somewhat analogous to parts 2 and 3 of Article 369-2 of the Criminal Code of Ukraine. "Abuse of Influence", which criminalizes the acceptance of an offer, promise or receipt of an undue advantage by the perpetrator for himself or herself or a third party to influence the decision-making of a person authorized to perform state functions, or an offer or promise to exert influence for the provision of such an advantage. Common qualifying features are the amount of the unlawful benefit; repeated commission of the crime; commission of the crime by prior conspiracy by a group of persons; commission of the crime in combination with extortion. Certain commonality of qualifying features is manifested in the commission of a crime by a person holding a responsible and particularly responsible position (Ukrainian legislation) and the commission of a crime by a person holding a public or political position (Georgian legislation). The differences lie in the fact that, firstly, the concept of "bribe" remains in the Georgian criminal law, while the national legislation has changed it to the concept of "unlawful benefit" based on the Law of Ukraine of April 18, 2013 "On Amendments to Certain Legislative Acts of Ukraine on Bringing National Legislation in Compliance with the Standards of the Criminal Convention on Corruption".
Comparing the sanctions of these articles, Art. 338 of the Criminal Code of Georgia defines the maximum punishment for a person in case of committing such a crime in comparison with Ukrainian legislation (8 years in prison in Ukrainian and 15 years in prison in Georgian legislation). In addition, the Ukrainian legislation is more humane, as the current version of the law provides for a lower maximum penalty (8 years of imprisonment under Article 369-2 of the Criminal Code of Ukraine and 12 years of imprisonment under Article 368 of the Criminal Code of Ukraine). In addition, Article 338 of the Criminal Code of Georgia provides for criminal liability for bribery in the case of official protectionism in the performance of official duties, which is not provided for in Ukrainian legislation.

Another distinctive feature of the Criminal Code of Georgia is that anti-corruption norms for public officials are provided for in a completely different Chapter XXXIX "Official Crimes", which, in particular, includes Article 339 of the Criminal Code ("Bribery"). In addition, in Chapter XXIX "Crimes against the interests of service in business or other organizations" of the Criminal Code of Georgia [], Article 221 provides for liability for commercial bribery. The disposition of para. 1 of this article contains the following provisions: offer, promise, transfer or provision of money, securities, other property or property services or (and) any other unlawful advantages in favor of this or any other person in order to perform or refrain from performing any act in violation of his/her official duties, in the interests of the bribe taker or other person. The qualifying features under Part 2 of this Article are the commission of an act by a group of persons and repeatedly.

Conclusions. The study of international and foreign experience is undoubtedly of enormous importance. In order to ensure the proper fulfillment of Ukraine's obligations arising from its membership in the Council of Europe and to achieve compliance with the political component of the Copenhagen criteria for EU membership, it is important to take the necessary measures to converge Ukrainian criminal law with European standards. In order to integrate Ukraine into the global legal space, it is necessary to study the legislative and doctrinal provisions of other countries.

References:


