

THE "CRISIS-TYPE" PHENOMENON OF CORRUPTION IN UKRAINE

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Abstract. The article substantiates and proves, using a socio-naturalistic scientific approach, that corruption in Ukraine today is not an isolated phenomenon, but an organic consequence and symptom of a fundamental social crisis in the country. This means that today's Ukrainian corruption is a "crisis-type" corruption, that is, it is caused by a social crisis, which it itself deepens. The authors use the phenomenological *method* of studying the phenomenon of corruption. To explain social phenomena, the concept of the "sociogenic factor" is used, which is necessary for the existence of human society, namely the social culture of people as a measure of consistency of their will and consciousness with the laws of social nature. People's social culture consists of the following types: political, economic, legal, moral, religious, scientific and technical, rehabilitative, ecological, etc. Crisis-type corruption is also a phenomenon of "crimes caused by social anomalies". Corruption is a real phenomenon, but unnatural, because it manifests a violation of the laws of social nature with which people's social life should be coordinated. The authors *present the concept* of "anti-corruption vices," according to which anti-corruption measures can be effective only if they combine the following: 1) administrative (repressive) means; 2) reforms aimed at creating conditions in which it becomes profitable to live and work honestly. The concept is based on the fact that corruption in Ukraine today has a completely unique character, which distinguishes it from corruption in Western countries not only in quantitative characteristics, but also in qualitative. The *results* of the study of the unique Ukrainian corruption phenomenon and their consideration in improving anti-corruption policy in Ukraine can be very useful for other countries suffering from "crisis-type" corruption.

Key words: crime, "crisis type" corruption, uniqueness of the phenomenon, social crisis, the concept of "anti-corruption vices", sociogenic factor.

JEL Classification: B55, K19

1. Introduction

The current corruption in Ukraine is special – it is a "terrible symptom of a severe disease" that has struck society. Only by identifying the causes of this phenomenon can it be effectively countered. When studying corruption crime, criminologists do not always pay attention to the study of society, the processes and phenomena occurring in it, and focus their efforts mainly on the criminal law aspects of the problem. That is why the study of corruption in post-Soviet countries is so necessary for legal science and practice.

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prevention and the minimization of corruption-related crime.

Among the scholars who partially responded to the topic of this study are the following: Dryomin V.M., who puts forward an institutional theory of crime and criminalization of society (Dryomin, 2010); Mykhailenko D.G. presents his own Concept of Criminal-Legal Counteraction to Corruption Crimes (Mykhailenko, 2018); Zharovska H.P. in particular, highlights the roots of corruption through the prism of combating transnational organized crime in Ukraine (Zharovska, 2019), and this is the next, higher level of research on this issue in modern criminology.

The book "Corruption: Economic Analysis and International Law" by the late Marco Arnone and

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Leonardo S. Borlini (2014) refutes the arguments made by some economists that corruption is profitable because it oils the wheels of business, reduces transaction costs and reduces the cost of capital. The authors show that the damage from corruption is enormous and agree with N. Roubani (2008) that when corruption pervades the public and private spheres, uncertainty in the financial system increases, undermining the proper functioning of the market mechanism in this volatile sector as well as leading to potentially devastating consequences for the entire economy.

Empirical analysis performed by M. Arnone and L.S. Borlini on the positive relationship between effective regulation of competition, competitiveness and lower levels of corruption, is original and it correlates with recent initiatives of some international institutions, including the Organization for Economic Cooperation and Development, as well as it establishes a link between corruption and anti-competitive behavior (Global Forum, OECD, 2016), (Gerry Ferguson, 2017). The scientists' conclusions seem very convincing. However, the aim of this article is to substantiate and prove, using a socio-naturalistic scientific approach, the fact that corruption in Ukraine today is not just an isolated phenomenon, but an organic consequence (and a symptom) of the fundamental social crisis in the country. This means that today's Ukrainian corruption is crisis-type corruption, i.e., it is caused by the social crisis, which it itself deepens.

2. The illusion of an effective anti-corruption factor

Corruption exists in any country, but in Ukraine it has its own peculiarity, namely its ability to nullify any attempts to free itself from the systemic social crisis that has engulfed the entire society. It is possible to note the growth of social tension and social conflicts in Ukraine on the background of unhealthy economic situation, which, if it is not solved in time, can lead to a standstill in the development of our society.

The methods of research are chosen depending on the object, subject and purpose of the study. The study used general scientific and special methods of legal science. Thus, the method of analysis and synthesis, as well as the logical method were used to formulate a holistic view of corruption and corruption of "crisis type", as well as to study their features and specifics. The logical-semantic method helped to establish the meaning of the concept of "anti-corruption vices". Comparative legal method was applied in the analysis of the relevant legislation of Ukraine and some other European states, regulating the issue under consideration, as well as the opinions of scientists on this scientific problem. The article is based on

the application of a set of the following methodologies: philosophical-legal and synergetic. The authors use a phenomenological method to study the phenomenon of corruption. The concept of "sociogenic factor" is used to explain social phenomena. This factor is a property inherent in people, which is necessary for the existence of human society. Such a property is social culture of people as a measure of consistency of their will and consciousness with the laws of social nature. According to the socio-naturalistic approach, there is the following pattern: the human factor reflects the social life of people.

In order to prevent and combat corruption Ukraine has ratified the Civil Convention against Corruption (Law of Ukraine, 2006), the Criminal Convention against Corruption (Law of Ukraine, 2007), the UN Convention against Corruption (Law of Ukraine, 2006), etc. Thus, the existence of anti-corruption legislation and its implementation in all states creates the illusion of an effective anti-corruption factor.

Comparing the plans of certain measures of anti-corruption activities of successful European states, in particular the Kingdom of Denmark, the Republic of Finland, the Kingdom of Sweden, with the actions of Ukraine taken in the field of combating corruption, we can say that they are to some extent identical, but the results of their implementation do not coincide, and, unfortunately, not in favor of Ukraine. It can be assumed that this is due to shortcomings in the conceptual framework of anti-corruption policy in Ukraine. For example, in the Kingdom of Denmark there is no state anti-corruption strategy, but the state adheres to high ethical standards. Ukraine, unlike the Kingdom of Denmark, even has the Supreme Anti-Corruption Court, the highest specialized court in the judicial system of Ukraine, but, unfortunately, "corrupt behavior" among citizens has become a forced "norm" for them. Given the many years (since Ukraine gained its independence in 1991) of total corruption in the country, Ukrainian citizens are still unable to abandon corrupt practices and expose corruption for fear of being involved in corruption investigations as well.

The peculiarity of the global socio-economic crisis in Ukraine is that it was projected on the protracted systemic crisis of Ukrainian society. Quite a long internal crisis at different stages was expressed in different forms: energy, oil, amber, forest, water, environmental, etc. But these crises were constantly accompanied by political and, accordingly, moral crisis of society. The combination of internal crises with a global one has created a threatening situation where the sovereignty of the state has come into question (Crisis in Ukraine, 2010).

Modern corruption crime in Ukraine has its own specific national characteristic, which it has inherited from the economic crime of the Soviet model, and

which it further improvises in relation to criminal activity and criminal schemes. While ascertaining the growth of criminal operations, it should be noted that in its underlying principles, corruption has remained the same mercenary form of crime, oriented toward foreign markets. The scale of corrupt activities is global. The main feature of modern transnational crime is its politicization. Having corrupt ties with certain representatives of the state, transnational criminal organizations actually rob the state, which in the current economic situation is a factor that brings Ukraine closer to economic collapse. Global transnational crime deepens the crisis situation in the socio-political and economic life of Ukraine, forms the vectors of foreign trade and creates the basis for a radical stratification of Ukrainian society on the basis of financial opportunities.

Funds obtained by criminal means and then legalized through the use of various financial schemes have formed in Ukraine an oligarchic class and people close to it, who actually run the state. The rest of the population has become a kind of donor to transnational criminal organizations, since huge financial resources do not go for social needs and economic development, but are overspent through the state budget and go directly to the accounts of the criminal-political elite (Zharovska, 2013).

3. Ukrainian social crisis

It would be wrong to blame the subjects of the actual so-called "captivity" of Ukraine for what is happening on a global scale. Here it is necessary to emphasize such specifics of corruption in Ukraine as the "Ukrainian social crisis".

According to this study, crisis-type corruption can be minimized only by eliminating the social cause that generates the social crisis itself, one manifestation of which is this type of corruption. This reason is the state of society, in which it is simply unprofitable to live and work honestly. And vice versa, it is profitable to live and work only unfairly. As the historical experience of different countries shows, even the death penalty does not stop one from committing a corrupt crime, which is especially noticeable in the People's Republic of China.

Ukrainian society has not yet formed the social strata and groups that will become the driving force and cultural basis of social change. Oligarchic groups in the process of redistribution of property have seized enormous resources, which are used to influence social processes in Ukraine only in the interests of the oligarchs themselves. Although the current dominance of oligarchic groups is ensured by unstable social institutions and a blurred social structure, their dominance has lasted for decades. The authors believe that this is a consequence of the crisis

of sociogenesis in Ukraine, which led to the defeat of Ukrainian society by Soviet totalitarianism. In particular, a manifestation of this crisis is the absence in society of a social order that would ensure that citizens could "live honestly," that is, meet their needs in accordance with the norms of morality and law. According to the worldview of social naturalism, the rule of "living honestly" is a law of social nature, in other words, a social norm. Criminals lead lives in constant violation of the laws of social nature on which society should be based. In addition, this state of society, in which it is unprofitable to live and work honestly, is actually a social anomaly. This deviation generates criminal excesses, including crimes of corruption. These are the kinds of "crimes caused by social anomalies" that are taking place in Ukraine today. For example: "amber criminal anomaly" in areas where there are deposits of amber, or "customs criminal anomaly," which affects residents of Ukrainian border regions.

The actions of high-ranking officials and politicians on the PEP list in placing international financial resources in offshore zones, which in fact were directed as financial aid to the state, are also unnatural. The World Bank notes the following phenomenon, the reasons for which are not yet precisely established, namely the direct correlation in some states, when the increase in financial assistance to the state, respectively, increases the financial flow to the offshore zones of about the same amount. OCCRP CEO Paul Radu and Transparency International have found that more than 36,000 objects of property in London now belong to offshore companies while preserving strict trade and banking secrecy wherein. Some of this real estate was purchased legally when offshore was used to protect the privacy of buyers. However, a certain amount of real estate was bought in such a way as to conceal the illegal origin of the money, and with this all contributes to the boom in London's real estate market. According to FinCEN, the organization will monitor cases where there is a high probability that corrupt officials or international criminals may use luxury real estate in the United States to secretly invest millions. Today, individuals who do not wish to reveal their name can buy real estate anonymously through offshore companies and pay for it in cash. The screening will primarily be for both high-end home buyers in Manhattan, New York and Miami-Dade County, Florida (Stella Roque, 2019).

It is possible to note the situation when crime goes beyond the local national character and takes organized forms. Through corrupt interactions, legal institutions can become a chain of criminal organizations. Since relations between states are regulated by bureaucracies, their interaction is inevitable. That is, a state where corruption is highly developed is likely to introduce the "virus" of corrupt practices into any democratic

state that declares and adheres to non-corrupt norms. This is facilitated by liberalization of customs and border relations, creation of unified banking systems, offshore zones, universalization of national currencies, formation of global financial networks, global markets, global use of modern information technologies and much more.

The fight against "crimes caused by social anomie," including corruption, cannot really be effective without reforms that will eliminate the anomaly itself, that is, without changes that will make life and work fair and profitable.

Instead, as the analysis of the Anti-Corruption Strategy for 2021–2025" shows. (Law of Ukraine, 2022) and the Law of Ukraine "On Prevention of Corruption" (Law of Ukraine, 2014), there is an "anti-corruption" illusion in Ukraine, according to which to eliminate the problem it is enough to improve administrative tools – anti-corruption legislation and anti-corruption bodies, without eradicating the very social cause of crisis-type corruption, that is not changing the state of society, in which to live and work honestly is not beneficial. The above-mentioned documents do not even attempt to identify the social cause of domestic corruption. And the concept of "corruption prevention" is reduced to responding not to the cause of the phenomenon, but to the conditions conducive to it. One gets the impression that the authors of these documents conflate the concepts of "causes of corruption" and "conditions conducive to corruption". But without distinguishing between these things, one cannot hope to effectively counteract this phenomenon. For example, in Ukraine, the phenomenon of survival is a specific way of life, which is based on extremely low life resources. In the conditions of scarcity of life resources, a person is forced to allocate and distribute all the resources available to him only to satisfy his basic needs, namely: food, clothes, housing, etc. That is, there is no opportunity to satisfy other needs, in particular, such as cultural, leisure, creative, cognitive, health needs (Crisis in Ukraine, 2010).

4. The concept of "anti-corruption vices"

Such a cursory look at the factors that give rise to corruption (including confusion about the causes and conditions conducive to it) can lead to rather dramatic mistakes in anti-corruption policy. The result is a hypertrophy of applied administrative (repressive) tools, which is inherent in the "police type of state".

Coincidentally, the National Agency for the Prevention of Corruption (NAPC), established in Ukraine in accordance with the Law of Ukraine "On the Prevention of Corruption" (Law of Ukraine, 2014), has a "preventive" function, which is to check

the property declarations of civil servants and their lifestyle, as well as drawing up protocols on administrative corruption offenses, in particular the conflict of interests. In fact, nothing at all is said here about the elimination of the social "root" (in fact, the "social cause") of the phenomenon generated by the social crisis in the state. In the media, the NAPC has become famous for its selective verification of declarations, using the function given to it by law only to put pressure on the political opponents of the authorities.

In 2019, Ukrainian courts closed a quarter of corruption cases, with only half of the accused getting sentences. Thus, in 2019, courts received 3,949 criminal proceedings on corruption and corruption crimes, which is 5% less than in the previous year. Only three-quarters of these proceedings were heard by the courts. There is a significant cumulative effect, which is based on the fact that each year the number of proceedings before the courts in this category increases. As of December 31, 2019, there were already 9,054 proceedings pending in the courts.

The volume of court proceedings in 2019 is almost identical to the volume of 2018. According to the NAPC, in 2018–2019 the courts made decisions in just over half of the criminal proceedings, i.e., 53% and 57% respectively. Among the reasons for such indicators the agency cites, perhaps, the low quality of pre-trial investigations and "disinterestedness" of the courts in considering corruption proceedings. In 2019, every fourth case (25%) was closed by the court. A year earlier, the figure was even higher at 31%. A total of 1,479 people were convicted last year for corruption or corruption-related crimes (+10% compared to last year), 526 were acquitted (+33% respectively), and a significant number of people (702) had their cases dismissed (National Report, 2020). This is, in particular, due to the fact that corruption crimes within organized criminal groups are often committed by heads of state bodies. Legal commercial structures that are not involved in criminal business cannot compete with organized criminal groups. That is why Ukrainian legislation in all spheres of public life is not so effective. This applies to almost all state bodies, such as the National Bank of Ukraine, the Antimonopoly Committee, the State Property Fund, the State Fiscal Service, the State Control and Revision Service, the customs authorities of Ukraine and other state bodies that have the right to monitor compliance with Ukrainian legislation by organizations and citizens to combat organized crime. That is why civil servants who act in a corrupt manner in close connection with some criminal business structures and judges are not legally penalized as much. Other state executive authorities, which have an anti-corruption function, are in

practice engaged in counteracting high-level political corruption, while addressing the interests of oligarchic clans.

The rampant crime and immorality in Ukraine is so widespread that criminal practices have become habitual for people, so they do not react acutely to news about the facts of corruption crimes. Thus, the phenomenon of "trivialization of corruption" in the legal culture of citizens is forming in Ukraine, in particular because citizens can satisfy their legal needs and exercise their rights only through corruption. Corruption is becoming a means of achieving not only an illegitimate but also a legitimate goal. For example, in Ukraine it has become almost the norm that citizens must bribe a judge to obtain a legitimate court decision, and the vast majority of Ukrainians simply cannot afford to hire a lawyer for financial reasons.

It seems that in contrast to the concept of "pure repressions", which is the basis of the current anti-corruption policy in Ukraine, the concept of "anti-corruption vices" is more effective, according to which a combination of the following measures (which should have as strong a grip as between the jaws of vices) is necessary: 1) administrative (repressive) means; 2) reforms aimed at creating such conditions in society, under which it will become profitable to live and work honestly. The first measure without the second (i.e., the application of "pure repression" to corrupt individuals) is doomed to ineffectiveness. The concept of "anti-corruption vices" is fully consistent with the rule formulated by the famous criminologist Cesare Beccaria: "It is better to prevent a crime than to punish it later." A good example of successful anti-corruption reforms is the Republic of Singapore.

Analysts say that today Ukraine has made significant progress in eradicating corruption. According to Transparency International's Corruption Perception Index 2021, Ukraine ranked 122nd out of 180 countries, next to countries such as Zambia, Gabon and Mexico, while countries such as Denmark and Finland were at the top. In the same year,

Ukraine ranked second in Europe in terms of corruption (Transparency International, 2021).

Today Ukraine faces the following dilemma: either by trying to overcome the crisis type of corruption, that is, the so-called "abnormal corruption" through online "pure repression," to become a "police-type state," or by eliminating its social cause, to overcome this phenomenon by means inherent in a democratic state. For example, in 2019, the FBI received an official request from the Ukrainian government to help train employees of the National Anti-Corruption Bureau of Ukraine. It should be noted that there is a high risk that the FBI will be used by Ukrainian politicians in their political games (Yanevsky, 2015).

5. Conclusions

The concept of "anti-corruption vices" should be based on the fact that corruption in Ukraine today has a completely unique character, which distinguishes it from corruption in Western countries not only in quantitative characteristics, but also in qualitative. The qualitative difference of this corruption lies in the fact that as a crisis-type corruption, it is generated by the social crisis in Ukraine and, in turn, contributes to this crisis itself.

In this connection, the problem of an adequate policy of international cooperation in the fight against "crisis-type" corruption in Ukraine becomes relevant. In particular, it concerns the policy of providing financial assistance to our country by the European Union and the development of a "grant policy" to combat corruption in Ukraine.

Assistance to Ukraine from other countries in the fight against corruption should be used to implement the concept of "anti-corruption vices" within the framework of anti-corruption policy, but not within the concept of "pure repression".

The results of the study of the unique Ukrainian corruption phenomenon and their consideration in improving anti-corruption policy in Ukraine can be very useful for other countries suffering from "crisis-type" corruption.

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