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**PATH TO THE EU: MOLDOVA AND UKRAINE'S QUEST TO ERADICATE
CORRUPTION – A COMPARATIVE LEGAL PERSPECTIVE**

**CALEA CĂTRE UE: ÎNCERCAREA MOLDOVEI ȘI UCRAINEI DE A ERADICA
CORUPȚIA – O PERSPECTIVĂ JURIDICĂ COMPARATIVĂ**

**ПУТЬ В ЕС: СТРЕМЛЕНИЕ МОЛДОВЫ И УКРАИНЫ ИСКОРЕНИТЬ
КОРРУПЦИЮ – СРАВНИТЕЛЬНАЯ ПРАВОВАЯ ПРСПЕКТИВА**

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ABSTRACT:

**PATH TO THE EU: MOLDOVA AND UKRAINE'S QUEST TO ERADICATE
CORRUPTION – A COMPARATIVE LEGAL PERSPECTIVE**

This article compares anti-corruption legislation in Moldova and Ukraine, examining their alignment with each other which is essential in the context of their aspirations for European integration. It analyses primary legal rules and relevant court judgements, emphasising differences and similarities in defining and interpreting corruption. Moldova's broader approach contrasts with Ukraine's focus on public sector corruption exclusively, revealing varying degrees of harmonisation.

The study concludes that despite sharing foundational elements in defining corruption, both countries need to improve transparency and accountability standards to meet European anti-corruption standards.

Key words: *corruption, anti-corruption legislation, European integration, interpretation, definition of corruption, European Union.*

JEL Classification: K33

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REZUMAT:

**CALEA CĂTRE UE: ÎNCERCAREA MOLDOVEI ȘI UCRAINEI DE A
ERADICA CORUPȚIA – O PERSPECTIVĂ JURIDICĂ COMPARATIVĂ**

Articolul dat compară legislația anticorupție din Republica Moldova și Ucraina, examinând cât de armonizate sunt, ce este esențial în contextul integrării europene. Acesta analizează normele juridice

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primare și hotărârile judecătorești relevante cu scopul de a identifica diferențele și asemănările în definițiile și interpretarea corupției din ambele sisteme juridice.

Studiul acesta ajunge la o concluzie că, cu toate că ambele țări au câteva elemente fundamentale ale corupției în comun în definițiile lor domestice, legislația anticorupție a Moldovei contrastează cu cea din Ucraina pentru că ultima se concentrează exclusiv pe corupția din sectorul public.

Cuvinte cheie: *corupție, legislație anticorupție, integrare europeană, definiția corupției, interpretare, Uniunea Europeană.*

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РЕЗЮМЕ:

ПУТЬ В ЕС: СТРЕМЛЕНИЕ МОЛДОВЫ И УКРАИНЫ ИСКОРЕНИТЬ КОРРУПЦИЮ – СРАВНИТЕЛЬНАЯ ПРАВОВАЯ ПЕРСПЕКТИВА

В данной статье сравниваются антикоррупционные законодательства Молдовы и Украины в контексте стремления обоих государств к европейской интеграции. Рассматривая соответствие двух систем друг другу, в настоящей статье анализируются основные правовые понятия и соответствующие судебные решения. Особое внимание уделено сходствам и различиям в определении и толковании понятия «коррупция» на законодательном уровне.

В исследовании делается вывод, что, несмотря на то, что обе правовые системы разделяют основополагающие элементы коррупции, более существенный подход молдавского законодательства к определению коррупции контрастирует с украинским, который определяет коррупцию возможной только в публичном секторе.

Ключевые слова: *коррупция, антикоррупционное законодательство, европейская интеграция, определение коррупции, интерпретация, Европейский Союз.*

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1. Introduction

Recently, Moldova and Ukraine, two long-lasting aspirers for European integration, undertook their first steps on the path of joining the European Union (EU). Nevertheless, it does not mean that these states have resolved all their domestic problems. Both states continue their decades-long struggle against numerous issues that date back to their Communist heritage. Among them, in a recent survey, Ukrainians named corruption as the most concerning one.¹ In this context, corruption should be understood in everyday, rather than academic, terms as *illegal behaviour of people in authority driven by personal interest*.²

Ukrainian President Zelenskyy suggested a rather radical legal solution to this problem: “Equating corruption to state treason during wartime [...] will be a very serious instrument to make [state officials] not even think about [corruption]”.³ While an extreme measure, it shows his dedication to legally address this issue. For Moldova and Ukraine, eradicating corruption is crucial in order to join the EU. It is inextricably linked with the political element of the

¹ A Hrushetskyi, ‘Public Perception of the Main Problems (Except War) and Who Should Make Efforts to Fight Corruption: Results of a Telephone Survey Conducted September 30–October 11, 2023’ (2023) *Kyiv International Institute of Sociology*, Graph 1, available at: <https://kiis.com.ua/?lang=eng&cat=reports&id=1322&page=1> accessed 29 Jan 2024.

² ‘corruption, n’ (OLD Online 2024) available at: https://www.oxfordlearnersdictionaries.com/definition/american_english/corruption#:~:text=%2Fk%C9%99%C B%88r%CA%8Cp%CA%83n%2F.Topic%20Collocations accessed 29 Jan 2024.

³ K Tyschenko, ‘Zelenskyy Wants to Equate Wartime Time Corruption to Treason’ (27 August 2023) *Ukrainska Pravda*, available at: <https://www.pravda.com.ua/news/2023/08/27/7417309/> accessed 29 Jan 2024.

Copenhagen criteria that the European Commission uses to assess a country's eligibility to join the Union: democracy, the rule of law, and respect for human rights and minorities all can only be ensured with minimal levels of abuse of power in pursuit of private benefits.¹

This article provides a comparison of legislative rules establishing anti-corruption frameworks in both states in order to answer the following research question: *to what extent primary legislative rules regulating illegal behaviour of people in authority driven by a personal interest in Moldova and Ukraine are currently harmonized?* The main research aim is, hence, to highlight similarities and the most striking differences in how these countries legally approach this issue. To this end, Section 2 will explain this author's methodological decisions. Afterwards, a comparison of legislative anti-corruption rules in both countries will be provided. It will be argued that a minor conceptual difference in how both jurisdictions define corruption resulted in different anti-corruption frameworks. This hypothesis will then be tested by comparing how competent national courts interpreted definitions of corruption employed in their jurisdiction. Finally, a conclusion will provide several claims about this paper's research question based on the author's findings.

2. Methodology

This paper adopts the functional comparative method. The author identified the widespread use of official positions in the pursuit of private interests by their holders as a significant societal issue. Following Siems' logic, this phenomenon is "a real-life, socio-economic problem [that] should be the starting point [of the analysis]".² In the context of both states' plans of European integration, the academic literature supports this choice given that it has been argued that corruption is one of the biggest impediments on a state's way to becoming an EU member.³

The choice of units of analysis is justified by a combination of academic and empirical reasons. Regarding the former, there have been many corruption-examining studies focusing on both countries following the creation of the EU's Eastern Partnership initiative, which aims at spreading European values to six neighbouring countries, including Moldova and Ukraine.⁴ However, the issue of harmonization of these legal systems' approaches in the context of their aspiration for European integration remains under-researched. Empirically, this choice is explained by the fact that both countries were recommended to start negotiations for joining the EU. Since the European Commission issued this recommendation, it can be concluded that it sees these countries at a similar stage of their European integration process. Moreover, the reasonableness of this choice is strengthened by comparably widespread instances of illegal use of authority in both countries, as demonstrated by several international metrics and the European Commission's recent reports.⁵

The research aim of this paper is to highlight differences in how these states regulate the abuse of power in the pursuit of private benefit by making such abuse unlawful. Two reasons

¹ D Kochenov, 'Behind the Copenhagen Façade: The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law' (2004) 8(10) *European Integration Online Papers* 1, 13.

² M Siems, *Comparative Law* (Cambridge University Press 2018) 16.

³ MA Vachudova, 'Corruption and Compliance in the EU's Post-Communist Members and Candidates' (2009) 47 *Journal of Common Market Studies* 43, 44; TA Borzel et al, 'The European Union and the Fights against Corruption in Its Near Abroad: Can It Make a Difference?' (2010) 11(2) *Global Crime* 122, 126.

⁴ See, for instance, M Emerson et al, 'Anti-Corruption Policies in Georgia, Moldova, and Ukraine' (2017) *3DCFTAs: Understanding Association Agreements between the EU and Ukraine, Moldova and Georgia* 1; W Kononczuk et al, 'Oligarchs in Ukraine, Moldova, and Georgia as Key Obstacles to Reforms' (2017) *3DCFTAs: Understanding Association Agreements between the EU and Ukraine, Moldova and Georgia* 1; A Pisarenko, and O Vlasniuk, 'Accountability, Transparency and Corruption in the V4 Countries, Ukraine and Moldova' (2017) *Frontiers of Democracy: Embedding Democratic Values in Central and Eastern Europe* 107.

⁵ Transparency International, 'Corruption Perceptions Index 2022' Moldova and Ukraine (2022), available at: <<https://www.transparency.org/en/cpi/2022>> accessed 29 Jan 2024; European Commission, 'Key Findings of the 2023 Report on the Republic of Moldova' (8 November 2023), available at: <https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_5629> accessed 29 Jan 2024; European Commission, 'Key Findings of the 2023 Report on Ukraine' (8 November 2023), available at: <https://ec.europa.eu/commission/presscorner/api/files/document/print/sk/qanda_23_5631/QANDA_23_5631_EN.pdf> accessed 29 Jan 2024.

justify the pursuit of this research objective. First, given that the EU has explicitly named harmonization of laws and policies among its members as one of the Union's crucial objectives,¹ this comparative research's scientific relevance lies in identifying to what extent these countries' approaches are currently harmonized in the context of the EU's anti-corruption standards. Second, in such a short paper, it will be practically impossible to identify a normative framework for comparing these legal systems as to which one addresses the illegal use of authority "better". Thus, the scientific relevance of employing the functional comparative legal approach to answer this essay's research question outweighs the functional method's limitations of bias and limited generalizability.²

Finally, to compare legal definitions of corruption within the framework of functionalism, this essay will employ Ghanavati and Breaux's logic of "re-topicalization".³ This approach consists of disentangling each definition into separate components and juxtaposing them to identify similarities and dissimilarities. This methodological choice implies that other important socio-political factors in addressing the issue of corruption, such as the role played by civil society organisations, are excluded from the scope of this article. With this in mind, let us now turn to comparing anti-corruption legislation in place in Moldova and Ukraine.

3. Comparing the Two Laws

The objective of the following passages is to introduce primary legal rules that set up frameworks of prohibition of illegal use of authority in both countries under analysis. It will be established that in Moldovan and Ukrainian legislations, the analysed phenomenon is labelled as corruption and is addressed through anti-corruption laws. These laws' definitions will be used in the following paragraphs to compare these legal systems.

The focal point of Moldovan anti-corruption legislation is Parliamentary Law No. 82/2017.⁴ It addresses corruption in negative terms: rather than being an anti-corruption law of a narrow application, this piece of legislation sets up the entire framework of incorruptibility to be applicable in its jurisdiction.⁵ Academics have argued that the core function of this law is to provide integrity and legal certainty in dealing with corruption.⁶ There, corruption is defined as an

"Unlawful use of one's functions in pursuit of private interests. Such a use may occur either in public or private entities, either directly by the holder of the function or through intermediaries, where the private interest in question may be either the function holder's own or favour other individuals".⁷

In the modern Ukrainian legal system, the most crucial piece of legislation is Parliamentary Law №1700-VII "On Prevention of Corruption".⁸ As the title suggests, it should be seen as an anti-corruption law which aims at preventing corruption from occurring only in the public sector and, to this end, does not establish an entire framework of incorruptibility. It adopted the following definition of corruption:

"Corruption" shall mean the use [by a holder of a public function] of granted official powers or powers associated with opportunities to obtain unlawful benefit or receipt of such benefit or

¹ T Givens and A Luedtke, 'The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization' (2004) 32(1) *Policy Studies Journal* 145, 146; YN Gierczyk, 'The Evolution of the European Legal System: The European Court of Justice's Role in the Harmonization of Laws' (2005) 12(153) *ILSA Journal of International and Comparative Law* 153, 181.

² R Michaels, 'The Functional Method of Comparative Law' in M Reimann and R Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 364, 378.

³ S Ghanavati and TD Breaux, 'Comparing and Analysing Definitions in Multi-Jurisdictions' (2015) *IEEE RELAW* 47, 47; G McKeever and T Walsh, 'The Moral Hazard of Conditionality: Restoring the Integrity of Social Security Law' (2020) 55(1) *Australian Journal of Social Issues* 73, 74.

⁴ Law No. 82/2017 "On Integrity" 25 May 2017 [hereinafter: Law No. 82/2017].

⁵ T Mostovei, 'Perspectives for Implementation of Anti-Bribery Management Systems in the Republic of Moldova' (2018) 23(1) *EuroTimes* 393, 395.

⁶ C Țărnă, 'Ghidul Integrității Administrației Publice Locale' (December 2020) *Friedrich Ebert Stiftung* 1, 5.

⁷ Law No. 82/2017, Article 3.

⁸ Law of Ukraine No. 1700-VII "On Prevention of Corruption" 14 October 2014 [hereinafter: Law No. 1700-VII].

receipt of a promise/offer of such benefit for himself/herself or others, or respectively the promise/offer or granting of an unlawful benefit to the person [holding a public office] or upon his/her request to other individuals or legal entities with a view to persuade the person to unlawfully use his/her official authorities or associated opportunities granted to him/her.”¹

Thus, the illegal use of power is conceptualized as corruption at the legislative level in Moldova and Ukraine. It means that these pieces of legislation represent functional equivalents as they address the same societal issue at the level of primary legislation. The following subsections will compare the two frameworks by applying the functional method based on the following set of criteria for comparison: (1) their definitions of corruption; and (2) the interpretation of these definitions by competent national courts. The decision to examine case law rests on the fact that, even if this analysis establishes that the definitions employed by jurisdictions are functionally identical, domestic courts could have applied them differently.²

Academics have suggested that, when comparing legal definitions across different jurisdictions, the key challenge is “how to orient the constraints in a definition from different viewpoints in order to compare definitions from a shared viewpoint”.³ In this paper’s context, Subsection 3.1 will present definitions that both systems use to describe illegal behaviour of people in authority as “different viewpoints” in the above phrase’s sense. Afterwards, Subsection 3.2 will turn to the practice of interpretation of these definitions in both countries’ competent courts in order to examine whether a “shared viewpoint” can be inferred from it.

3.1 Definitions of Corruption:

While the main anti-corruption law in Moldova is phrased in negative terms and is aimed at establishing an overall regime of incorruptibility, its Ukrainian analogue approaches corruption in a more limited way by addressing instances of abuse of power by public officials. These different approaches resulted in a few distinctions, the most prominent of which is the definition of corruption employed.

Disintegrating each definition step-by-step, it becomes apparent that the very foundations of both approaches are similar. Both laws focus on using official powers, granted to a person, in pursuit of private interests. However, the Moldovan definition is more precise in specifying that the act of usage itself should be unlawful,⁴ while in Ukraine corruption entails a regular use of granted official powers in pursuit of some sort of unlawful benefit.⁵ This minor but crucial difference conceptualizes each jurisdiction’s approach to identifying corruption.

Thus, whereas in Moldova an act of an official, to qualify as corruption, should be unlawful by definition (for example, representing a violation of one of the Penal Code’s provisions), in Ukraine an otherwise perfectly compliant with law act of a person holding an office can still constitute corruption if it is performed in order to obtain unlawful benefit. The approach undertaken by the Ukrainian lawmakers is, hence, stricter in making unlawful each act of office holders when it is driven by unlawful personal motivation. This severity can be explained by the circumstances of the current Ukrainian anti-corruption legislation’s adoption. It occurred in the aftermath of the Revolution of Dignity, when the public called for a firmer approach to regulating corruption given that the rejection of this phenomenon reached its apogee at that time, especially in the context of discovering several grave instances of the illegal use of public positions by the previous office holders.⁶

It is with this definitional difference of which acts could amount to corruption in mind that further conditions under which corruption occurs in both laws should be analysed. In Moldova, lawmakers decided to cover both public and private sectors when defining corruption, meaning

¹ Law No. 1700-VII, Article 1.

² K Linos, ‘How to Select and Develop International Case Law Studies: Lessons from Comparative Law and Comparative Politics’ (2017) 109(3) *American Journal of International Law* 475, 476.

³ Ghanavati and Breau (no 10) 74.

⁴ Law No. 82/2017, Article 3.

⁵ Law No. 1700-VII, Article 1.

⁶ A Aslund, ‘Oligarchs, Corruption, and European Integration’ (2014) 25(1) *J. Democracy* 64, 65; M Kralikova, ‘Importing EU Norms: The Case of Anti-Corruption Reform in Ukraine’ (2022) 44(2) *Journal of European Integration* 245, 249.

that an act of corruption does not necessarily require the involvement of a public official.¹ This inclusive approach perfectly resonates with the country's encompassing framework of incorruptibility since a broader perspective on where corruption might occur allows for its more comprehensive regulation. On the contrary, in Ukraine, the main anti-corruption legislation is silent about to what extent acts in private entities may be considered corruption. While the law is explicit about the acts of a long list of public servants (or persons providing public services) mentioned in Section I, Article 3,² it does not touch upon perspectives of corruption in the private sector. This definitional omission led several authors to argue that it makes it difficult to measure whether certain acts performed in the private sector, which would fall under the definition of corruption if were performed by public officials, can constitute corruption.³

Another difference between these two approaches is that the one employed in Moldova is pre-empting instrumentalization of third parties to perform corruption as a means of avoiding responsibility. To this end, the definition of corruption adopted by Law 82/2017 includes acts of corruption that might be performed through intermediaries.⁴ This wording expands the range of those who could be involved in corruption-related activities, hence broadening the scope of the jurisdiction's incorruptibility framework. On the other hand, the Ukrainian legislation does not include such a provision, limiting its applicability only to those acts of corruption which are performed by the addressees of the law themselves. In this regard, theoretically, the definition used in Moldova allows for more effective tackling of sophisticated corruption schemes.

Both definitions then seemingly arrive at a common ground when they highlight that a private interest serving as motivation for committing an act of corruption can benefit either the addressees of the law themselves or other persons. Nevertheless, the Ukrainian definition of corruption departs from its Moldovan counterpart afterwards when it in detail prescribes several specific acts that amount to corruption when committed not by the addressees of the law but by people interacting with them. In this regard, the law "On Prevention of Corruption" specifies that promising, offering, or granting unlawful benefit to a person listed in Section I, Article 3 of the law, when intended to persuade them to engage in corruption, itself qualifies as corruption.⁵

Overall, while the very foundational elements of corruption's definition overlap in both jurisdictions, each system conceptualizes corruption more extensively in different domains to develop a comprehensive definition that suits its jurisdiction best. At this point of analysis, it can be seen that both countries' approaches to defining corruption are harmonized only to a limited extent. The above comparison of legal definitions has demonstrated that with every step taken beyond definitional foundations, definitions of corruption depart from each other by emphasizing different circumstances under which certain instances of use of authority amount to corruption. Thus, having adopted Ghanavati and Breaux's method of comparing definitions by juxtaposing particular elements of two definitions, this section arrives at a preliminary conclusion that two definitions of corruption employed in Moldova and Ukraine represent "different viewpoints" about circumstances in which corruption may occur. With this idea in mind, let us now turn to comparing how the competent courts in both countries interpreted respective definitions. If similarities between these interpretations are found in the following section, "a shared viewpoint" will be reached to finalize the comparison of these systems' definitions in this essay's conclusion.

3.2 *Interpretations of the Meaning of Corruption by both States' Competent Courts:*

¹ Law No. 82/2017, Article 3.

² Law No. 1700-VII, Article 1.

³ IO Khristich, 'Issues Related to Measuring Corruption in Private Sphere of Ukraine' (2018) 51(1) *Journal of Eastern European Law* 95, 100; S Baranov, 'Problems of Combating Corruption in the Private Sphere of Ukraine' (2020) *Particularitățile Adaptării Legislației Republicii Moldova și Ucrainei la Legislația Uniunii Europene* 55, 57.

⁴ Law No. 82/2017, Article 3.

⁵ Law No. 1700-VII, Article 1.

Before engaging in the comparative analysis of how the above-analysed definitions were interpreted domestically, several remarks regarding the data used in this subsection should be made. The author has preliminarily searched the websites of multiple national courts in both countries in order to find two instances with the most comprehensive databases containing cases in which it was the most reasonable to expect the interpretation of the corruption's definitions.

In light of the limited digitalization of judicial institutions' archives in both countries, two courts were selected for analysis: (1) the Criminal Chamber of the Supreme Court of Justice of Moldova and (2) the High Anti-Corruption Court of Ukraine. The former was chosen because its digital archive contains the most extensive collection of cases where the definition of corruption was interpreted. The rationale behind analysing the latter's jurisprudence stems from this court's specific competence to decide upon instances of alleged violations of anti-corruption legislation.¹

3.2.1. The Criminal Chamber of the Supreme Court of Justice of Moldova:

Academics have argued that the Moldovan Penal Code's provisions should be used to interpret the country's anti-corruption legislation because multiple articles of the Penal Code contain detailed descriptions of acts which amount to corruption under the Law No. 82/2017 and, hence, these two pieces of legislation supplement each other.² Thus, given its competences to decide upon the cases alleging violations of provisions of the Penal Code,³ this Chamber has on multiple occasions interpreted the definition of corruption in the context of the country's overall framework of incorruptibility. Although, as it was argued in the previous section, the definition of corruption employed in Moldova is encompassing, this Court has pointed out to the importance of the notion of *intention* in establishing acts of corruption.

The definition used in Law No. 82/2017 does not mention whether the intention to commit an act of corruption is a requirement to define the latter. Although this law's definition of corruption includes the condition of motivation by a private interest, it should not be equated with an intention to obtain such an interest. While the semantics of the word "intention" suggests that a person should act knowingly and willingly for their intention to be found,⁴ there might also be situations in which a person obtains such an interest without wanting it. The latter situations, hence, cannot amount to corruption under Law No. 82/2017 because no intention to receive private interest can be established.

Nevertheless, the Chamber in multiple cases alleging violations of the Penal Code which pertain to acts of corruption (among others: passive corruption, abuse of power, bribery, falsification of official documents)⁵ has examined whether these actions were performed knowingly and with an intention to obtain personal interest. For instance, in *Corlăteanu*, a case revolving around an incident of abuse of power in the context of a public sector enterprise, the Chamber established that the respondent's "illegal intentions" to commit an act of corruption played an important role in qualifying his abuse of power as an act of corruption.⁶ A similar reasoning was expressed by the Court in *Karatun*, where it was concluded that, given that the respondent "intentionally used [his] working situation [...] in the pursuit of personal interests", he was found guilty of abuse of power and falsification of official documents.⁷ In *Zelinschi*,⁸

¹ O Reznik et al, 'Anti-Corruption Transformation Processes in the Conditions of the Judicial Reform in Ukraine: Implementation' (2023) 14(1) *International Journal for Court Administration* 1, 8.

² O Bejan, 'Cadru Penal al Corupției după Codul Penal al Republicii Moldova' (2006) 3(4) *Revista de Criminologie, Drept Penal și Criminologică* 15, 18-19; N Putina and M Iatco, 'Strengthening the Integrity and Development of Anti-Corruption Policies in the Republic of Moldova' (2020) 1(1) *Political Studies Forum* 47, 52.

³ Law No. 789 "Regarding the Supreme Court of Justice" 26 Mar 1996, Chapter III, Article 13.

⁴ 'intention, n' (*Cambridge Dictionary Online* 2024), available at: <<https://dictionary.cambridge.org/dictionary/english/intention>> accessed 30 Jan 2024.

⁵ Bejan (no 29) 18; 51 cases since the adoption of Law No. 82/2017: <https://jurisprudenta.csj.md/db_col_penal.php> accessed 31 Jan 2024.

⁶ *Corlăteanu Alexandru* [2021] Curtea Supremă de Justiție case no. 1ra-150/2021 [2021] 1, Section 2.

⁷ *Karatun Vladimir* [2017] Curtea Supremă de Justiție case no. 1ra-1329/2017 [2017] 1, Section 7.

⁸ *Zelinschi Victor* [2018] Curtea Supremă de Justiție case no. 1ra-1176/2018 [2018] 1.

Mihalache,¹ and *Botezatu*,² the Court followed the same logic in arguing that the “intentional use of the public service [...] in an illegal way” was a decisive factor in establishing that those acts amounted to corruption.³ Thus, these cases are important because they demonstrate that the Chamber has consistently ruled on the necessity of establishing the intention of abusing an office for private gain to identify such abuse as an act of corruption.

3.2.2. The High Anti-Corruption Court of Ukraine:

Having found that the Criminal Chamber of the Moldovan Supreme Court of Justice interpreted intention as a requirement to establish an act of corruption, let us now examine whether the High Anti-Corruption Court of Ukraine reached similar conclusions.

There have been only two judgements in which this Court explicitly interpreted the definition of corruption in the Law “On Prevention of Corruption”: decisions no. 991/2396/22 and no. 991/366/22.⁴ Both cases originated from the Specialized Anti-Corruption Prosecutor’s Office’s applications to order the recovery of funds obtained by means of corruption (in violation of the Law “On Prevention of Corruption”) back to the state budget. Given that these assets had already been transferred to the third parties, the Court had to interpret the definition of corruption under this law to establish whether third parties may be held accountable for corruption.

These cases established a precedent in the Ukrainian jurisprudence because, as it has been argued in subsection 3.1, the definition employed by the above-mentioned law, unlike the Moldovan one, does not prevent instrumentalization of third parties in the performance of acts of corruption. Despite this, the importance of these cases for the current analysis lies in the Court’s argumentation. It ruled that “it may be sufficient to establish the *intention* of a person authorized to perform [public] functions” to recognize the existence of an agreement engaging the third party’s responsibility for acts of corruption.⁵ Thus, perhaps in a more specific context than its Moldovan counterpart, this Court has also recognized the role that intention plays in establishing acts of corruption.

Hence, this comparison of two national courts leads to the conclusion that, despite two jurisdictions having adopted varying definitions of corruption in the primary legislation, the competent national courts have interpreted them in a way that allows for inferring points of harmonization. Both courts whose practice has been discussed in this subsection reasoned that the notion of an intention to commit an act of corruption is a crucial requirement for establishing that an instance of illegal use of a granted function in the pursuit of a private interest amounts to corruption.

4. Concluding Remarks

This essay’s research aim was to analyse to what extent current legislation regulating the illegal behaviour of people in authority driven by private interest is harmonized in Moldova and Ukraine. In this context, sporadic overlaps in how jurisdictions define and interpret corruption were found. In particular, both systems’ approaches share the very basic definitional elements of corruption, and competent national courts have interpreted intention as an additional requirement to establish an instance of corruption. However, the author argues that these are not sufficient to indicate a significant level of harmonization of both countries’ anti-corruption frameworks in light of their plans for European integration.

As the EU’s anti-corruption standards of transparency and accountability require much more than both frameworks can achieve with their laws,⁶ Moldova and Ukraine should commit more legislative efforts and resources to ensure that their legal systems, besides punishing instances of corruption, are also capable of preventing it. It was suggested by academics analysing the

¹ *Mihalache Vitalie* [2020] Curtea Supremă de Justiție case no. 1ra-5/2018 [2020] 1.

² *Botezatu Anatolie* [2018] Curtea Supremă de Justiție case no. 1ra-1417/2018 [2018] 1.

³ *Botezatu*, Section 2.

⁴ Unified State Register of Court Decisions, available at: <<https://reyestr.court.gov.ua/>> accessed 31 Jan 2024.

⁵ Case №991/366/22 [2022] The High Anti-Corruption Court of Ukraine [2022], Section 5.10.8; Case №991/2396/22 [2022] The High Anti-Corruption Court of Ukraine [2022], Section 4.6.5. Emphasis added.

⁶ Kralikova (no 22 above), 254.

EU's anti-corruption framework that it is better ensured through achieving transparency in both public and private sectors.¹ While the Moldovan Law no. 82/2017, in theory, attempts to establish an overall framework of incorruptibility encompassing all social domains, its Ukrainian counterpart attempts to prevent the illegal use of public authorities exclusively which does not increase levels of transparency.

Finally, further research may benefit from using this article's findings as a starting point for more comprehensive comparative exercises to assess to what extent Moldova and Ukraine's anti-corruption frameworks are harmonised. It can be achieved in two different ways. Firstly, the traditional functionalist methodology can be expanded to include historical and socio-political aspects into the scope of further analyses. Such an approach will allow to encompass both countries' anti-corruption landscape more broadly, accounting for important historical developments and political actors which were not taken into account by this author due to spatial and temporal constraints of this article. Secondly, this comparative approach may be applied to other EU candidate members, such as Georgia, Albania, or Montenegro. As all these states are struggling to fight corruption on their way to accede to the EU treaties, further research may focus on drawing a generalised pattern of legislative anti-corruption approaches, identify which country is more successful in this quest, and provide recommendations on how others may improve their legislative frameworks.

Bibliography:

a. Primary sources:

Laws:

Moldova:

Law No. 789 "Regarding the Supreme Court of Justice" 26 March 1996

Law No. 82/2017 "On Integrity" 25 May 2017

Ukraine:

Law of Ukraine No. 1700-VII "On Prevention of Corruption" 14 October 2014

Judgements:

Moldova:

Botezatu Anatolie [2018] Curtea Supremă de Justiție case no. 1ra-1417/2018 [2018]

Corlăteanu Alexandru [2021] Curtea Supremă de Justiție case no. 1ra-150/2021 [2021]

Karatun Vladimir [2017] Curtea Supremă de Justiție case no. 1ra-1329/2017 [2017]

Mihalache Vitalie [2020] Curtea Supremă de Justiție case no. 1ra-5/2018 [2020]

Zelinschi Victor [2018] Curtea Supremă de Justiție case no. 1ra-1176/2018 [2018]

Ukraine:

Case №991/2396/22 [2022] The High Anti-Corruption Court of Ukraine [2022]

Case №991/366/22 [2022] The High Anti-Corruption Court of Ukraine [2022]

b. Secondary sources:

Journal Articles:

Aslund A, 'Oligarchs, Corruption, and European Integration' (2014) 25(1) *J. Democracy* 64

Baranov S, 'Problems of Combating Corruption in the Private Sphere of Ukraine' (2020)

Particularitățile Adaptării Legislației Republicii Moldova și Ucrainei la Legislația Uniunii Europene 55

Bejan O, 'Cadrul Penal al Corupției după Codul Penal al Republicii Moldova' (2006) 3(4) *Revistă de Criminologie, Drept Penal și Criminalistică* 15

Borzel T A et al, 'The European Union and the Fights against Corruption in Its Near Abroad: Can It Make a Difference?' (2010) 11(2) *Global Crime* 122

Emerson M et al, 'Anti-Corruption Policies in Georgia, Moldova, and Ukraine' (2017) *3DCFTAs: Understanding Association Agreements between the EU and Ukraine, Moldova and Georgia* 1

Ghanavati S and Breaux TD, 'Comparing and Analysing Definitions in Multi-Jurisdictions' (2015) *IEEE RELAW* 47

Gierczyk NY, 'The Evolution of the European Legal System: The European Court of Justice's Role in the Harmonization of Laws' (2005) 12(153) *ILSA Journal of International and Comparative Law* 153

¹ A Mungiu-Pippidi, 'The Good, the Bad, and the Ugly: Controlling Corruption in the European Union' (2013) 9(1) *Advanced Policy Paper for Discussion in the European Parliament* 1, 45.

Givens T and Luedtke A, 'The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization' (2004) 32(1) *Policy Studies Journal* 145

Khrstich IO, 'Issues Related to Measuring Corruption in Private Sphere of Ukraine' (2018) 51(1) *Journal of Eastern European Law* 95

Kochenov D, 'Behind the Copenhagen Façade: The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law' (2004) 8(10) *European Integration Online Papers* 1

Kononczuk W et al, 'Oligarchs in Ukraine, Moldova, and Georgia as Key Obstacles to Reforms' (2017) *3DCFTAs: Understanding Association Agreements between the EU and Ukraine, Moldova and Georgia* 1

Kralikova M, 'Importing EU Norms: The Case of Anti-Corruption Reform in Ukraine' (2022) 44(2) *Journal of European Integration* 245

Linós K, 'How to Select and Develop International Case Law Studies: Lessons from Comparative Law and Comparative Politics' (2017) 109(3) *American Journal of International Law* 475

McKeever G and Walsh T, 'The Moral Hazard of Conditionality: Restoring the Integrity of Social Security Law' (2020) 55(1) *Australian Journal of Social Issues* 73

Michaels R, 'The Functional Method of Comparative Law' in M Reimann and R Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (Oxford University Press 2006), 364

Mostovei T, 'Perspectives for Implementation of Anti-Bribery Management Systems in the Republic of Moldova' (2018) 23(1) *EuroTimes* 393

Mungiu-Pippidi A, 'The Good, the Bad, and the Ugly: Controlling Corruption in the European Union' (2013) 9(1) *Advanced Policy Paper for Discussion in the European Parliament* 1

Pisarenko A and Vlasniuk O, 'Accountability, Transparency and Corruption in the V4 Countries, Ukraine and Moldova' (2017) *Frontiers of Democracy: Embedding Democratic Values in Central and Eastern Europe* 107

Putina N and Iatco M, 'Strengthening the Integrity and Development of Anti-Corruption Policies in the Republic of Moldova' (2020) 1(1) *Political Studies Forum* 47

Reznik O et al, 'Anti-Corruption Transformation Processes in the Conditions of the Judicial Reform in Ukraine: Implementation' (2023) 14(1) *International Journal for Court Administration* 1

Țărna C, 'Ghidul Integrității Administrației Publice Locale' (December 2020) *Friedrich Ebert Stiftung* 1

Vachudova MA, 'Corruption and Compliance in the EU's Post-Communist Members and Candidates' (2009) 47 *Journal of Common Market Studies* 43

Books:

Siems M, *Comparative Law* (Cambridge University Press 2018)

Dictionaries:

'corruption, n' (*OLD Online* 2024) available at: https://www.oxfordlearnersdictionaries.com/definition/american_english/corruption#:~:text=%2Fk%2F%20CB%20CA%20CA%203n%2F,Topic%20Collocations accessed 29 Jan 2024

'intention, n' (*Cambridge Dictionary Online* 2024), available at: <https://dictionary.cambridge.org/dictionary/english/intention> accessed 30 Jan 2024

Newspaper articles:

Tyschenko K, 'Zelenskyy Wants to Equate Wartime Time Corruption to Treason' (27 August 2023) *Ukrainska Pravda*, available at: <https://www.pravda.com.ua/news/2023/08/27/7417309/> accessed 29 Jan 2024

Reports:

European Commission, 'Key Findings of the 2023 Report on the Republic of Moldova' (8 November 2023), available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_5629 accessed 29 Jan 2024

European Commission, 'Key Findings of the 2023 Report on Ukraine' (8 November 2023), available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/sk/qanda_23_5631/QANDA_23_5631_EN.pdf accessed 29 Jan 2024

Hrushetskyi A, 'Public Perception of the Main Problems (Except War) and Who Should Make Efforts to Fight Corruption: Results of a Telephone Survey Conducted September 30–October 11, 2023' (2023) *Kyiv International Institute of Sociology*, available at: <https://kiis.com.ua/?lang=eng&cat=reports&id=1322&page=1> accessed 29 Jan 2024

Transparency International, 'Corruption Perceptions Index 2022' Moldova and Ukraine (2022), available at: <<https://www.transparency.org/en/cpi/2022>> accessed 29 Jan 2024

Websites and databases:

The Database of the Decisions of the Criminal College of the Supreme Court of Justice, available at: <https://jurisprudenta.csj.md/db_col_penal.php> accessed 31 Jan 2024

Unified State Register of Court Decisions, available at: <<https://reyestr.court.gov.ua/>> accessed 31 Jan 2024.

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