THE CIRCULAR PATH OF THE BATTLE AGAINST CORRUPTION

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Abstract: Corruption is a widespread phenomenon in many countries and areas. Hence the need to establish mechanisms to combat corruption at the national and transnational levels. The United States, the European Union, as well as a large number of countries have engaged in the fight against corruption aimed at vital areas of society as well as in all political, economic, social and cultural domains. In order to achieve the expected goals in the fight against corruption, all combat mechanisms must be part of a global vision. Despite numerous studies, it is necessary to continue to research the concept of corruption and its consequences, emphasizing the various international efforts and proposals to improve the performance of these institutions in the fight against corruption. Any effective fight against the phenomenon of corruption depends on the willingness of countries to consolidate the principles of joint international cooperation and to strengthen measures to prevent and combat corruption in more efficient and effective steps. These performances are an inspiration for the European Commission, which is trying to create mechanisms that will enable judicial authorities to cooperate with each other to guarantee the prosecution and punishment of corrupt individuals. Taking into account these premises, the imperative is imposed to find an answer to the following problem: To what extent do the institutional and legal mechanisms of international organizations, primarily the European Union, contribute to the fight against corruption and limit its spread throughout the world? To answer this question, we will start from the assumption that a) financial corruption is an abuse of the provisions of financial rules that apply in the administrative and financial areas; b) the phenomenon of financial corruption is present everywhere in all areas of life: political, economic and social and in different countries; c) within the EU as well as in the wider international community, numerous legal and international mechanisms have been created to fight financial corruption, by providing procedures and measures that will reduce and limit the spread of corruption. The development of the rich anti-corruption toolkit and legal tools in developed countries, primarily the USA and the EU, has gone through several evolutionary phases, but the development of these mechanisms is still ongoing.
Keywords: European Union, Transparency International, Corruption Index, OECD, financial corruption, international legal mechanisms, fight against corruption.

1. INTRODUCTION

There are a number of definitions of corruption in the literature, but the authors are most attracted by the elaboration of financial corruption as the most extreme form of corruption. In fact, behind every corruption lies a financial interest. Financial corruption is defined as financial abuse based on the violation of laws and regulations and the various provisions adopted in any institution or organization, such as embezzlement, tax evasion, etc...." (Benrajm, M. K., & Halimi, H. 2012,). Corruption usually involves more than two people. Corruption involves the factor of mutual obligation and common interest and the masking of corrupt activities. Perpetrators of corruption fall into a contradiction between their everyday lives in public and private life; All acts of corruption represent a violation of duty and patterns of responsibility. The emergence of financial corruption is explained by several reasons, which differ from society to society, although the ways in which it is practiced are very similar. In general, the main causes of corruption can be found in political, economic, social and cultural reasons. Political factors are among the most important that contribute to the emergence, growth and spread of corruption. Political loyalty as a criterion for appointing administrative leaders to important positions is one of the factors of corruption. Government officials enjoyed wide freedom of action and little responsibility; The weakness of civil society and the marginalization of the role of its institutions in many countries, the devolution of power, the separation of powers and the lack of accountability as well as the spread of the phenomenon of administrative bureaucracy and excessive centralization are significant factors of corruption. The economic causes of corruption are government interference in economic activities, individuals who tend to pay bribes to officials, to circumvent public regulations and procedures. This government intervention appears in the creation of import restrictions, the provision of government subsidies, price controls, etc. The social and cultural causes of corruption are the nature of society and the emergence of the importance of personal relationships in the social domain, which creates a significant impact on the spread of corruption, and consequently on the propagation of regional loyalties at the expense of higher national interests; The presence in certain complexes of a utilitarian vision that justifies the plunder of money publicly because it is a right common to all, and the cause of individual skill and intelligence. Military tax laws are complex and difficult to understand, which creates challenges for inspections to abuse discretion in the application of tax incentives. The topic of corruption, placed in the focus of law, history, economics and political socio-anthropology, left the sole

competence of lawyers to wage war on corruption. Later it would gradually grow into a legitimate subject of study for the social sciences. In Europe, it is considered that the social and economic sciences considered this phenomenon with a delay sometime in the 1960s. In this direction, the contribution of Pierre Lascoumes, both from the analyses of the different models of corruption in the United States, and from the methodological and empirical works, are of great importance for science in Europe in this domain. Based on the documentation present in the major handbooks from the 1970s to contemporary works on corruption, political and economic analyses dominate. To this are added the numerous initiatives and reports of the EU, OECD, Transparency International, the World Bank and the IMF, which provide an overview of the main debates taking place in the specialized literature. In this direction, the evolution of the fight against corruption, the issue of definitions, the difficulties of measuring corruption, attempts to identify the causes and consequences of the phenomenon, new socio-anthropological approaches, planned and undertaken anti-corruption measures dominate.

2. USA – THE CRADEL OF THE FIGH AGAINTS CORRUPTION

From a historical point of view, the first phase of the internationalization of the fight against corruption took place in the USA in the mid-seventies. Following Watergate, suspicions of illegal financing of American political parties weighed on several companies. Investigations were conducted by ad hoc bodies ("Office of the Special Prosecutor Watergate" and "Senator Frank Church's Subcommittee on Multinational Corporations"), as well as by the American financial markets authority, the Securities and Exchange Commission (SEC). These investigations would make it possible to uncover the mass of funds that were used, among other things, to corrupt foreign public officials and thus obtain favorable contracts and tenders. For example, the company "Gulf Oil" is accused of contributing to the campaign of the President of the Republic of Korea, Northrop allegedly paid off a Saudi general, while Exxon and Mobile Oil allegedly paid money to Italian political parties. The Lockheed affair was the one that had the greatest impact. Between 1950 and 1970, the American aerospace company spent more than twenty-two million dollars on bribes to foreign public officials during negotiations for the sale of its aircraft. The scandal had repercussions worldwide, affecting many figures from West Germany (Minister of Defense), the Netherlands (Prince Bernhard), and Italian politicians. In Japan, this scandal led to the fall of the government in 1978, several of its members, including Prime Minister Kakuei Tanaka, who had received bribes were not held criminally liable. No text criminalizes these behaviors and the SEC mainly sought to determine whether these payments should have been the subject of information intended for investors. (Lascoumes.P. 1999) However, fearing a weakening of its foreign policy, the US Congress decided to pass a new law regulating this matter: It was decided to launch an investigation and hold public hearings. The Foreign Corrupt Practices Act (FCPA) was signed by President Jimmy Carter on December 19, 1977 and entered into force on the same day. It thus incriminated the active corruption of foreign public officials committed in order to obtain or retain a contract. The ban applied to both American individuals and legal entities, as well as to any company listed in the United States (stocks, bonds or American depositary receipts traded on a US stock exchange or NASDAQ) Distortions of competition. By prohibiting its companies from using corruption to obtain foreign contracts, the US did not ignore the competitive disadvantage created. Indeed, The main exporting countries incriminated only domestic corruption and some countries, such as France, encouraged this type of practice in agreement to deduct the tax "exceptional costs" caused. Through the gap in the perception of corruption in the United States, efforts were made to eliminate tax deductions for corruption in 1958, i.e. long before Watergate. At the time of the FCPA, the US government was already seeking a multilateral solution "however, these efforts cannot be registered as a success in the fight against corruption and extortion if other countries' companies do not respect such actions.(A. Perez, A. M. (2023) At the same time, thanks to the progress made within the United Nations in the negotiations for an agreement on illegal payments, the goal of the fight against corruption was gradually moving forward. A new impetus was the Code of Ethical Business Practices adopted by the International Chamber of Commerce » P. SERVAN-SCHREIBER (2013). However, international initiatives related to the fight against illegal payments did not produce the expected results because no binding agreement emerged. (Smolar, P. 2021) Since 1979, negotiations within the United States have been subject to scrutiny due to the large differences between countries or the status of companies in their home countries. In addition, according to the International Chamber of Commerce rules of conduct and the OECD Recommendations, which are based on voluntary compliance by companies, they will also not bring the expected positive effects. Johnston, M. 2005). In the 1980s, with the opening of new markets, especially in developing countries, where corruption is endemic, this practice emphasized the distortion of competition from which American companies suffered the most. In August 1988, President Ronald Reagan signed the Omnibus on Foreign Trade and the Competition Act had a threefold purpose: a) clarification of previous legislation in light of case law, b) legal exceptions intended to reduce distortions of competition, and c) a mandate for the US President to restart international efforts within the framework of the OECD. In the event that negotiations should fail again, the President must inform Congress so that it can learn the

consequences. European countries were faced with the alternative of following the American model or suffer the consequences of the repeal of the FCPA (The Foreign Corrupt Practices Act of 1977). The following year, the OECD's "Working Group on Corruption in International Commercial Transactions" marked a new step in the fight against corruption. Furthermore, after the fall of the Berlin Wall, "the expansion of American repressive unilateralism towards post-communist states further developed this dimension."

3. GLOBAL EXPANSION

lobal expansion. Countries that have acquired "the conviction that corruption had to be accepted as an inevitable reality", the OECD initiative has the effect of a catalyst. The question of economic policy is mixed with the question of criminal policy. Corrupt practices are internationalized as a whole, and countries are no longer able to fight alone with organized crime that localizes its activities in order to escape through a single commercial forum from any repression: "The internationalization of corruption - a term for the prevalence and ability of this form of crime to use the methods and instruments of the international system, taking advantage of both the capacities it offers and the failures that characterize it - must inevitably respond to the internationalization of its incrimination". In addition to the instruments of the European Union, several international conventions, the regional scope began to increase. Soon, in an exceptionally short time, in the years that followed 1996, several important documents were adopted that significantly strengthened the fight against corruption. During this period, the Organization of American States adopted the Inter-American Convention against Corruption in 1999, the Council of Europe adopted a criminal convention, then the Civil Convention on Corruption Convention civile la corruption ouverte à la signature le 4 novembre 1999, en vigueur le 1 er novembre 2003.as well as the additional protocol to the criminal convention. In 2003, the African Union adopted the African Union Convention on the Prevention and Control of Corruption. These documents sought to implement, at a minimum, the criminalization of public corruption, especially if domestic and active bribery of a foreign public official is detected. The new consensus on the criminalization of corruption allowed for consideration of an initiative of a broader and more universal scope. Such a step was realized with the United Nations Convention against Corruption, which was opened for signature on December 9, 2003, in Merida. "The requirement for the dual criminality of corruption meant that an offense committed abroad and prosecuted in the home country must also be punishable in the country on whose territory it was committed."The proliferation of international conventions has indicated the legal challenges faced by national legislators at the time of transposition. The difficulty has particularly affected the Member States of the European Union, which have not only made corruption a serious subject of their obligations towards the community, but also as an obligation arising from the conventions of the OECD, the United Nations and the Council of Europe. Each instrument, depending on the international organisation, has had its own autonomous logic: diversification of the interests protected (human rights, the economy under the pressure of corruption) which has necessarily led to a "discontinuity of standards". Also, if certain elements are common, the field of application is not identical (for example public or private corruption, related criminal offences). Similar inconsistencies can arise from the diversity of the numerous provisions in these institutions, which can create a major gap in the functioning of anti-corruption legislation. Moreover, the definition of public officials, that of offences and sanctions, liability of legal persons, skills, etc. it can also be diverse and completely inconsistent. In turn, the harmonization of criminal laws at the national level is significantly limited by the numerous margins of appreciation, the lack of a certain flexibility. Often, a sense of consideration for the divergences between national legal systems is lacking. (Bourgon, J. 2007).

4. TRANSPOSITION OF INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

The phase of decline, which began around the 2000s, is characterized by numerous ratifications and the adoption of transposing laws. The evolution of the legal framework often takes place in successive phases, such as France which adopted three transposing laws between 2000 and 2007. Verge,P (2024) Corruption: which States have seen their situation worsen? https://www.lesechos.fr/monde/enjeux-internationaux/corruption-quels-etats-ont-vu-leur-situation-emperer-2073074 Poor political will, as well as certain legal difficulties, help to explain the rise in the number of reservations as an uneven pace of legislative development. Discontinuity of standards. The proliferation of international conventions has indicated the legal challenges faced by national legislators at the time of transposition. The Member States of the European Union, as previously elaborated, found themselves in a triple obligation that they found very difficult to fulfill: These States had to adapt to the obligations of the fight against corruption imposed by the EU, the OECD, the United Nations and the Council of Europe. Each instrument, depending on the international organization, has an autonomous logic: the diversification of the interests protected (human and economic rights) necessarily leads to a "discontinuity of standards". Also, if certain elements are common, the field of application is not identical (public or private corruption, related crimes) and numerous provisions diverge: the definition of public officials, that of offences and sanctions, liability of legal persons, skills,

etc. Furthermore, the harmonisation of criminal law is significantly limited by the numerous margins of appreciation and the possibility of issuing reservations, intended to guarantee a certain flexibility and to take into account divergences between national legal systems, but which complicate the reading of the descending phase, from international to national.

5. EXTERNAL AND INTERNAL PRESSURES

In order to encourage states to respect their international obligations, they were aware that they were faced with two sources of internal and external nature that exerted constant pressure on the government. It is evident that each international convention is accompanied by the imperative to create an evaluation mechanism, and even an ad hoc monitoring group, which allows for periodic monitoring and assessment of the adopted measures and the writing of reports dedicated to incriminations resulting from corruption. The adopted methodology, called "peer review", presents common features for each cycle, the theme of which is precisely defined. In such a case, the state is evaluated by filling out a self-assessment questionnaire, then, in the second phase, several state evaluators conduct an analysis of the texts, case law and practices, supported by a site visit. Finally, the phase of adoption of the report occurs, which contains non-binding recommendations from all members of the monitoring group. In this report, the country under review does not have a major influence, and the media provides the Reporting which is generally transmitted on a voluntary basis. It seems that the advertising of the fight against corruption is useful for three categories of actors. First of all, lawyers, who acquire a comparative, and valuable tool for thinking about the evolution of European, national and other European law. The third segment of users are the texts and the main case law, which are often contextualized by foreign lawyers (professors, judges, lawyers, etc.). Then, the legislator is subject to external pressure, and another benefit is the comparative analysis of the progress of the fight against corruption in other countries. This allows political elites to conceptualize political guidelines that are beneficial for their country in this domain. The tensions that may arise in the course of relations, due to the country's resistance to certain reforms, also allow to identify numerous challenges in the fight against corruption. Finally, anti-corruption associations can find leverage to support their actions and demand new legislative intervention. Second, the role of civil society has been exponential since the mid-1990s. Anti-corruption associations have sometimes developed worldwide, as is the case with the Transparency International association, and have exerted constant pressure on states. Some initiatives have been doomed to failure, but others have directly influenced public authorities, for example, as was the possible introduction of a “judicial convention of public interest” in the so-called Sapin 2 bill in France. This initiative was supported and defended several months in advance by the local branch of Transparency International. Kennard,M./McEvoy, J.(2020)The statistical classification of states, using for example the Corruption Perceptions Index, represents an additional source of pressure. In the same vein, national or European institutions relied on anti-corruption associations to influence the reports that guided public policies. Therefore, the study also used the productions of anti-corruption associations (reports, conferences, press reviews) to the extent that it was often based on the work of lawyers. Pressures accompanied the legislative reforms of all the Member States of the European Union. (Budsaratragoon,P./ Jitmaneeroj, 2019)

6. IMPLEMENTATION OF THE LEGAL FRAMEWORK

Effective repression of corruption, the globalization of the fight against corruption gave hope that the new consensus would go beyond simple transposition towards effective repression of corruption. Several elements allow for progress but the problem remains unresolved. With regard to transnational corruption, numerous judgments of European companies abroad, especially by the US authorities, tended to demonstrate the relative ineffectiveness of the European Union Member States in the fight against corruption. Until the early 2000s, the pressures exerted by the US had as their main objective the adoption of an international convention, at the same time several foreign companies were prosecuted on the basis of the FCPA. After the entry into force of the OECD convention, a “new era” of the FCPA began in the fight against corruption itself, which threatened to grow into an “economic and diplomatic weapon” in the protection of US foreign trade. The European Union and its member states, following the example of France, which imposed only one sentence against a legal entity for active corruption of a foreign public official, were passive and powerless in this battle. As for other forms of corruption, cases continued to be regularly updated, without necessarily leading to criminal convictions, which makes it difficult to assess the progress made. Thus, the "anti-corruption policy" also affected countries outside Europe, the candidate countries for EU membership as well as the EU Member States. Organized crime also developed, whose activities through corruption resembled the problems that affected Italy after the great "clean hands" operation. Finally, the difficulties affecting judicial cooperation always posed a risk of impunity. The weak deterrent nature of the repressive framework leads those involved in the fight against corruption to diversify their approaches, often in a non-focused manner, and to opt for pressure that is no longer vertical (international-nation) but horizontal. The risk of corruption has thus

gradually integrated the ethical concerns of companies, especially around their compliance with US anti-corruption legislation. Multinational companies have been called upon to participate directly in the fight against corruption. In an ambitious manner, and sometimes to be able to respond to calls for tenders, some companies have also gone beyond their legal obligations and integrated corruption as their concern for social and environmental responsibility (SCR). However, the development of a culture of compliance or , or "compliance", has remained a long and complex process, especially in the absence of clear and relevant principles between countries. The real risk is to promote an anti-corruption policy reduced to an autonomous being that works on empty, no longer feeding on anything but itself. even, producing even more procedures and practices, but without bringing the consistency, explanation and predictability specific to the rule of law. Some states have also developed public policies that go beyond their international obligations, but which mainly concern preventive measures. Thus, an increasingly important place is attributed to transparency that extends for example through the questionnaires of elected officials or even to the activities of "interest representatives", or lobbying, in order to avoid conflicts of interest.(Gaurav R.2023)

7. PILLARS OF ANTI-CORRUPTION STRUCTURES

At the international level, the difficulties in the fight against corruption have focused on the interaction of the various monitoring bodies in order to avoid duplication and overloading of administrative measures. The impact of monitoring groups on the repressive framework of the assessed countries has shown a tendency to reduce their number but also to prevent answers to current questions regarding corruption. The advice of experts is that it is desirable for the EU and its members to return to vertical pressure. In this context, the return to pressure vertical pressure from the international to the national level is to provide an answer to the problems of judicial cooperation and effective enforcement. Consultation of international actors seems to be essential to remove certain legal uncertainties such as the transnational application of the principle. Beyond these adjustments, some authors advocate a change of paradigm, moving from an interstate logic to a supranational logic. The main proposal in this area is to transfer the international corruption dispute to the International Criminal Court. However, this still seems a distant goal given the rare initiatives. More pragmatically, it would be for the European Union to offer a solution for this necessary "European surge" in the fight against corruption. Complexity can create an uncertain and relevant place to breathe new impetus into the fight against corruption. These interactions have the consequence of renewing the question of the place of the fight against corruption in the area of freedom, security of citizens and the constant expansion of justice. The first attempt by the European Community to impose the criminalization of active and passive corruption goes back to the draft treaty, presented in 1976 by the Commission and "with the amendment of the Treaties establishing the European institutions in order to adopt common provisions for the criminal protection of the EU's financial interests and the enforcement of the provisions of the said Treaties". Articles 3 and 5 of the protocol annexed to the above-mentioned draft agreement provide for an obligation for each Member State to sanction active and passive corruption of a public official in an equivalent manner to that of a national and an official of the European Communities. The mechanism makes it possible to compensate for the lack of EU competence in criminal matters and is based on the principle of assimilation: "the principle of assimilation consists in requiring the Member States to grant the interests of the EU a level of protection equivalent to that which they grant to their own interests". If the draft agreement encountered insurmountable difficulties, the principle of assimilation persisted, above all under the influence of the Court of Justice of the European Communities 179 before being adopted by the Maastricht Treaty 180 , then explicitly inserted in the European Union conventions relating to the fight against corruption. (Perez,A.M. 2023) De l'influence américaine dans la lutte contre la corruption transnationale, https://theses.fr/2023PA01D003 After the Maastricht Treaty, EU action was divided into three pillars. The first pillar, or "community pillar", brings together all integrated policies (such as the common agricultural policy, the customs union, the internal market, but also the protection of the EU's financial interests), together with the skills that can be shared or pooled according to the "community method": the EU Commission has a monopoly on initiative and submits its proposal to the European Parliament and the Council, which adopt directives or regulations by qualified majority or absolute majority. The second pillar, by contrast, concerns the common foreign and security policy (CFSP), while the third pillar concerns police and judicial cooperation in criminal matters with the "intergovernmental method".

8. THE SIGNIFICANCE OF THE GRECO:ANTI-CORRUPTION BODY OF THE COUNCIL OF EUROPE

The right of initiative for anti-corruption action belongs jointly to the EU Commission and the Member States. In most cases, the Council of the EU itself adopts the proposed instrument according to the rule of unanimity. "Criminal jurisdiction is logically placed in the third pillar. "The European Union is only a meeting place for the

political skills of the EU and the Member States in a single institutional framework". It is a precise institutional framework where the repressive instruments of the fight against corruption are adopted. The analysis itself cannot be free from the issues related to European criminal law. The choice of Member States (instruments, objects, contents) is constantly subject to tension between the necessity of implementing the fight against corruption and the fear of the uncontrolled transfer of the sovereignty of the states in favor of the European Union. In the mid-nineties, although corruption was not explicitly mentioned in the Maastricht Treaty, from a political perspective, the desire to intensify the fight against this phenomenon was manifested. It was clear that it must be systematically supported by starting from the broader and lofty goals of the EU. Within the framework of the Council of Europe in 1999, GRECO (Group of States against Corruption is an anti-corruption body of the Council of Europe) was established by seventeen countries of the Council of Europe. Thanks to GRECO, the EU has an effective source of assessment of corruption with which it fed its own anti-corruption report. However, this methodology there were also many shortcomings, among which stands out the subjectivity of the member states regarding their corruption record. GRECO became responsible for monitoring the application of the twenty the guiding principles adopted in 1997 and the implementation of the legal instruments according to the Action Programme against Corruption. In 2011, the EU established a "mechanism for EU monitoring in the fight against corruption with periodic evaluation" in accordance with the Treaty on the Functioning of the EU. On the basis of Article 67§3 TFEU, the Union has the right to intervene to ensure a high level of security and measures to combat crime. The first EU anti-corruption report was presented in the form of a Communication from the European Commission, since February 2014, to the Council and the European Parliament. A few months later, the European Court of Auditors (hereinafter "ACC") expressed critical attitude, after which the conclusions of the Justice Council followed Home Affairs (hereinafter "JHA Council") From the point of view of legal frameworks, the Decision of 6 June 2011 establishing a "European Union monitoring mechanism in the fight against corruption for the purpose of "periodic evaluation periodic review" was adopted within the framework of the Treaty on the Functioning of the EU. Indeed, on the basis of Article 67§3 of the TFEU, the Union has the right general intervention to ensure a high level of security through security measures prevent and combat crime. This competence covers them the field of anti-corruption policies, in accordance with the defined frameworks.

9. CONCLUSION

While the majority of Member States are already subject to three international anti-corruption assessment mechanisms (OECD, GRECO and UNCAC), the preparation of a new EU anti-corruption report necessarily raises the question of its complementarity with the existing monitoring. With the intervention of the President of the EU Anti-Corruption Commission in autumn 2022, the impression was given that efforts were being made within the EU to improve the situation in this area. After the major corruption scandal Katargate, the European Union seems to be mobilizing in view of the corruption of numerous MEPs. To show interest, the EU Commission proposed several documents on the fight against corruption in 2023, a few months before the European elections - communication COM(2023) 311 final containing the proposal for an interinstitutional ethics body, presented on 8 June 202336(*); - the proposal for a directive COM(2023) 637 final establishing harmonised rules in the internal market on the transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, presented on 12 December last year; The impression was that this activity was overdue and that the EU was obliged to take even more significant steps in this area for the fight against corruption.

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