THE INTERNATIONAL LEGAL FRAMEWORK AGAINST CORRUPTION

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PURPOSE

The dynamics of international relations in the last few decades have led to the evolution of various forms of corruption in international practice of organized crime. As one of the complex human phenomena that has a deep moral basis, corruption is often defined as a kind of "perversion" of honesty and fidelity in performing entrusted duties, i.e. as an "unfair" or "unfaithful" behavior that leads to bribery or which leads to "abuse of the entrusted authority for private gain" (Nicholls et al., 2005; Llamzon, 2014: 19). Although corruption is easier to understand in everyday colloquial speech than in legal theory and practice, it is clear that it is an extremely complicated behavior that has several modalities that have developed in parallel with the development of society. So today, corruption is manifested through covert and often long-term actions of one or more individuals involved in the functioning of the public sector (which often includes close ties to the private sector), who, through the abuse of their official position, acquire personal property benefit, which essentially affects the undermining of the foundations of the economic and legal order of the States. This has become particularly evident in the recent period when traditional ethnic and national criminal groups have given way to multiethnic and multinational macro-regional criminal groups that have taken advantage of the diversification of international trade and improved communication and financial systems around the world. As corruption raises serious moral, economic and political dilemmas, undermines institutions and democratic, ethical and legal values, good governance, efficient, transparent and com-

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petitive market operations, the international community has been forced to adopt important international legal instruments to combat this scourge (which is usually associated with organized crime, especially economic crime, human and drug trafficking, money laundering and terrorist financing), which negatively affect the sustainable economic development of States (Dimitrijević, 2018). Money laundering and terrorist financing on international and national legal level. In: Thematical Proceedings of VIII International Scientific Conference, Archibald Reiss Days. Belgrade: University of Criminal Investigation and Police Studies). Working diligently to adopt a series of international conventions through the United Nations, the European Union, the Council of Europe, the Organization for Economic Cooperation and Development, the Organization of American States, the African Union and other important international organizations, the international community has established a comprehensive and a multidisciplinary international legal framework with the legal standards needed to effectively combat corruption (Simović & Šikman, 2017). The purpose of this study is limited to the analysis of the most important international legal instruments of international organizations that may be important for our successful and effective fight against corruption.

DESIGN/METHODS/APPROACH

Using the appropriate scientific methods for legal analysis, in the following section the author identifies and interprets the provisions of conventions and other international legal instruments of international organizations that make up the international legal framework for the fight against corruption.

UNITED NATIONS CONVENTION AGAINST CORRUPTION

The United Nations Convention against Corruption was adopted in New York on 31 October 2003 and entered into force on 14 December 2005 (UNTS, 2003). According to the general provisions, the Convention was adopted to promote and strengthen measures to prevent and combat corruption more effectively and efficiently, then to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery, as well as to promote integrity, accountability and proper management of public affairs and public property. The Convention is applied for the purpose of preventing corruption, conducting investigations and prosecuting, as well as for the purpose of freezing, seizing, confiscating and recovering proceeds of crime. Each State Party shall take the necessary measures, including legal and administrative measures, in accordance with the fundamental principles of its do-

mestic law, to ensure compliance with the obligations of this Convention. Fulfillment of these obligations, however, cannot be to the detriment of the sovereign equality and territorial integrity of other States, nor can it be to the detriment of their domestic jurisdictions (UN Office on Drugs and Crime, 2004). With regard to preventive measures, the Convention obliges States to regularly evaluate their domestic anti-corruption legislation. It also obliges States Parties to establish effective practices and to develop and implement effective, coordinated anti-corruption policies that promote public participation and reflect the principles of the rule of law, good governance of public affairs and public property, integrity, transparency and accountability. In addition, the Convention obliges States to cooperate with each other in accordance with the basic principles of their legal system and to develop such relations with relevant international and regional organizations in order to implement preventive measures. In particular, this cooperation, in accordance with the provisions of Article 5 of the Convention, may include participation in international programs and projects aimed at preventing corruption. States Parties to the Convention are obliged to establish special bodies to monitor the implementation of anti-corruption policy. They are obliged to provide such bodies with appropriate material and professional support and to provide them with an independent position in the performance of their functions. States are obliged to strengthen the systems of hiring, employment, retention, promotion and retirement of civil servants, and to adopt appropriate legislation on the appointment of public officials. In this regard, they will particularly advocate for transparency in the financing of candidacies for public office and, where necessary, for the financing of political parties. According to the Convention, they are also obliged to strengthen the transparency of systems that avoid conflicts of interest. Each State Party shall endeavor to apply, within its institutional and legal system, codes or standards of conduct for the proper, honorable and proper performance of public functions. Relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials, contained in the annex to General Assembly resolution 51/59 of 12 December 1996, should also be taken into account. States are also required to establish measures and systems that require public officials to make statements to the appropriate authorities regarding, *inter alia,* their other activities, employment, investment, property and gifts of significant value or benefits that may give rise to a conflict of interest in relation to their work as public officials. They should also make it easier to report acts of corruption, as well as take disciplinary and other measures against public officials who violate the provisions of the code or anti-corruption standards. With regard to public procurement management, the Convention provides for the establishment of systems based on transparency, competition and objective criteria in decision-making that are effective in preventing corruption. Similarly, the Convention provides for the management of

public finances, which emphasizes the existence of procedures for the adoption of the State budget, transparency of income and expenditure reports, the existence of a system of auditing standards, effective risk management, internal control and adequate corrective measures. States are required to take such civil and administrative measures as may be necessary under the basic principles of domestic law to preserve the integrity of the accounting records. In this sense, States are obliged to take measures that may be necessary to increase the transparency of public administration, including its organization, functioning and decision-making procedures. Without affecting the independence of the judiciary and the prosecutor's office, States still have a duty to take measures to strengthen their integrity and prevent opportunities for corruption. The provision of Article 12 of the Convention, which refers to taking preventive measures to prevent corruption in the private sector, is very important. Namely, the Convention prescribes effective, proportionate and dissuasive civil, administrative and criminal penalties for non-compliance with such measures, which include, *inter alia*: improving cooperation between law enforcement agencies and relevant private entities; implementation of standards and procedures to preserve the integrity of relevant private entities, including codes of conduct for fair, honest and proper conduct of business activities and all relevant professions and to prevent conflicts of interest, and to promote good business practice among companies and in contractual relations with the State; increase transparency in relations between private entities, including, where necessary, measures relating to the identity of legal and natural persons involved in the establishment and management of corporations; preventing the abuse of procedures governing private entities, including those relating to subsidies and permits issued by public bodies for the conduct of business; prevention of conflicts of interest by introducing restrictions, where necessary and for a reasonable period of time, on the performance of professional activities of former public officials or the employment of public officials in the private sector after leaving public office or retirement, where those activities or employment are directly related to who were or were supervised by these public officials during their term of office; ensuring that private companies, taking into account their structure and size, have sufficient internal audit control and are subject to appropriate audit and certification procedures. In accordance with their regulations on bookkeeping and data storage, publication of financial statements and accounting and auditing standards, States are required by the Convention to prohibit the opening of unregistered accounts, unregistered or inadequately identified transactions, recording of non-existent expenditures, documents and intentional destruction of accounting documents before it is provided by law. States should also ban tax deductions from expenses that constitute bribes. They have a duty to take public information measures and to ensure that the public is informed of the anti-corruption bodies listed in this Convention through which corruption can be report-

ed. In addition, States have a special obligation to establish an internal regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide official or unofficial services for the transfer of money or valuables and, where appropriate, other bodies which are particularly susceptible to money laundering. In addition, States are required to consider establishing a financial intelligence unit to serve as a national center for collecting, analyzing, and providing information on potential money laundering. Also, States are obliged to examine the possibility of applying appropriate and feasible measures that require financial institutions to tighten control over the sending of money and payment instruments abroad without hindering the movement of legitimate capital. The Convention calls for stronger international judicial co-operation and co-operation with financial regulators. To this end, it directs States to use the guidelines and relevant initiatives of regional, interregional and multilateral organizations to combat money laundering (Art. 14). According to the provisions of Articles 15 to 25, the Convention stipulates the obligation to incriminate a wide range of criminal acts, namely: bribery of domestic and foreign public officials and officials of international organizations, embezzlement, abuse or other illegitimate use of property by public officials, abuse of influence and functions, illegal enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment and obstruction of justice. In addition to the obligation of States to incriminate and punish natural persons for committing, complicity, aiding or abetting corruption, the Convention also stipulates the obligation of States to prescribe criminal, civil or administrative liability of legal entities in their legislation. The provision of Article 30 of the Convention, provides for the obligation of the Contracting Parties to prosecute and sanction perpetrators of corrupt acts. In addition to the means acquired through the commission of acts of corruption or used for their commission, in the provision of Article 31, the Convention regulates in detail the methods of their identification, freezing, seizure and confiscation. A very important incentive for reporting corruption offenses is provided for in Article 33 of the Convention, which provides for the protection of whistleblowers. The consequences of corruption under the Convention must be remedied through the prosecution of perpetrators and through compensation for damages that does not preclude the possibility of annulment or termination of the contract, revocation of the concession or other similar instrument or for taking another remedy. In fact, the Convention emphasizes that the return of goods acquired through acts of corruption is one of the basic principles and that the contracting States are obliged to cooperate with each other in this regard and provide assistance to each other. After all, Chapter V of the Convention is dedicated to this, which provides in detail the mechanisms for the return of property through international cooperation in the implementation of confiscation. It also encourages the conclusion of multilateral and bilateral

agreements in order to improve this procedure. Jurisdiction for criminal prosecution under the Convention is without prejudice to the norms of general international law, since the Convention prescribes territorial jurisdiction and jurisdiction based on the personality of the law (active and passive protective principle), which does not exclude criminal jurisdiction in the manner prescribed by domestic law. In order to successfully and effectively combat corruption, the Convention provides for the establishment of special national bodies, strengthening cooperation with competent national and international bodies for the prosecution of corruption, interstate cooperation and encouraging cooperation with the private sector. According to the Convention, international cooperation in prosecuting and punishing corruption should be conducted in accordance with the principle of *aut dedere, aut punire.* At the same time, there is a possibility of transferring proceedings in order to achieve criminal prosecution. Special measures to improve the prevention and punishment of corruption are provided for in Chapter VI of the Convention, which deals with the provision of technical assistance and the exchange of information related to these acts. Technical assistance includes the implementation of appropriate anti-corruption plans and programs, including material support and training, as well as the exchange of relevant experience and specialist knowledge, which should enable better international cooperation between States. In order to ensure the consistent application of the provisions of the Convention, the Conference of the States Parties has been established. The Conference as monitoring mechanism is established to "improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this convention and to promote and review its implementation" (Article 63). The Secretary-General and the Secretariat of the United Nations shall provide the necessary services to the Conference of the States Parties to the Convention (Article 64). Given that each State Parties is given the opportunity to assess what measures it will take to fulfill its obligations under the Convention, in practice there has been inconsistent application of the stipulated anti-corruption measures, which is why the UN established the Review Mechanism at the Doha Conference in 2009. Its role is to submit annual reports with self-evaluation of the results achieved in the fight against corruption. In that way, they wanted to overcome the perceived weaknesses and encourage the States to show stronger readiness to respect the recommendations not only of intergovernmental bodies, but also of civil society organizations and independent experts. Finally, it is worth noting that the UN, in addition to this Convention, also adopted the Convention on Transnational Organized Crime in 2000, which entered into force in 2003, and which also calls on the State Parties to criminalize corruption (I.L.M., 2001: 334-394).

THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Twenty-nine OECD member States and five non-member States (Argentina, Brazil, Bulgaria, Chile and Slovenia) signed on 17 December 1997 the Convention Combating bribery of foreign public officials in international business transactions. The Convention entered into force on 15 February 1999 (I.L.M., 1998: 1-11). In a sense, the OECD Convention follows the guidelines contained in the UN Declaration against Corruption and Bribery in International Commercial Transactions, supplemented by General Assembly Resolution 51/191 of 21 February 1997, which calls on member States to take appropriate measures and cooperate in all levels in the fight against corruption and bribery in international commercial transactions (United Nations, 1997). Unlike the UN Convention against Corruption, which covers a wide range of incriminated persons, the OECD Convention is limited to incriminating persons who bribe foreign public officials (Balmelli & Jaggy, 2004). In other words, the Convention implies the responsibility only of those who bribe (active bribery), not the responsibility of foreign officials who seek or receive or receive bribes (passive bribery). "Foreign public official" under the Convention includes any person holding a legislative, administrative or judicial office in a foreign country, whether appointed or elected; any person holding public office for a foreign country, including there is also a function in a public service or public enterprise and any official or agent of a public international organization. The bribery of foreign public officials in international business transactions does not exclude the criminal acts of incitement, aiding and abetting, authorization, attempt and conspiracy. The perpetrators of these acts may be natural persons and legal entities. Liability of a legal entity, in addition to criminal liability, also includes civil and administrative liability. States Parties have committed themselves to sanctioning bribery, and sanctions may include seizure or confiscation of property or the application of similar financial sanctions. With regard to the determination of jurisdiction, the Convention adopts the territorial principle. States Parties are also obliged to prosecute their nationals for offenses committed abroad on the basis of personal principle, and where such jurisdiction exists for other offenses. In the event of a conflict of jurisdiction, the contracting States shall consult each other. Also, each party is obliged to consider whether its jurisdiction in the case (on territorial or nationality basis), would lead to the effective implementation of measures in the fight against bribery of foreign public officials and, if not, take corrective steps. Investigation and prosecution of the bribery shall be subject to the applicable rules and principles of each contracting States. According to the Convention, extradition should take place in accordance with internal regulations and on the basis of mutually concluded agreements. Ac-

cording to the Convention, States have an obligation to prohibit the keeping of hidden accounts, irregular accounting and to eliminate all irregularities that lead to bribery or concealment of bribery. In this regard, they are obliged to suppress the crime of money laundering and to provide each other with international legal assistance in criminal matters. Although the OECD Convention is limited in subject matter and territory compared to the UN Convention, it has not been ineffective as it has affected the harmonization of domestic legislation with international legal standards. Thus, according to Article 12 of the Convention, it follows that the States are obliged to cooperate and promote its implementation and enforcement. Monitoring of the implementation of the Convention is done within the OECD Working Group on Bribery through a peer review process, which includes first monitoring the compliance of domestic legislation with the Convention, and then monitoring the implementation of the legislative framework in practice (OECD, 2008: 12; Razzante, 2020: 170). As weaknesses have been identified in the application of certain legislative frameworks in practice, the OECD adopted on 26th November 2009, Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Previously, the Council adopted the Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials on May 25 of the same year, which explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. The Recommendation for Further Combating Bribery of Foreign Public Officials recommends in particular that governments encourage their enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. This specifically includes preventive measures against small facilitation payments, protecting whistleblowers and improving communication between public officials and law enforcement authorities (Chance, 2019: 8). Two Annexes have been added to this Recommendation: "Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", which refers to specifying the responsibilities of foreign public officials and legal entities and effective implementation of obligations under the Convention. as well as "Good practice guidance on internal controls, ethics, and compliance", which should serve as a legally non-binding guide for companies in establishing effective internal controls, ethics and compliance programs or measures to prevent and detect foreign bribery. In November 2016, the OECD Council issued a new Recommendation for Development Cooperation Actors on Managing the Risk of Corruption which recommends the application of comprehensive methods in risk management by relevant entities responsible for trade, export credit, international co-operation and diplomatic representations as well as the private sector. After that period, the special OECD Working Group undertook to conduct a comprehensive revision

of the 2009 Anti-Bribery Recommendations. The OECD Council adopted on 13th March 2019, new Recommendation directing States to take adequate measures to deter bribery in international business transactions benefiting from official export credit support. The latest Recommendation was adopted on 26th November 2021, which intensified efforts to prevent, detect and investigate foreign bribery. Taking into account the changed circumstances, these Recommendation support the strengthening of international cooperation in the implementation of foreign laws, introduce the principle of using non-judicial solutions in cases of bribery abroad, support legal entities to comply with anti-corruption rules, and promote comprehensive and effective protection for persons reporting bribes. This strong OECD anti-corruption framework covers areas such as taxes, official development assistance, export credits and State-owned enterprises (OECD, 2021).

COUNCIL OF EUROPE CRIMINAL LAW CONVENTION ON CORRUPTION

The Committee of Ministers of the Council of Europe adopted the text of the Criminal Law Convention on Corruption in November 1998. The Convention has been open for signature since 27 January 1999, and entered into force on 1st, July 2002 (European Treaty Series, 1999). The Protocol was subsequently added to the Convention, which entered into force on 1 February 2005 (European Treaty Series, 2003). Although the Convention formulates corruption as bribery (Article 13), it defines a wide range of acts of corruption that may constitute forms of transnational crime. The Convention and additional Protocol goes beyond the OECD Convention, as they criminalizes active and passive bribery of domestic and foreign public officials, national and foreign parliamentarians and members of international parliamentary assemblies, active and passive bribery in the private sector, active and passive bribery of officials of international organizations, active and passive bribery of domestic, foreign and international judges and officials of international courts, active and passive trading in influence, money laundering of proceeds from corruption offenses and accounting offenses connected with corruption offenses. With regard to the above-mentioned solution to corruption or bribery of officials of international courts, the Rome Statute of the International Criminal Court, which was adopted almost at the same time as this Convention, obviously had considerable influence (Schabas, 2004: 66). Under the provisions of the Convention, legal entities may also be held liable for bribery offenses committed in their favor. This liability includes the liability of any natural person which acts individually or within the body of the responsible legal entity, which has a leading position or power of attorney to represent that legal entity or the authority to make decisions, or to exercise control within that legal entity. Li-

ability of legal entities generally extends to criminal offenses trading in influence and money laundering (Article 18). As for the legal determination of active and passive bribery, it is considered that these are two sides of the same phenomenon. The briber's act offering, promising or giving the undue advantage and the bribe's act of accepting the offer, promise or gift are made independent criminal offences. However, the briber and the bribee will not be punished for complicity in the other one's offence (Council of Europe Explanatory Report, 1999). By the provisions of the Convention, States have accepted the obligation to incorporate the envisaged solutions into their national legislation. However, most of the provisions are of an optional nature and leave the State free to regulate the issues of incrimination of various forms of corruption in different ways. However, this does not completely relieve the State of its responsibility to apply the appropriate legal measures necessary to criminalize the commission, aiding or abetting of corruption offenses. The Convention imposes an obligation on States to provide effective, proportionate and dissuasive sanctions and coercive measures in their internal legal order, including the deprivation of liberty of perpetrators of corruption. In the case of legal entities, in addition to criminal and non-criminal sanctions, the Convention also prescribes the possibility of monetary sanctions. With regard to jurisdiction, the Convention accepts the principle *aut dedere, aut judicare*. At the same time, States may, with their internal legislation, establish territorial or personal jurisdiction in relation to the place where the criminal offense was committed, i.e. according to the citizenship of the perpetrator of the corruption. States reserve the right to regulate this issue in a different way and to make certain reservations when accepting the obligations under the Convention in relation to the application of the provisions on jurisdiction (Article 17). This, of course, does not exclude the obligation of States to establish jurisdiction for corruption offenses committed abroad when the perpetrator is on their territory and has their citizenship and for whom an extradition request has been made (Degan, Pavšić & Beširević, 2011: 308). For the effective fight against corruption, the Convention provides enhanced international co-operation and mutual assistance, extradition and the provision of information in the investigations and prosecutions of corruption offenses. In this regard, States have the possibility to form specialized bodies that would be authorized to act effectively in this area (Article 20). The provision of international legal assistance remains at the discretion of national authorities under the provisions of the relevant international instruments on international cooperation in criminal matters, or arrangements agreed on the basis of uniform or reciprocal legislation (Article 21). The Convention will be applicable whenever there is no international instrument or arrangement or when the provisions of the Convention are more favorable than the provisions of international instruments and arrangements (Art. 25). States would have the option of rejecting a request for international legal assistance with a call to protect its fundamental interests,

national security and sovereignty or *ordre public* (Art. 26). The monitoring mechanism of the implementation of the Convention is carried out by the Group of States against Corruption (GRECO) (Resolution of the Committee of Ministers of the Council of Europe, 1999). Membership in GRECO is not limited to member States (for example, the United States is a member of this body). The goal of GRECO is to effectively improve the ability of its members to fight corruption through the process of monitoring the implementation of anti-corruption measures and monitoring compliance with contractual obligations, monitoring compliance with the Twenty Guiding Principles for Combating Corruption developed by the Multidisciplinary Corruption Group and monitoring the implementation of obligations from other international instruments in accordance with the Program of Action against Corruption (Resolution of the Committee of Ministers of the Council of Europe, 1997). Accordingly, GRECO helps to identify gaps in national anti-corruption policies, encouraging the necessary legislative, institutional and practical reforms. This body also provides a platform for the exchange of best practices in preventing and detecting corruption. The evaluations carried out by this body focus on specific thematic areas that have been identified as particularly risky for most member States (Trifunović-Stefanović, 2020: 43).

COUNCIL OF EUROPE CIVIL LAW CONVENTION ON CORRUPTION

The Committee of Ministers of the Council of Europe adopted the text of the Civil Law Convention on Corruption in 1999. The Convention entered into force in November 2003, following the deposit of the required number of instruments of ratification (European Treaty Series, 1999). The Council of Europe Civil Law Convention is the first international convention to deal with the civil law aspect of corruption. Its provisions are mandatory and reservations to any of the provisions are not allowed. The Convention regulates the issues of compensation for damages, State responsibility, statute of limitations, validity of contracts, protection of employees (whistleblowers), issues of reporting and auditing, obtaining evidence and international cooperation. It is the only international convention that contains a definition of corruption. Corruption under Article 2 of the Convention means "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof". It follows from this formulation that the Convention limited the definition of corruption only on its aspect of bribery. The Convention obliges the State Parties to provide in their domestic legislation effective remedies for persons who have suffered damage as a result of

acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. This compensation should cover material damage, loss of profits and non-pecuniary loss. In order to obtain compensation, the injured party in the legally prescribed court proceedings has to prove the occurrence of the damage, whether the defendant acted with intent or negligently, and the causal link between the corrupt behavior and the damage. There is no liability if the person damaged by part of the corruption contributed to the damage through his own fault. States are obliged to provide in their internal legislation joint and several liability in cases where there are several perpetrators of corruption. The Convention contains a general provision on the nullity of contracts in the event of corruption. In the context of the development of modern international economic relations, this provision may be of particular importance for developing countries when the damage is caused by transnational corruption (Harvard Law and International Development Society, 2014-2015). The Convention provides for a subjective and objective limitation period. The first is 3, while the second is 10 years. The advantage of this approach is in easing the criteria for proving responsibility in civil proceedings, in which it is necessary to point out arguments about illegal behavior, direct and conscious doing or not doing, inciting or aiding, which contributes to active and passive bribery. In that sense, States are obliged to prescribe effective procedures for the acquisition of records in civil proceedings arising from an act of corruption, as well as to prescribe the possibility that courts may issue interim measures to ensure the interests and rights of parties during civil proceedings. A particularly important provision in the Convention relates to the obligation of States Parties to legislate appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions. In such situations the Convention incorporates the principle of vicarious liability under which injured parties may claim compensation either from a State if the defendant is a public official or from any appropriate authorities if he is not a public official (Article 5). Otherwise, the Committee of Ministers of the Council of Europe adopted on 11 May 2000 a Recommendation on Codes of conduct for Public Officials, which includes a Model Code of Conduct for Public Officials. This document gives suggestions on how to deal with real situations frequently confronting public officials, such as gifts, use of public resources, dealing with former public officials, etc. The Code stresses the importance of the integrity of public officials and the accountability of hierarchical superiors. It specifies the standards of conduct of public officials, and also contains general principles that public officials must adhere to while in public office, i.e. when they leave that position in the public service, especially in relations with former public officials. The Civil Law Convention on Corruption pays special attention to the protection of whistleblowers. In this regard, State Parties are obliged to take the necessary measures to protect all employees who

report their suspicions of corruption in good faith and on reasonable grounds. Finally, the Convention addresses also international co-operation. In this regard, there is an obligation of the parties to co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgments and litigation costs in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters as well as in accordance with their internal law. The provision of Article 12 of the Convention defines GRECO as a monitoring mechanism for implementations through previous evaluations and direct visits to countries.

CONVENTION ON THE PROTECTION OF THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS

In order to combat fraud affecting the financial interests of the European Communities, the Council of the European Union in July 1995 encouraged the drafting of the Convention on the Protection of the European Communities' Financial Interests (Council of the European Union Act, 1995). The Convention entered into force on 17 October 2002. It has been supplemented by a series of protocols over time. The First Protocol to the Convention adopted in 1996 makes a distinction between active and passive corruption of public officials. It also defines an "official" at national and EU levels and unifies criminal sanctions for corruption (First Protocol, 1996). Second Protocol, adopted in 1997, further clarified the Convention regarding the issues of the liability of legal persons. In this regard, Second Protocol criminalizes legal persons for fraud, active corruption and money laundering committed in their favor by any person, individually or within the body of a legal entity having a managerial function within the legal entity, on the basis of power of attorney or authority to make decisions on behalf of a legal entity or on the basis of powers to exercise control within the legal entity. The incrimination also extends to complicity, incitement and attempt to commit any of the aforementioned crimes (Second Protocol, 1997). The Convention replaced the previously concluded treaties on fraud prevention. It is very important as it has a preventive effect in terms of public expenditures and budget revenues. Under the Convention, "fraud" means fraudulent acts defined as all acts affecting the European Communities' financial interests, including any intentional act or commission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; non-disclosure of information in violation of a specific obligation, with the same effect; the

misapplication of such funds for purposes other than those for which they were originally granted. In addition, fraudulent acts include the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, as well as non-disclosure of information in violation of a specific obligation, with the same effect. Also, the misapplication of a legally obtained benefit, with the same effect is treated as fraud. The Convention requires each Member State of the European Union to take all necessary measures to ensure that illegal conduct or fraud in both public spending and budget revenues, as well as participation in such actions, encouragement or attempt to take such actions, are subject to effective and proportionate criminal penalties that have a strong deterrent effect. In cases of serious fraud, the prescribed penalties must include imprisonment. Sanctions provided for legal entities should include criminal or non-criminal fines. Sanctions may also include other penalties such as exclusion from the right to public benefits or assistance, temporary or permanent disqualification from conducting commercial activities and placing under judicial supervision or issuing a court order for liquidation. In addition to the above obligation, the Convention stipulates that EU member States have a duty to take all necessary measures to determine their competence to prosecute corruption offenses. In this regard, the First Protocol establishes a number of criteria that determine the jurisdiction of the judicial authorities of a member State to prosecute corruption cases on a territorial and personal basis *(lex loci delicti comisii* and *lex nationalis)*. It also provides for the application of the protective principle when the offense is committed against a national of a member State, or when the offender is a Community official working for its institutions. In the event that a fraud constitutes a criminal offense involving at least two member States, it is the obligation of those countries to co-operate in investigating, prosecuting and enforcing sentences by, for example, mutual legal assistance, extradition, transfer of proceedings or execution of sentences in another EU member State. Efforts to improve the existing convention framework for the prevention of corruption at the EU level have led to the situation that the Treaty on the Functioning of the EU in Article 83 imposes an obligation on member states to criminalize corruption at the national legislative level (Treaty on the Functioning of the European Union, 2012). With a series of directives that followed, and of which perhaps the most important is Directive 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, the EU has consolidated key rules which member States should incorporate into their criminal law in order to prevent it at European level (Directive, 2017).

CONVENTION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION

Convention drawn up on the basis of the Treaty on EU on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (Treaty on EU on the fight against corruption, 1997). The Convention entered into force on 28 September 2005 and all EU countries have acceded to it. This regional international legal instrument deals with criminalization of active and passive crimes of corruption committed by Community public official or Member State officials. By definition, "Public official" by the Convention means a European or national official, including any national official of another EU country. "European official" means also any person who is an official or other contract staff member within the meaning of the EU Staff Regulations, as well as any person seconded to the EU by EU countries or any public or private body performing functions equivalent to those performed by EU officials or other servants. "National official" means an official or public officer as defined by the national law of the EU country in which the person in question performs that function for the purposes of application of the criminal law of that EU country. "Active corruption" means the intentional act of a person who promises or gives, directly or through an intermediary, any advantage to an official, for himself/herself or for a third party, to act or refrain from acting in accordance with his/her duty or in the performance of his/her functions in violation of his official duties. "Passive corruption" under the Convention means the reckless act of an official who, directly or through an intermediary, seeks or receives any advantage for himself/herself or a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with by his/her duty or in the performance of his/her functions in violation of his official duties. The text of the Convention implies the application of the principle of assimilation, which should oblige the member States to apply the same descriptions of corruption to national and public officials of the Community. According to the Convention, sanctions against perpetrators of the criminal offences must be effective, proportionate and dissuasive. For the establishing of jurisdiction member States may took over the legal solutions provided for in the Convention on the Protection of the European Communities' Financial Interests. It means that the judicial authorities of a member States may prosecute corruption cases on a territorial and personal basis or through the application of the protective principle. It is important to note that member States may adopt internal legal arrangements which go beyond the obligations set out in the Convention.

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

The Convention was adopted on 29th March 1996 and entered into force on 6th March 1997 under the inter-governmental framework of the Organization of American States (I.L.M., 1996: 724-734). The Convention obliges states to implement a number of measures in their judicial systems and public policies that include prevention, criminalization, assistance and international cooperation. These measures were supposed to establish the mechanisms necessary to prevent, detect, prosecute and eradicate corruption, especially those related to the performance of public functions. According to the Convention, the "public function" means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy. "Public official" is defined as any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy. Corruption under the Article 6 of the Convention means the following acts: seeking or accepting, by a government official or a person performing public functions, any object of monetary value or other benefit, in exchange for any act or omission in the performance of his public functions; offering or giving to a civil servant or a person performing public functions, any object of monetary value, or other benefit, in exchange for any act or omission in the performance of his public functions; any act or omission in the performance of his duties by a state official or a person performing public functions for the purpose of unlawful gain for himself or for a third party; fraudulent use or concealment of property arising from any of the foregoing acts and participation as a principal, co-principal, instigator, accomplice or accessory in the execution or attempted execution, cooperation or conspiracy to commit any of the above acts. The Article 8 of the Convention covers acts of transnational bribery and illicit enrichment. Transnational bribery by definition implies "the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions". Illicit enrichment is formulated in Article 9 as the "significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions". In view of the criminal offenses described above, the Convention requires States to adopt appropriate measures and legislation, as well as to strengthen mutual cooperation in order to prevent, detect, investigate and punish acts of corruption in accordance with the Convention. For the purposes of international

assistance and cooperation provided under this Convention, each States may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements. Establishment of an institutional system for combating corruption at the national level according to Article 3 of the Convention includes establishing and strengthening general standards of conduct of public officials, adequate mechanisms for their implementation, providing instructions to government staff to ensure proper understanding of their responsibilities and ethical rules governing their activities, revenues, assets and liabilities of persons performing public functions, establishing fair, transparent and efficient public procurement and employment systems, ensuring an efficient system of state revenue control, laws denying favorable tax treatment or corporations for expenditures made in violation of anti-corruption laws, establishing a system of state protection officials and citizens in good faith, report corruption, establish oversight bodies and mechanisms to prevent, detect, punish and eradicate corruption, deter from bribery of domestic and foreign government officials, ensuring mechanisms for controlling the operations of public companies, encouragement of officials, such as mechanisms to ensure that public enterprises and civil society and NGOs engage in anti-corruption activities; and study the further application of preventive measures. The Convention deals with matters of jurisdiction in Article 5. This provision defines that each Contracting Party shall adopt such measures as may be necessary to establish its jurisdiction over offenses. The Convention adopts the personal principle according to which the States Parties will be competent to prosecute corruption when this offense is committed by one of its nationalities or by a person who habitually resides in its territory. Also, like other international legal instruments, this Convention accepts the territorial principle for determining criminal jurisdiction when it determines that States Parties may have jurisdiction when the alleged criminal is present in its territory and does not extradite. Also, the Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law. In any case, however, this does not mean that the State will be able to circumvent the principle of representation that derives from the customary rule: *aut dedere, aut judicare* (Stessens, 2001: 923) The Article 15 of the Convention specifically obliges States to provide the widest possible assistance with regard to measures for the identification, search, freezing, seizure and confiscation of property or proceeds derived from or used in the commission of corruption offenses. In doing so, the State conducting the enforcement procedure may, in accordance with its own legislation, dispose of such property or may transfer part or all of the property to another State which assisted in the basic investigation or procedure.

THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

The Convention was adopted on 11 July 2003 at the AU Summit and entered into force on 5 August 2005 (ILM, 2005: 1-17: Schroth, 2005: 24-38). The Convention promotes the development of anti-corruption mechanisms, cooperation in combating corruption, coordination of policies and legislation of the contracting States, removal of obstacles to the enjoyment of basic human rights and freedoms, as well as fostering transparency and accountability in the management of public affairs. Like other previously analyzed international legal instruments, this Convention does not contain a comprehensive definition of corruption, but therefore uses an enumerative method to list acts that may constitute corruption. These offenses and related offenses include bribery (active and passive) in the public and private sectors, any acts or omissions in the performance of duties for the purpose of unlawful gain, trading of influence, diversion of property by public officials, illicit enrichment, use or concealment of proceeds from the acts listed in the Convention as well as money laundering. The Convention criminalizes these acts of corruption and related offences. It also obliges States Parties to adopt legislative and other preventive measures in the public and private sectors in order to combat these acts of corruption in an efficient and timely manner. According to the Convention, the perpetrators of the criminal offense are principal, co-principal, agent, instigator and accomplice, accessory after the fact, in a conspiracy to commit the enumerated acts. The Convention may also be applied to any other acts or practices of corruption and related offenses not described in the Convention on a reciprocal basis agreement of two or more states (Gebeye, 2011: 60). Although the Convention brings some striking innovations in international anti-corruption efforts, in particular by linking corruption and human rights (e.g. through a fair trial provision involving the application of the African Charter on Human Rights), it is interesting that it does not provide any remedy aggrieved individuals or groups of individuals could seek adequate protection of their rights through compensation or restitution. However, Article 16 of the Convention contains a solution according to which the contracting states are obliged to adopt legislative measures for the search, seizure, freezing, confiscation and repatriation of corruption. States are required to cooperate in recovering funds derived from corruption, even if extradition is not possible. This solution strengthens the cross-border fight against corruption, and provides significant funds for the future economic development of damaged countries. Jurisdiction for the prosecution of acts covered by the Convention is determined by Article 13 and it implies the application of the territorial, personal and protective passive principle. In addition, the application of the *ne bis in idem* rule is guaranteed. Extradition under the Convention presupposes the existence of bilateral treaties and agreements between States. In their absence, the

Convention itself is considered to constitute a sufficient legal basis for extradition for the acts covered by it. In each individual case, account should be taken of the solutions present in the internal legal order of States. The Convention elaborates on various types of mutual legal and international cooperation and the establishment of a Follow up mechanism in the form of an Advisory Committee on Corruption, whose tasks under Article 22 is to promote, encourage and implement anti-corruption measures throughout Africa (Olaniyan, 2004: 74-92)

FINDINGS

The previous analysis shows that in the international legal field, international organizations such as the United Nations, the Council of Europe, the Organization for Economic Cooperation and Development, the Organization of American States and the African Union, play a key role in legislation and codification of rules and legal standards on the fight against corruption. The reasons for this action of international organizations are certainly motivated by the fact that corruption is a serious international problem that hinders sustainable economic development, good governance, rule of law in many countries, and erodes other important social and democratic values. The finding arising from the analysis of conventions and other international legal acts of these international organizations suggests that these legal instruments are in fact guidelines for amending and harmonizing the domestic legislation and legal practice of State Parties. As some of these conventions are of the universal and others of the regional type, they are in principle binding *inter partes,* which does not mean that the rules in them do not have an *erga omnes* character. This certainly does not mean that corrupt crimes will fall under the jurisdiction of international courts (Starr, 2007: 1257-1314; Stephenson & Schütte, 2019). Also, considering the differences in determining illegal actions that fall under the concept of corruption (starting with traditionally accepted acts of corruption, bribery, abuse of office, illegal financing, embezzlement of public funds, theft of public property, fraud and extortion to nepotism, cronyism, clientelism and trade in interests), it is clear that these conventions contain many similarities and common features manifested through the criminalization of active and passive bribery, incrimination of legal entities, promotion of international cooperation and enforcement of effective criminal sanctions, which include, *inter alia,* the identification, seizing and confiscation of proceeds from corruption. In addition to the mandate provisions, which stipulate that States must take certain measures and provide for certain anti-corruption solutions, the conventions also include a number of dispositive provisions that contain obligations that States should undertake or consider. Namely, such provisions stipulate that the State Parties will consider the possibility of adopting certain preventive measures or

taking actions and assessing whether those measures or actions would be in accordance with the national legal system. This finding can be useful for the consistent incorporation of international anti-corruption standards into national legislation, in order to avoid situations where corrupt acts are treated unequally due to the application of different legal standards at the national level, which may be crucial for their incrimination and punishment especially when corruption acquires transnational characteristics (Shevchuk, 2010). Thus, for example, by applying the standards present in the OECD Convention against Bribery, States may opt for a much narrower approach that requires only the incrimination of active bribery. On the other hand, if States implement standards from some other international legal instruments, such as the Criminal Law Convention on Corruption of the Council of Europe, then they will sanction various corruption offences with their internal legislation. As corruption offences take on more and more forms of transnational organized crime in modern conditions, conventions have established mechanisms to monitor their implementation (for example, the Conference of the States Parties to the United Nations Convention against Corruption is established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation; the OECD Working Group on Bribery oversees implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions through a peer review process; the Group of States against Corruption - GRECO is a monitoring mechanism for the implementation of the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption of the Council of Europe, which works closely with the EU Commission to develop a comprehensive anti-corruption policy applicable in the territory of the member States). Various forms of international cooperation should lead to the improvement of the fight against corruption not only at the legislative (preventive) level, but also at the repressive level, which implies institutionalized mechanisms of international police and judicial cooperation. In this regard, the EU is a good example of establishing new institutional mechanisms of cooperation at the supranational level, such as the European Public Prosecutor's Office, the Agency for Cooperation in Criminal Matters (EUROJUST), the Agency for Police Cooperation (EUROPOL) and the European Anti-Fraud Office (OLAF) (Trifunović-Stefanović, 2020: 37-56; Jovašević, 2008: 207-228).

ORIGINALITY/VALUE

Over the past decades, the world has been plagued by a series of complex, corruption scandals perpetrated by transnational organized networks involving the public and private sectors. In practice, these networks often operate simultane-

ously in the legal and illicit spheres, with some linked to the highest levels of government, resulting in a loss of state resources. In general, such a situation has led to a breach of public confidence in democracy and the rule of law. At the same time, the weakening of institutions and governance structures provided an opportunity for the emergence of new forms of corruption with a relatively low risk of detection through independent investigation and prosecution. Given that corruption can contribute to the unequal distribution of social wealth at the local and international level, its impunity can lead to new social divisions, which in turn can lead to new looting of national resources, which usually cause conflicts and political instability (Arafa, 2021; Fuentes, 2010). Thus, in some cases of systemic corruption, market destabilization and economic depression occur, contributed to by transnational organized crime, money laundering, terrorist financing, illegal arms proliferation and environmental degradation. All this directly affects the population and their basic human rights and fundamental freedoms and provokes open insurgency and revolution, which has a negative impact on the preservation of international peace and security (Working Group on Corruption and Security, 2014: 12-15; Peters, 2015; Dimitrijević et. al., 2007). Although corruption exists in rich and poor countries, it is more pronounced in the latter where the nature, extent and dynamics of corruption are very different (Graycar, 2015: 87-96). In this regard, broad corrupt networks are characteristic of underdeveloped, transitional and post-conflict countries that crave investment and financial capital, where public services have eroded or lagged behind, where there is no developed infrastructure, health and education system, where the administration is not built, in which clientelism, nepotism, cronyism and kleptocracy reign, i.e. where corruption, as a rule, includes government officials, political leaders, civil servants at all levels of government, then representatives of the private sector and members of criminal syndicates whose activities span continents. The consequences of corruption are detrimental in many respects, so that they can undermine the ability of governments to serve the general public interest, lead to irregular funding of political parties, concealment of real corporate property, threaten, harass and harm victims, key witnesses, whistleblowers, investigators, journalists, prosecutors and judges, then prevent the work of civil movements and non-governmental organizations, free media, with visible political patronage, finally, lead to the consolidation of corrupt individuals and groups in all branches of government (Ware &. Noone, 2005: 30-45). In the context of these consequences and the United Nations data that at the global level "the cost of corruption is at least 5% of global GDP", it becomes much clearer why there has been a significant increase in activities on the prevention and punishment of corruption at the international legislative level and why key international organizations are dealing with this topic today (Connors, 2022: 963-964; Nicić & Arsenijević, Momčilović, 2020: 15; Dimitrijević, 2011: 319-321). Preliminary analysis of legal standards contained in international conventions and

other international legal instruments of international organizations indicates the importance of their incorporation into the domestic legislation of the States Parties as well as their effective, inclusive and sustainable implementation in fluctuating State and inter-State practice. Non-application or inconsistent application of these legal standards at the national and international level can lead to the above-mentioned negative consequences of corruption, which should not be justified by lack of operational capacity or political will to conduct complex and multidisciplinary prosecutions, as well as to conduct efficient and effective criminal sanctions against the perpetrators of these illegal acts. This conclusion has value in itself, as well as the fact pointed out in the analysis of the importance of consensual establishment of mechanisms for monitoring the implementation of obligations under conventions by States, then the establishment of various bodies for international judicial and police cooperation, encouraging anti-corruption initiatives international financial institutions (e.g. World Bank) and NGO's (e.g. Transparency International), which shows a sincere commitment to strengthening the fight against corruption and encourages the competent national institutions to act in accordance with the principles of transparency, accountability and integrity, which are basic preconditions for developing any democratically stable, economically and environmentally sustainable societies (Johnson & Sharma, 2004; Wouters, Ryngaert & Cloots, 2013: 1-76; Dimitrijević & Todić, 2014; Kerusauskaite, 2018). Finally, the entire international community has a shared responsibility to effectively address the challenges and risks of corruption at the national, regional and global levels, by strengthening knowledge, sharing and coordinating and promoting innovative legal approaches in solving the problem of corruption (United Nations, 2021: 16; Kimberly, 1997: 175).

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