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Analysis of Articles 354, 368-3, 368-4, 370 uStGB vs. Sections 299, 331 et seq. StGB

Analyse der Artikel 354, 368-3, 368-4, 370 des ukrainischen Strafgesetzbuches im Vergleich zu §§ 299, 331 ff. StGB

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I. Introduction

Corruption today represents one of the greatest challenges for any legal system. While we frequently hear about bribes within courts, ministries, or the police, the modern economy demonstrates that corruption has long transcended the boundaries of state institutions. It actively infiltrates private business, distorting fair competition and undermining trust in market institutions.

For Ukraine, studying this topic is of paramount importance. As a candidate for accession to the European Union, our country has undertaken serious obligations to harmonize its criminal legislation with European standards. This particularly concerns the adaptation of our legal norms to EU Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the so-called PIF Directive). To successfully integrate, we must not simply adopt European laws, but thoroughly understand how they operate in practice.

A comparative legal analysis between the Criminal Code of Ukraine (CCU) and the Criminal Code of Germany (*Strafgesetzbuch* – StGB) serves as an ideal tool for such a study. Both countries belong to the Romano-Germanic legal family; however, their approaches to the punishment of corruption differ slightly. While Ukrainian anti-corruption legislation has been changing rapidly and often chaotically under the pressure of reforms in recent years, the German system relies on a long, clear dogmatic tradition where every element of the *corpus delicti* has been refined by decades of judicial practice[1].

The object of research is the Criminal-law relations in the sphere of countering corruption offenses within the private and public sectors in Ukraine and Germany.

And subject is here the specific legislative acts, namely Articles 354, 368-3, 368-4, and 370 of the CCU in comparison with Paragraphs (§§) 299, 331, and subsequent sections of the German StGB.

This paper will therefore aim at a comprehensive comparative legal analysis of the legislation of Ukraine and Germany regarding criminal liability for corruption offenses in the private sector and the sphere of public services, as well as defining the procedural and substantive features of such instruments as the provocation of bribery and corporate liability.

To achieve the stated aim, the following objectives must be addressed:

Firstly, to analyse how bribery is penalized in Ukrainian business: examine Articles 354 and 368-3 of the CCU and clearly demonstrate the criteria by which the law separates the liability of rank-and-file employees from company directors.

Next, to study the German approach to business corruption: investigate Paragraph (§) 299 of the StGB and determine why private-sector bribery in Germany is primarily considered a crime against fair market competition.

In the third place to evaluate the status of "independent professions": clarify why Ukraine allocated a distinct article (Art. 368-4 of the CCU) for the bribery of notaries, auditors, and experts, and how this segment is regulated in Germany.

Furthermore to compare the rules governing the provocation of bribery: analyse Ukrainian Article 370 of the CCU (provocation of bribery) and the German doctrine of *Tatprovokation*, relying on the strict standards of the European Court of Human Rights (ECtHR) regarding police traps[2].

And last but not least to compare the penalties imposed on companies: investigate how a legal entity (firm) is penalized for the corruption of its directors in Ukraine (measures of a criminal-law character) versus Germany

[1] Мельник М. І. Кримінально-правова протидія корупції: теорія та практика. Київ: Атіка, 2021. С. 45.
[2] Справа «Раманаускас проти Литви» (Ramanauskas v. Lithuania), Заява № 74420/01, Рішення ЄСПЛ від 5 лютого 2008 року.

(heavy administrative fines under the OWiG act)[3].

II. Chapter 1. Criminal Law Analysis Of Corruption Offenses In Ukraine

1. Bribery in the Private Sector: Articles 354 and 368-3 of the CCU

Corruption is traditionally associated with state officials, yet modern business suffers from it no less. For a long time in Ukraine, criminal law predominantly protected the state apparatus from bribery. However, with the commencement of European integration processes and the adaptation of our legislation to international standards, explicit norms penalizing bribery within private business appeared in the Criminal Code of Ukraine. Currently, this block is mainly represented by Articles 354 and 368-3 of the CCU[4].

The main feature of the Ukrainian approach is a clear division of criminal liability based on the specific professional status held by the private company employee. If we speak about the generic object of these crimes, it is not the authority of state power, but the established legal order of private law enterprise functioning, fair business practices, and internal labour discipline.

The Ukrainian legislator divided liability in the private sector based on the scope of the subject's authority. Put simply, the law clearly distinguishes whom exactly is being bribed an ordinary executor or a director who makes decisions.

Let us first analyse Article 354 of the CCU. It penalizes the bribery of an employee of an enterprise, institution, or organization who is not a public official[5].

Subject of the crime is either general (if we talk about the person offering or giving the money) or special (a rank-and-file hired employee of an enterprise who takes the money and does not possess subordinates or managerial functions)[6]. This could be an ordinary procurement manager, a courier, a cashier, a secretary, or a rank-and-file IT specialist[7].

On the objective side it consists of two independent forms: active bribery (offering, promising, or providing a benefit) and passive bribery (demanding or receiving a benefit).

The subject matter of the crime is an "illegal benefit." In practice, this is understood as money, property, advantages, services, or privileges that a person receives without any legal grounds.

A completely different level of liability is envisaged by Article 368-3 of the CCU[8]. It regulates the bribery of an official of a legal entity of private law. Here we are already talking about serious figures directors, board members, chief accountants, heads of financial departments, or company liquidators.

To clearly understand who exactly qualifies as an official in the private sector, we must refer to Note 1 to Article 364-1 of the CCU. It teaches us that private sector officials are persons who perform the following specific duties:

1. Organizational and managerial duties (leading a team, staff allocation, the right to issue binding orders to subordinates).
2. Administrative and economic duties (management and disposal of property, signing financial agreements,

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3 Ordnungswidrigkeitengesetz (OWiG) Закон Німеччини про адміністративні правопорушення в редакції від 19 лютого 1987 року (зі змінами).

4 Конвенція Організації Об'єднаних Націй проти корупції від 31 жовтня 2003 року. Ратифікована Законом України № 740-V від 18.10.2006.

5 Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Стаття 354.

6 Науково-практичний коментар до Кримінального кодексу України / За ред. В. Я. Тація, В. П. Пшонки. Х.: Право, 2013. С. 844.

7 Постанова Пленуму Верховного Сусу України «Про судову практику у справах про хабарництво» № 5 від 26.04.2002 року (із наступними змінами).

8 Кримінальний кодекс України, *supra* примітка 11, Стаття 368-3.

controlling company bank accounts)[9].

The objective side of Article 368-3 of the CCU is structurally similar to Article 354 (possessing both active and passive forms), but the punishments are significantly harsher, up to actual imprisonment for a term of 3 to 7 years. Since a director holds more power, their betrayal of company interests causes far greater damage to the market.

The main problem in Ukrainian judicial practice regarding this article is that, in reality, it is difficult to prove the director's intent to act specifically *against* the interests of their company[10]. If a director took a "kickback" for signing a contract that still brought the firm some profit, the defense in court often tries to reclassify it as a mere violation of corporate ethics or a civil dispute, which is why there are relatively few actual convictions under Art. 368-3 of the CCU in Ukraine.

2. Bribery of Public Service Providers (Article 368-4 of the CCU)

Article 368-4 of the CCU is a rather unique and specific norm of our code. It covers so-called "hybrid" subjects. To simplify, these people are not classic state officials (like ministers or police officers), but they cannot be called ordinary private business either. They possess a special status: the state has officially authorized them to perform important public functions on its behalf[11].

To avoid confusion, the legislator clearly identified four main groups of such professionals, which are indicated in the scheme below:

- Notaries and auditors (who control the legality of transactions and financial reporting);
- Experts and appraisers (who provide official conclusions for courts or assess property value);
- Bankruptcy managers / liquidators (key figures who manage the property of enterprises during bankruptcy proceedings);
- Arbitrators, as well as members of panels or certified subjects performing state functions defined by law[12].

When someone bribes a notary, expert, or auditor, damage is caused to two things simultaneously. First, public trust in these professions is damaged, as society expects absolute honesty and independence from a notary or a forensic expert. Second, such bribery completely destroys fair procedure for instance, instead of a lawful division of property during bankruptcy or an honest real estate appraisal, everything is decided through money, which strikes at the interests of ordinary citizens[13].

On the objective side, the familiar model applies here: both giving a bribe for the right decision (active bribery) and its extortion or receipt by this specialist (passive bribery) are criminalized.

However, proving guilt under this article in Ukrainian judicial practice is very difficult. The defense in court almost always uses the same loophole: they claim that the money received by, for example, an expert or an appraiser, was not a bribe for a "needed" conclusion, but simply an unofficial fee for "urgency," "complexity of work", or additional consultation. Because of this, they often attempt to shift the case from the criminal plane into an ordinary civil honorarium, or at most, a disciplinary violation to strip the individual of their license rather than imprisoning them[14].

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9 Кримінальний кодекс України, *supra* примітка 11, Стаття 364-1 (Примітка 1).

10 Дудоров О. О. Кримінально-правова протидія комерційному підкупу: проблеми теорії та практики // Вісник Луганського державного університету внутрішніх справ. 2021. № 2. С. 45–58.

11 Науково-практичний коментар до Кримінального кодексу України / За ред. М. І. Хавронюка. Київ: ФОП Маслаков, 2024. С. 1024.

12 Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Стаття 368-4.

13 Мельник М. І. Кримінально-правова протидія корупції: теорія та практика. Київ: Атіка, 2021. С. 341.

14 Узагальнення судової практики розгляду кримінальних проваджень про корупційні кримінальні правопорушення Касаційного кримінального суду у складі Верховного Суду від 12.05.2023.

3. Provocation of Bribery (Article 370 of the CCU)

Article 370 of the CCU is perhaps the most controversial norm in all of our anti-corruption legislation. It penalizes officials (most often law enforcement officers: police officers or detectives) who intentionally and artificially create conditions to compel a person to take or give a bribe in order to subsequently arrest them for it[15].
To clearly differentiate this, Ukrainian doctrine utilizes two criteria, which I have combined into the comparative table below:
Table: Investigative Experiment (NSRD) vs. Provocation of a Crime (Art. 370 CCU)

Distinction Criterion	Lawful Investigative Experiment	Provocation of Bribery (Crime)
Behavior of the Agent / Police	Passive. The police do not push toward the crime; they simply observe or record the person's actions.	Active. The agent initiates the conversation about money, persuades, pressures, complains, or threatens.
Intent of the Suspect	Already existed. The person was searching for an opportunity to take or give a bribe prior to the appearance of the police[16].	Created artificially. The person had no intention of breaking the law until they were actively induced to do so[17].

Source: Own Compilation.

The Ukrainian legislator established strict criminal liability for provocation (up to 7 years in prison), since such police actions completely negate the European principle of a fair trial.
Today, the Supreme Court of Ukraine approaches this strictly. If the defense proves that law enforcement officers "helped" the intent to arise even slightly, the court will declare all gathered evidence (money, hidden camera recordings) inadmissible, fully acquit the defendant, and a case may be opened against the detectives themselves under Article 370 of the CCU[18].

4. Measures of a Criminal Law Character Regarding Legal Entities

The classic doctrine of Ukrainian criminal law is based on the principle of individual guilt and recognizes exclusively a sane natural person as the subject of a crime[19]. However, the specific nature of modern commercial corruption lies in the fact that the unlawful actions of a natural person (for example, a director) are frequently committed not for personal enrichment, but to obtain excess profits or competitive advantages for a specific company. In order to fulfill the recommendations of European institutions and implement international standards, large-scale

[15] Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Стаття 370.
[16] Науково-практичний коментар до Кримінального кодексу України / За ред. В. Я. Тація, В. П. Пшонки. Х.: Право, 2013. С. 860.
[17] Мельник М. І. Кримінально-правова протидія корупції: теорія та практика. Київ: Атіка, 2021. С. 402.
[18] Постанова Великої Палати Верховного Суду у справі № 208/5548/15-к від 11.12.2019 року // Єдиний державний реєстр судових рішень.
[19] Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Статті 19, 22.

amendments were introduced to the CCU in 2014, establishing a special institute Section XIV-1 "Measures of a Criminal Law Character Regarding Legal Entities." This step made it possible to hold enterprises, institutions, or organizations financially liable for corruption offenses committed by their leaders.

To apply measures of a criminal-law character to an enterprise, the simultaneous presence of clearly defined substantive legal grounds is required. First, the law requires a special status of the natural person: the crime, notably commercial bribery under Articles 368-3 or 368-4 or active bribery under Article 369 of the CCU, must be committed not by an ordinary employee, but by an authorized person of the legal entity, which includes directors, members of collegial bodies, or persons acting on the basis of a power of attorney[20]. Second, a functional link is a mandatory condition, meaning that the unlawful actions of this authorized person must be committed directly on behalf of or in the interests of the company for example, to ensure victory in public procurement or to avoid tax audits[21].

If these grounds are proven during a trial, the criminal court has the right to apply three types of measures of a criminal-law character to the legal entity. The primary financial measure is a fine, the amount of which is differentiated based on the severity of the crime committed by the authorized person and can be calculated in fixed sums or in a twofold amount of the illegal benefit received by the company[22]. The next measure is the confiscation of property, which involves the forced, uncompensated seizure into state ownership of property that was the subject matter of the crime or obtained as a result of its commission. The exceptional and harshest measure of coercion is the liquidation of the legal entity, which effectively terminates the company's activities and is applied by the court in cases of serious or especially serious crimes if the entire activity of the firm was directed toward the realization of criminal or corrupt schemes.

Despite the progressive nature of this institute, its practical implementation in Ukraine remains ineffective. An analysis of judicial practice indicates a critically low number of verdicts where actual coercive measures were applied directly to companies. In the vast majority of cases, criminal prosecution is limited to the conviction of the specific director. The legal entity itself frequently continues to function, often undergoing a procedure of rebranding or changing its founders, which allows it to evade material sanctions and continue participating in economic turnover.

III. Chapter 2. Comparative Analysis With German Criminal Law (StGB)

1. Bribery in the Private Sector under § 299 StGB: Protection of Fair Competition

Unlike the Ukrainian anti-corruption model, which splits private sector bribery based on the organizational hierarchy and authority of the subject (Articles 354 and 368-3 of the CCU), the German approach is anchored in an entirely different dogmatic tradition[23]. Under the German Criminal Code (*Strafgesetzbuch* – StGB), corruption within commercial transactions is fundamentally regulated by Paragraph 299 StGB (*Bestechlichkeit und Bestechung im geschäftlichen Verkehr*)[24].

The defining structural characteristic of § 299 StGB is its underlying protective purpose (*Schutzzweck*). While the Ukrainian legislator protects internal labor discipline and the distinct corporate duties of directors versus rank-

[20] Кримінальний кодекс України, *supra* примітка 29, Стаття 96-3.
[21] Науково-практичний коментар до Кримінального кодексу України / За ред. М. І. Хавронюка. Київ: ФОП Маслаков, 2024. С. 284.
[22] Кримінальний кодекс України, *supra* примітка 29, Стаття 96-7.
[23] See *Simonis* CCZ 2026. S. 99–101.
[24] Strafgesetzbuch (StGB) in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), § 299 (Bestechlichkeit und Bestechung im geschäftlichen Verkehr).

and-file employees, the German doctrine interprets commercial bribery first and foremost as a crime against fair market competition. The German legal framework views corruption in the private sector as a severe distortion of competitive market forces, because economic decisions should be driven exclusively by quality, price, and merit, rather than illicit backroom financial incentives.

Furthermore, corporate governance in Germany heavily utilizes structured Compliance Management Systems (CMS) based on recognized audit guidelines such as IDW PS 980[25]. According to these frameworks, corporate compliance relies on a fundamental seven-element cycle where everything initiates with the internal compliance culture, shaped heavily by the *"tone at the top"* set by the executive management[26]. A core practical element of this culture is the corporate Code of Conduct. Under German corporate practice, an internal policy such as a gifts and hospitality guide is designed to clearly outline to employees what they are legally permitted to do and what they must strictly avoid.

German corporate compliance programs frequently use the provisions of Paragraph 299 StGB as a benchmark to assess legal risk. In practice, rather than attempting to outline abstract background information regarding the exact technical elements of § 299 StGB or how it delineates from other statutory norms, effective internal guidelines are condensed to provide straightforward operational rules for employees. This creates a sharp analytical contrast with the Ukrainian private sector model, shifting the focus from individual employee status under the CCU to the broader systemic protection of fair market rules and risk-based preventive compliance procedures under German law.

2. Corruption in Public Services and the Status of Independent Professionals in Germany

The criminal law processing of corruption in public services represents a complex intersection of administrative and penal dogmatics in both legal systems. In Ukraine, the legislator introduced a specialized, standalone norm Article 368-4 of the CCU to penalize the bribery of "hybrid" non-state professionals who provide public services under official state authorization, such as notaries, auditors, forensic experts, and bankruptcy liquidators.

In German criminal law, this sphere is fundamentally governed by the core official corruption offense of Paragraph 331 StGB (*Vorteilsannahme* – acceptance of a benefit). The primary protective purpose of § 331 StGB is to preserve public confidence in the absolute integrity, objectivity, and "non-purchasability" (*Nichtkäuflichkeit*) of public service providers and state functionaries. The offense is classified as an abstract endangerment crime (*abstraktes Gefährdungsdelikt*), meaning that the protected legal interest is compromised the moment a public actor creates even the mere appearance of being susceptible to outside financial influence.

The statutory elements under § 331 StGB require a specific structural alignment:

1. Eligible Subject (*Tauglicher Täter*): The perpetrator must hold the status of a public official (*Amtsträger*), a European public official, or a person specially bound to public service (*für den öffentlichen Dienst besonders Verpflichteter*)[27].
2. The Benefit (*Vorteil*): Defined broadly as any material or immaterial transfer or award that lacks a legally enforceable right and objectively improves the legal, economic, or personal position of the recipient or a third party[28].
3. Relationship to Public Service (*für die Dienstausübung*): The benefit must be linked to the performance

[25] IDW Prüfungsstandard 980 des Instituts für Wirtschaftsprüfer in Deutschland: Grundsätze ordnungsmäßiger Prüfung von Compliance Management Systemen (September 2022).
[26] See *Simonis,* CCZ 2026. S. 100–101.
[27] *Kindhäuser / Hilgendorf.* Strafgesetzbuch, 2025. § 331 (Vorteilsannahme). Rn. 1–10.
[28] See *Böttger / Böttger.* Wirtschaftsstrafrecht, Kapitel 5: Korruption. a) Sozialadäquanz. Rn. 87–89.

of the recipient's public duties.

This relationship forms the core dogmatic element known as the unlawful agreement (*Unrechtsvereinbarung*), which establishes the causal or teleological link between the public service execution and the receipt of the illicit benefit. Unlike the harsher offense of bribery (*Bestechlichkeit* under § 332 StGB), § 331 StGB does not require the public servant to perform an *unlawful* or non-compliant act; even a fully lawful exercise of public duties or general "goodwill cultivation" is criminalized if it signals a dependency on external financial sponsorship.

A major point of comparison arises from the landmark School Photographer Case (*Schulfotografen-Fall*), adjudicated by the Federal Supreme Court of Germany[29].. In this case, professional photographers entered into agreements with school principals to take student portraits on school grounds. In exchange, the photographers provided financial contributions directly to the schools, framed as "sponsoring", "rebates", or "expense compensations". The 3rd Criminal Senate of the BGH held that even if these payments represented a financially reasonable and proportionate exchange for the school's organizational efforts, they could still constitute an illicit *Vorteil* and trigger an *Unrechtsvereinbarung* under §§ 331 et seq. StGB[30].

The BGH established that because a civil contract between a public institution and a private entity does not automatically erase the corruptive character of a transaction, a strict administrative legality review (*verwaltungsrechtliche Rechtmäßigkeitsprüfung*) must be conducted. Under the principle of the unity of the legal order (*Einheit der Rechtsordnung*), a public administration cannot demand or contractually agree to a financial reward or fee for its services unless it possesses an explicit, normative statutory authorization under the principle of the statutory reservation of law (*Gesetzesvorbehalt*)[31].

This creates a highly refined analytical contrast between the two nations:

Systemic Element	Ukrainian Framework (Art. 368-4 CCU)	German Framework (§ 331 StGB & BGH Jurisprudence)
Statutory Mechanism	Separate, standalone article explicitly enumerating specific independent professions (notaries, liquidators, auditors).	Unified official corruption offenses (§§ 331–333 StGB) applied through the expansive functional status of *Amtsträger*.
Core Dogmatic Test	Determination of whether the subject falls within the listed authorized groups or possesses delegated state functions.	Structural evaluation of the *Unrechtsvereinbarung* and an administrative legality review of the transaction under the *Gesetzesvorbehalt*.

[29] *BGH*, Judgment of May 26, 2011 - 3 StR 492/10.
[30] *BGH*, Urteil vom 26. Mai 2011 – 3 StR 492/10, wistra 2011, 391 ff.; see also *Schlöser J.*, NZWiSt 2013, 11 (12).
[31] *Rönnau* JuS. 2011. S. 311–313.

Exemptions / Safe Harbors	Often handled loosely via defense arguments reclassifying payments into civil honorariums or disciplinary licensing disputes.	Formally restricted through strict doctrines of social acceptability (*Sozialadäquanz*) and specialized third-party funding regulations (*Drittmittelforschung*).

Source: Own Compilation.

Under German law, small, customary courtesies are deemed eventually in certain circumstances socially "acceptable" (so-called "*sozialadäquat*") and therefore excluded from the statutory definition of an illicit benefit, provided they are minor, customary, and rooted in standard social politeness (such as a token holiday tip or minor refreshments). Generally, German legal practice recognizes a baseline financial threshold of ca. €35 to €50 as socially acceptable (depending on inflation), balancing criminal law with tax and civil law standards[32]. However, substantial commercial arrangements such as the sponsoring of public entities, educational fundraisers, or university research require strict compliance with administrative protocols.

For instance, the BGH recognizes a specialized exception for third-party university research funding (*Drittmittelforschung*). To prevent a structural collision between the anti-corruption laws and the statutory academic duty of university professors to secure research sponsorships, the courts exclude these payments from the scope of § 331 StGB only if the formal university notification and approval procedures (*Anzeige- und Genehmungsverfahren*) are meticulously observed[33]. This system demands a high degree of transparency and documentation, directly shifting the anti-corruption focus in Germany from a simple list of professions to a deep, administrative and dogmatic analysis of institutional transparency.

3. Statutory Treatment of State Incitement and Corporate Regulatory Liability under German Law

The structural approach of German jurisprudence toward state-engineered investigative interference and corporate misconduct highlights a fundamental commitment to the constitutional principles of a fair trial and the limits of individual criminal culpability. Rather than introducing separate criminal prohibitions within the core penal framework, the German legal system processes these phenomena through procedural bars, substantive sentence mitigation remedies, and highly structured administrative-regulatory fine mechanisms. This reveals a sharp dogmatic tradition that prioritizes systemic institutional corrections over the creation of overlapping statutory crimes[34].

Under German criminal dogmatics, when a state agent, an undercover law enforcement investigator, or a state-directed confidential informant (*V-Mann*) actively induces, pressures, or manipulates an un-predisposed target into committing an offense that they otherwise would not have contemplated, the situation is managed via the specialized doctrine of state incitement (*Tatprovokation*)[35]. German jurisprudence explicitly rejects the model of defining this state overreach as an independent criminal offense within its penal code. Instead, such state-engineered traps are recognized by judicial organs as a severe, structural violation of the constitutional principle of a fair trial (*faires*

[32] See only *Reiff* CCZ. 2018. S. 194–196.
[33] *Kindhäuser / Hilgendorf.* Strafgesetzbuch: Lehr- und Praxiskommentar (LPK-StGB). 10. Auflage. Baden-Baden: Nomos, 2025. § 331 (Vorteilsannahme). Rn. 1–10.
[34] IDW-Prüfungsstandard 980 des Instituts für Wirtschaftsprüfer in Deutschland: Grundsätze ordnungsmäßiger Prüfung von Compliance Management Systemen (September 2022).
[35] See *Simonis,* CCZ, 2026, S. 99.

Verfahren), which is strictly protected under Article 6 of the European Convention on Human Rights (ECHR)[36]. The legal remedies applied by the German courts focus entirely on the procedural and material position of the incited individua. Under the established and long-standing practice of the Federal Court of Justice (*Bundesgerichtshof* – BGH), a verified *Tatprovokation* demands immediate judicial intervention. Depending on the intensity of the state's active pressure and the degree of deception employed by the police apparatus, the court must either implement a mandatory, drastic mitigation of the individual's criminal sentence or, in cases of flagrant and unconstitutional manipulation, declare a formal procedural bar to prosecution (*Verfahrenshindernis*). The imposition of a *Verfahrenshindernis* effectively neutralizes the state's right to proceed with the case, resulting in the immediate and mandatory dismissal of the entire criminal prosecution against the defendant[37].

In complete alignment with this individualistic philosophy, German legal doctrine also rejects the concept of formal corporate criminal liability, maintaining the strict traditional view that a legal entity, such as a company, firm, or institution, lacks the capacity to act with human-like criminal guilt (*Schuld*). Consequently, corporate involvement in bribery, market corruption, or institutional misconduct cannot be prosecuted under the standard criminal code. Instead, when an executive director, board member, or authorized manager commits a commercial corruption offense such as private sector bribery under Paragraph 299 of the StGB the corporate entity is held strictly accountable through administrative regulatory channels[38].

This corporate administrative liability is structurally governed by the German Regulatory Offenses Act (*Ordnungswidrigkeitengesetz* – OWiG), specifically leveraging the extensive provisions of Paragraph 30 OWiG[39]. Under this framework, a criminal or administrative court is authorized to impose a heavy corporate administrative fine (*Verbandgeldbuße*) directly upon the enterprise. To ensure absolute economic fairness and deterrence, the financial penalty under § 30 OWiG is meticulously divided by the authorities into two distinct operational components. The first component is a punitive element designed to penalize the enterprise for its organizational leadership failure and internal compliance deficits. The second, and often more severe, component is a mandatory economic skimming element (*Abschöpfungsteil*)[40]. This skimming mechanism is designed to strip the legal entity of 100% of the financial profits, competitive market advantages, or excess commercial yields gained as a result of the underlying corruption scheme, ensuring that corporate malfeasance remains completely unprofitable[41].

IV. Comparative Synthesis Of Ukrainian And German Anti-Corruption Frameworks

The structural and comparative analysis of the anti-corruption mechanisms of Ukraine and Germany reveals entirely distinct legislative methodologies, systemic priorities, and dogmatic traditions. While the Ukrainian model favors explicit substantive criminalization to target specific actors and deter state overreach, the German legal framework operates through constitutional-procedural remedies and highly developed administrative regulatory channels.

The primary systemic divergences between the two legal frameworks can be synthesized through the following

36 See European Convention on Human Rights (ECHR), opened for signature 4 November 1950, Art. 6 (*Right to a fair trial*) referencing it *Fischer*, Strafgesetzbuch, 73 edn., § 46, Mn. 66, 67 ff. and § 26, Mn. 12, which was developed by BGH Senats after revision by the ECtHR judgements.
37 See *Schlöser* NZWiSt 2013, 11 (12).
38 *Sommer / Tsambikakis.* Münchener Anwaltshandbuch Medizinrecht § 3, Rn. 168–170.
39 Gesetz über Ordnungswidrigkeiten (OWiG) in der Fassung der Bekanntmachung vom 19. Februar 1987 (BGBl. I S. 602), § 30.
40 *Böttger / Brockhaus.* Wirtschaftsstrafrecht, Kapitel 14: Medizin- und Arzneimittelstrafrecht. III. Die Bedeutung des Medizin- und Arzneimittelstrafrechts in der Praxis. Rn. 4.
41 Gesetz zur Bekämpfung der Korruption im Gesundheitswesen vom 30. Mai 2016 (BGBl. 2016 I Nr. 25).

core comparative areas:

Ukraine enforces a status-based division of commercial bribery under Articles 354 and 368-3 of the CCU, explicitly separating the liability of rank-and-file employees from executive directors who wield organizational authority. Conversely, Germany employs a unified approach in Paragraph 299 StGB[42]. The German system filters commercial corruption primarily through the lens of market functionalism, interpreting private-sector bribery as a severe distortion of fair market competition rather than a mere breach of internal corporate hierarchy.

The Ukrainian legislator relies on narrow statutory categorization, isolating non-state professionals such as notaries, auditors, and bankruptcy managers under a distinct, specialized provision (Article 368-4 of the CCU)[43]. Germany processes these same professional actors through its core official corruption offenses under Paragraph 331 StGB (*Vorteilsannahme*) by applying an expansive functional definition of a public official (*Amtsträger*). Furthermore, German jurisprudence filters these public service transactions through a strict administrative review under the *Gesetzesvorbehalt* and relies on established dogmatic safe harbors like social acceptability (*Sozialadäquanz*) and highly structured third-party research regulations (*Drittmittelforschung*)[44].

Ukraine controls investigative entrapment through direct substantive criminalization under Article 370 of the CCU, exposing law enforcement officers who artificially engineer a bribery trap to independent penal prosecution of up to 7 years in prison. Germany entirely rejects the substantive criminalization of investigators, opting instead for constitutional remedies focused on the target under the doctrine of *Tatprovokation*[45]. Grounded in Article 6 of the ECtHR, German courts neutralize police entrapment by granting a severe mitigation of the defendant's sentence or by declaring an absolute procedural bar to prosecution (*Verfahrenshindernis*), which results in the immediate, mandatory dismissal of the criminal case[46].

The Architecture of Corporate Liability shows Ukraine adapts to international standards by housing quasi-criminal "measures of a criminal-law character" within Section XIV-1 of its core penal framework, allowing criminal courts to directly impose fines, property confiscation, or mandatory liquidation on corporate entities. Germany rigidly maintains the individualistic principle of criminal guilt (*Schuld*), holding that legal entities lack the capacity to act with human-like blameworthiness Corporate misconduct is therefore strictly processed outside the core penal code via Paragraph 30 of the OWiG act. The German system relies on heavy administrative organizational fines combined with a mandatory economic skimming mechanism (*Abschöpfungsteil*) designed to strip the legal entity of 100% of the illicit profits and commercial advantages yielded by the corruption scheme.

V. Conclusion

Finally, the comparative analysis of private and public corruption offenses under Ukrainian and German law carries profound structural relevance for the protection of the European Union's financial interests and the combating of EU fraud. As Ukraine actively pursues its integration into the European legal and economic space, aligning domestic anti-corruption frameworks with international instruments specifically EU Directive 2017/1371 (the PIF

[42] Strafgesetzbuch (StGB) in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), § 299 (Bestechlichkeit und Bestechung im geschäftlichen Verkehr).
[43] Зіставлення диспозиції ст. 368-4 КК України та системи посадових деліктів німецького кримінального права.
[44] *Schlöser,* NZWiSt. 2013. S. 11–12.
[45] *Rönnau,* JuS. 2011. S. 311–312.
[46] European Convention on Human Rights (ECHR), opened for signature 4 November 1950, Art. 6 (Right to a fair trial) and see *Fischer*, Strafgesezbuch, 73 edn., § 46, Mn. 66, 67 ff. and § 26, Mn. 12, which was developed by BGH after revision by the ECtHR judgements.

Directive) becomes crucial. Ensuring rigorous penal and regulatory liability for bribery within public service providers and commercial transactions directly safeguards incoming EU integration funds, structural assistance, and humanitarian resources from systemic diversion. Implementing transparent compliance boundaries modelled on the German *OWiG* system and reinforcing strict procedural protections against state-engineered incitement serve as essential benchmarks to guarantee that both public and private institutional sectors operate with the absolute transparency required to defend the financial integrity of the Union.

In conclusion, Ukraine's anti-corruption strategy is characterized by explicit statutory typification, placing highly specific professional roles and investigator behaviours under individual articles of the CCU. Germany, by contrast, manages both public service corruption and investigative boundaries by relying on broad, foundational statutory norms backed by robust administrative-regulatory frameworks and dynamic constitutional jurisprudence.

German Bibliography

Böttger, M. (Hrsg.), Wirtschaftsstrafrecht, 3. Aufl. 2023, Nomos, Baden-Baden.

Clausen, T./Schroeder-Printzen, J. (Hrsg.), Münchener Anwaltshandbuch Medizinrecht, 4. Aufl. 2026, C. H. Beck, München.

Fischer T., Lutz H-J., Anstötz S., Strafgesetzbuch mit Nebengesetzen, Beck'sche Kurz Kommentare, 73. Auflage, C. H. Beck, München.

Heintschel-Heinegg, B. von/Kudlich, H. (Hrsg.), BeckOK StGB, 68. Ed., Stand: 1.2.2026.

Institut der Wirtschaftsprüfer in Deutschland e.V., IDW Prüfungsstandard: Grundsätze ordnungsmäßiger Prüfung von Compliance Management Systemen (IDW PS 980 n.F. (09.2022)), Stand: 28.9.2022.

Kindhäuser, U./Hilgendorf, E., Strafgesetzbuch. Lehr- und Praxiskommentar, 10. Aufl. 2025, Nomos, Baden-Baden.

Reiff, R., Von kleinen Aufmerksamkeiten und großen Geschenken – was ist erlaubt? – „Eine Tasse Kaffee? Nein danke!" – Wo fängt Korruption an?, CCZ 2018, 194–203.

Rönnau, T., Grundwissen – Strafrecht: Sozialadäquanz, JuS 2011, 311–313.

Schlösser, J., Zur Strafbarkeit des Public Fundraising nach den §§ 331 ff. StGB am Beispiel des Schulfotografen-Falles (BGH, Urt. v. 26.5.2011 – 3 StR 492/10), NZWiSt 2013, 11–15.

Simonis, M., Andere Branche, dieselben Themen: Compliance-Konstanten – Was immer gleich bleibt, was (keinen) Sinn ergibt und was noch besser ginge, CCZ 2026, 99 ff.

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