

Corruption: A Complex Phenomenon In Need of a Comprehensive Criminal Policy

By José Luis de la Cuesta*

I. Introduction

Considered for a very long time as a set of «sporadic events» and not as real practices entrenched in the ordinary life of some administrations (and of the individuals and corporation related to them) (Quintero Olivares, 2013, 1085), corruption has only recently become recognized as a social, economic and political problem of the highest relevance, whose prevention and treatment are increasingly complex and difficult, particularly due to its «international dimension» (Quintero Olivares, 2013, 1083). In a globalized context, there are several opportunities to exert illegitimate influence on the social, economic and political decision makers... particularly for the powerful organized groups and/or criminal networks. The “big corruption” (Hava García, 2016, 60), an illness of democracy –«that, like a tsunami, drags whatever it finds in its path»– (Acale Sánchez, 2014, 49), does not have any geographical, political or cultural boundary. No system can feel immunized against corruption, whose harmful effects –direct and indirect– result in important political costs (Demetrio Crespo, 2003, 47 ff.) and, particularly, in important costs for the free competition, and for the social-economic rights and stability, becoming, thus, «the natural enemy of economical development and entrepreneurial activity» (Quintero Olivares, 2013, 1088).

Since it is a hidden phenomenon which is increasingly characterized by the growing sophistication of the means (Quintero Olivares, 2017, 17) and the capability to take advantage of the opportunities offered by cyberspace, the evaluation of the extension and incidence of the big (and small) corruption constitutes «an herculean task» (Brooks, 2016, 44). Therefore, the effort of some international organizations, and notably, of *International Transparency* and its *Corruption Perception Index*, is particularly relevant¹. According to it, two thirds of the countries are still in the lower part of the scale used. Certainly the *Index* has some limits (Brooks, 2016, 45): it measures the perception of corruption, and, on the basis of the studies on insecurity and fear of crime, it is widely known how the perception and the objective seriousness of a phenomenon are not necessarily coincident parameters (De la Cuesta Arzamendi, 2013, 1). Moreover, there is a paradoxical effect: although the adequate information of the public is of the highest relevance in order to ensure appropriate prevention and prosecution, more transparency and public information intensify the concern on the incidence of corruption, especially in a context of mediatic sensationalism and deep discredit of politics.

II. An internal affair?

As a consequence of treating corruption as an affair «whose incidence rarely surmounts the State frame» (Quintero Olivares, 2017, 19), the majority of states only punished, for decades, the corruption concerning their national civil servants, looking the other way if it occurred outside their borders or in relation to foreign officials: some countries even used to accept tax deductions based upon the quantities paid as a bribe with the aim of winning public competitions or getting more favourable transactions (Mongillo, 2012; Benito Sánchez, 2010, 241).

The pioneering adoption by the USA of the 1977 *Foreign Corrupt Practices Act* began to change this situation, since it punished criminally the corruption of foreign officials by American corporations. Furthermore, the USA applied a policy in order to promote the reform of other States' legislation² and, after more than 20 international years of *soft law* and *soft enforcement*, an important «paradigm shift» (Roca Agapito, 2009, 763) took place: the OECD –which in 1996 had published its own recommendations rejecting the tax deductions

* Honorary President. *Association Internationale de Droit Pénal* (AIDP). Director. Basque Institute of Criminology (University of the Basque Country, UPV/EHU). Research Group GICCAS (IT-585-13) and UFI 11/05 (UPV/EHU). Translation by Dr. Miren Odriozola, Lecturer in Criminal Law. Faculty of Law. University of the Basque Country (Spain).

¹ <https://www.transparency.org>

² On the «americanisation» of Criminal Law, Nieto Martín, 2003, 5; Recchia, 2013.

of the bribes paid to foreign officials— approved in 1997, in Paris, the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. The Convention made States Parties punish criminally the corruption of international or foreign public officials which took place in international business transactions. The text was based on an autonomous definition of «foreign public official» (art. 1.4) that, contrary to the *Foreign Corrupt Practices Act*, did not include political parties or candidates for public positions in a foreign country (Benito Sánchez, 2010, 250). Focused in transnational corruption, the Convention was completed in 2009 and 2012 with different *Recommendations*. Notwithstanding the limited effects in practice, its relevance as inspiration for later instruments is widely recognized (De la Cuesta Arzamendi, 2003, 5). Such subsequent instruments constitute key milestones in the way towards the «globalization of the need to control corruption» (Acale Sánchez, 2014, 31), which already everyone assumes formally.

III. United Nations

Leaving aside the Global Program Against Corruption and the Convention against transnational organized crime (Palermo, Italy, 2000), it was necessary to wait more, at the United Nations level, to welcome the first universal binding instrument against corruption: the *United Nations Convention against Corruption*, signed in Mérida (Yucatán, México: 9.12.2003). It is a text of an omni-comprehensive nature, aimed at «approaching all the relevant aspects in an integral and systematic way» (Torres Fernández, 2015, 10). Thus, the Convention envisages a long list of offences: bribery of national public officials (art. 15), bribery of foreign public officials and officials of public international organizations (art. 16), embezzlement, misappropriation or other diversion of property by a public official (art. 17), trading in influence (art. 18), abuse of functions (art. 19), illicit enrichment (art. 20), bribery in the private sector (art. 21), embezzlement of property in the private sector (art. 22), laundering of proceeds of crime (art. 23), concealment (art. 24), obstruction of justice (art. 25). It also regulates the possible liability of legal persons (art. 26) and the adequate treatment of frequently discussed issues regarding evidence; knowledge, intent and purpose as elements of an offence (art. 28); participation and attempt (art. 27); statute of limitations (art. 29); prosecution, adjudication and sanctions (art. 30); and freezing, seizure and confiscation (art. 31).

The Convention also includes measures on the protection of witnesses and experts, as well as on the support and reparation of corruption victims; it describes multiple mechanisms of international cooperation concerning extradition, transfer of convicted persons and mutual legal assistance, as well as concerning police cooperation –joint investigations, particularly, if corruption has an international nature, technical assistance, training, analysis and exchange of information...-. Furthermore, it promotes the prevention and fight against the transfer of funds of illicit origin: trying to surmount the traditional obstacles derived from bank secrecy, and promoting the implementation of techniques (such as undercover operations, electronic surveillance, controlled deliveries...) which are internationally applied to the fight against traffic in narcotics and organized crime.

Preventive policies and practices are the object of the second Chapter (Art. 5-14). The main purpose in this field is the respect for the international principle of «*due diligence*» (Jiménez García, 2015, 198), both in the public sector (codes of conduct, good governance, control of public finance and contracts, guarantee of public access to information), and in the private one, ensuring the participation of society and the implementation of measures against money laundering. Following the trend opened by the FATF, the Convention equally promotes the approval of measures with regard to the «public positions considered especially vulnerable to corruption», whose recruitment –and, where appropriate, rotation– should be governed by «adequate procedures» (art. 7, 1 b). It also requires (Art. 52) paying particular attention and taking «reasonable steps» to ensure a better prevention and detection of transfers of proceeds of offences related to «politically exposed persons» (Jiménez García, 2015, 262).

IV. Regional Initiatives

Some regional initiatives had already taken place before the UN Merida Convention.

On 29 March 1996, the Organization of American States adopted in Caracas the *Inter-American Convention against Corruption*, including an important list of preventive measures of a non-penal nature (Art. III). However, the main objective consisted in adopting a uniform definition of the acts of corruption and establishing the criteria for the prosecution of the acts committed within the public Administration. As a consequence, the Convention did not regulate corruption in the private sector. With regard to prevention and sanction –together with the harmonized incrimination of the punishable acts of corruption (art. VI) and

transnational corruption (art. VIII)–, the Convention promoted the incrimination by national legislations of the «illicit enrichment» of public officials: i.e., the «significant increase in the assets of a government official that he/she cannot reasonably explain in relation to his/her lawful earnings during the performance of his/her functions» (Art. IX). Article 20 of the UN Convention against Corruption followed this initiative in 2003. In any case, among regional initiatives European instruments (both of the Council of Europe and of the European Union) deserve special attention³.

– Council of Europe

1. In 1994 a Multidisciplinary Group on Corruption was constituted in the Council of Europe, and in 1999 (Res. (98) 7 Committee of Ministers) the Group of States against Corruption (GRECO) was born.

2. Among the resolutions and recommendations of the Committee of Ministers of the Council of Europe – which generally raise a great interest–, several texts deserve to be highlighted: Resolution 24 (97), on the twenty guiding principles for the fight against corruption; Recommendation R (2000) 10, on codes of conduct for public officials; Recommendation R (2003) 4, on common rules against corruption in the funding of political parties and electoral campaigns; Recommendation R (2014) 7, on the protection of whistle-blowers; and Recommendation R (2017) 2, on the legal regulation of lobbying activities in the context of public decision making.

3. The Council of Europe adopted two Conventions against corruption in 1999: the Civil Law Convention on Corruption (STE 174), which requires the establishment of efficient remedies in favour of victims of corruption, and the Criminal Law Convention on Corruption (STE 173) (and its additional Protocol, STE 191). Their implementation must be followed-up by GRECO

With the purpose of «coordinating the definition and incrimination of a wide range of corruption acts *lato sensu*», and to «improve the international cooperation» in its prosecution (Mongillo, 2012, 488), the *Criminal Law Convention on Corruption* adopts a broad concept of «public official», which Art.1 identifies with « the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law»; the 2003 Protocol adds to this list the individuals who intervene in the friendly resolution of conflicts (arbitrators, jurors).

Ambitious, the Convention contains a set of measures that States must apply in relation to the acts of corruption, and it regulates not only active and passive bribery of public officials -domestic (Art. 2 & 3) and foreign (Art. 5) officials- but also the bribery of members of domestic (Art. 4) and foreign (Art. 6) public assemblies, members of inter-parliamentary assemblies (Art. 10), officials of international organisations (Art. 9), judges and officials of international courts (Art. 11)–, as well as active and passive bribery in the private sector (Art. 7 & 8), trading in influence (Art. 12), money laundering from corruption offences (Art. 13) and even account offences (art. 14), aimed at incriminating conducts that can hinder or difficult controls and favour illegitimate influences on decision-makers.

States must incriminate in an appropriate (harmonized) way all these conducts and participatory acts. They should equally provide for «effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition» and facilitate the («criminal or non-criminal»: art. 19.2) liability «for the criminal offences of active bribery, trading in influence and money laundering (...) established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on a power of representation of the legal person, or an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person; as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences» (art. 18).

The Convention contains rules on jurisdiction (Art. 17); it promotes specialisation and the «necessary independence» (Art. 20) of the competent instances in the fight against corruption; and it compels States to adopt measures in order to ensure investigation, the gathering of evidence and the confiscation of proceeds (Art.23), as well as the protection of collaborators of justice and witnesses (Art. 22), international co-operation

³ Among them, other initiatives in Asia and the Pacific should be noted, as well as the African Union Convention on Preventing and Combating Corruption (Maputo, Mozambique: 11.7.2003), complemented in 2009 by the establishment of the African Union Advisory Board on Corruption. Last year, 2018, was proclaimed the African year against Corruption.

in the fight against corruption (arts. 25 ss.) and, particularly, mutual assistance (Art. 26) and extradition (Art. 27).

4. On September 18, 2014, the Council of Europe adopted a specific text on the *Manipulation of Sport Competitions*: the first international instrument against corruption in sport (Torres Fernández, 2017, 285). The Council of Europe's Convention (STCE, 215) aims to «combat the manipulation of sports competitions in order to protect the integrity of sport and sports ethics in accordance with the principle of the autonomy of sport» (Art. 1). Art. 15 establishes that «each Party shall ensure that its domestic laws enable to criminally sanction manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices, as defined by its domestic law». Criminal prosecution of «laundering of the proceeds of criminal offences relating to the manipulation of sports competitions» (Art. 16) is also foreseen, as well as the liability of legal persons (Art. 18).

– European Union

According to Art. 83 of the Treaty on the Functioning of the European Union, corruption belongs to one of the «areas of particularly serious crime with a cross-border dimension» that require the highest level of penal harmonization: the so-called «eurocrimes» (De la Cuesta Arzamendi, 2017, 171).

1. The communitarian action against corruption was first focused in the fight against fraud, by means of the *Convention on the protection of financial interests* (July 26, 1995), complemented by the Protocol of September 27 1996. In 1997 the second Protocol was adopted; based upon a broad concept of corruption, it included references to the offence of money laundering and to the liability of legal persons.

The *Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*, adopted on 26 September 1997, entered into force on 28 September 2005. Such Convention was criticised due to its restrictive scope of application: community officials and national officials of the UE Member States. Nevertheless, it included positive aspects such as the principle of assimilation or the reference to the specific violation of official duties (omitted in other international instruments), and it addressed issues as the liability of the head of business and/or the legal persons, and the prosecution of acts of corruption.

2. European institutions have also dealt with (active and passive) corruption in the private sector. This was first regulated by *Joint Action (98/742/JHA, of 22 December 1998)*, which was followed by the *Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector*. With the purpose of requiring Member States the incrimination of intentional acts of corruption (demanding an undue advantage in order to perform or refrain from performing any act) in breach of legal or professional duties in the course of business activities within profit and non-profit entities, the aforementioned Framework Decision ordered States to punish such acts by «effective, proportionate and dissuasive criminal penalties» and, particularly, for natural persons with «a penalty of a maximum of at least one to three years of imprisonment», and, where appropriate, temporary barring from this professional or comparable business activity (Art. 4); with regard to legal persons, in addition to (criminal or administrative) fines, other penalties were also included: exclusion from public benefits or aids; temporary or permanent barring from the practice of commercial activities; placing under judicial supervision; or a judicial order of dissolution (Art. 6).

3. After underlining the normative distances between Member States (and the differences regarding their implementation), the first *EU Anti-corruption Report (COM/2014/038 final)*⁴ stresses the vulnerabilities and weak points (particularly, concerning public contracts) and it focuses on the perception of corruption by European citizens: 76% of the citizens consider that there is a generalized problem of corruption in their respective country. The Report's main conclusions insist on the political dimension and the need to improve the mechanisms of control, prevention and repression, as well as on the need for particular attention in certain areas: petty corruption, corruption risks at regional and local level, selected vulnerable sectors –urban development and construction, healthcare, tax administration–, integrity and transparency in the financial sector, foreign and transnational bribery, State-owned companies, links between corruption and organized crime... Among the most important recommendations, the following deserve to be mentioned: prioritising anti-corruption policies, accountability of political elites and elected officials, strict rules on the financing of

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014DC0038&from=EN>

political parties, active promotion of public sector integrity, preventive and control mechanisms (internal and external) other than law enforcement... In the field of repression, together with the legal reform and execution of penal sanctions (even if their dissuasive effects are always limited), the Report states that efforts should be devoted to improve effectiveness and good practices of anti-corruption agencies and the reinforcement of the capacities (and coordination) of law enforcement, prosecution and judiciary instances, guaranteeing their full integrity.

4. Finally, implementing the reinforced cooperation for the establishment of the European Public Prosecutor's Office (foreseen by Art. 86 of the Treaty), *Council Regulation (EU) 2017/1939* of 12 October 2017, acknowledges the competence of the European Prosecutor on the criminal infringements against EU financial interests and other offences inextricably linked to them (Vervaele, 2018, 13). And, as an essential component of the legislative frame of the European Public Prosecutor's Office, *Directive (EU) 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* will replace (from 6 July 2019 on) the Convention on the protection of the financial interests of European Communities (and protocols), thus establishing the common basis for the investigation and prosecution of penal offences in the EU: shared definitions of crimes, harmonisation rules for prosecution and minimum terms for the statute of limitations, shared minimum sanctions (with imprisonment for the most serious offences). Due to its characterization as «particularly serious threat to the Union's financial interests, which can in many cases also be linked to fraudulent conduct» (Point 8), Art. 4 of the new Directive includes passive and active corruption among «other criminal offences affecting the Union's financial interests», together with money laundering and misappropriation. As a result thereof, the general provisions of Title III –concerning incitement, aiding and abetting, and attempt; liability of legal persons; aggravating circumstance; sanctions with regard to natural and legal persons; freezing and confiscation; jurisdiction limitation periods, recovery, etc.– are totally applicable to them, as well as the rules on cooperation among Member States and the Commission (OLAF) and other structures of the Union (Art. 15).

V. From singular offence to criminal phenomenon

A quick glance at the European and international regulations, together with the «enormity of the task» (Quintero Olivares, 2013, 1084), allows drawing a conclusion of the highest transcendence for the criminal approach and, particularly, for the criminal policy perspective: the progressive extension of the scope of application of corruption. Identified first as a singular crime –bribery, «considered the quintessence of corruption»– (Quintero Olivares, 2017, 25), corruption has become a criminal phenomenon (De la Cuesta Arzamendi & Blanco Cordero, 2017, 219). Thus, a «redefinition» (Torres Fernández, 2015, 6) of the term is demanded, since the originally criminological expression presents many difficulties to be adequately characterized –beyond appearances– and it has a «polysemic» content (Japiassú, 2007, 36) which is increasingly widened due to the new scopes of application and interests to protect (De la Mata Barranco, 2009, 245).

1. Even if traditionally corruption was only related to national officials, the expansion of the concept of corruption led first to the extension of the circle of perpetrators in order to embrace all those who develop public functions (administrative, political, parliamentary, judicial...) not only at national level, but also abroad or in international organisations. The next step in this evolution was to include the participants in mediation and arbitration procedures and, more generally, in processes of friendly dispute resolution (such as referees, jurors...).

Nevertheless, for more than twenty years, regional and international institutions demand that States extend the incrimination to corruption in the private sector,⁵ considering that the abuse of power in business or within private economical relations, which interfere in an intolerable way in the fundamental duties of loyalty exigible at enterprise or market level, should not elude penal policy. However, the debate on the legally protected interest with regard to the offence of corruption in the private sector is still open, and it ranges from the duty of loyalty towards the employer to the guarantee of free competition: countries like France and Austria have historically put the accent on the protection of the enterprise's hierarchy and they have given priority to the prevention of influences –based on elements or interests which are different from the entity's–

⁵ However, *vid.* Ventura Püschel (2009, 487).

on employees with a certain capacity of decision; on the other hand, Germany focuses on free competition, which can be negatively affected if strange elements are admitted in the process of price fixation of the services and products. Therefore, advantages that are contrary to competition's rules are prohibited, even if they are known and accepted by the employer.

The controversies on the legally protected interest in corruption offences extend to corruption in the public sector, where the penal sanction has traditionally been focused on giving an answer to the lack of respect for the duty of fidelity and loyalty by the official towards his/her respective institution. Nowadays it is widely accepted that the corruption of public officers attacks directly the Administration, its prestige and integrity, which are on the basis of the citizens' trust: as a consequence thereof, the public function –its correct development, in an independent and impartial way– has become the legally protected interest. Consistent with such reorientation of the legally protected interest in corruption in the public sector, it is understood as a criminal phenomenon integrated by various offences: some of them are capital or nuclear (bribery in a strict sense, trading in influence, collusion and other forms of attack against property); others, collateral (administrative and judicial prevarication, embezzlement of public funds, some forgeries...) (Queralt, 2012, 22). Further offences related to corruption, or its periphery, are also taken into account since their relevance can be important as constraints of corrupted behaviours: misappropriation, account offences, obstruction to justice and, in particular, money laundering.

Together with corruption in the public and private sector, Criminology underlines as well the presence of corruption in certain professional areas (auditors, rating firms...), and in sport, where betting transactions and the high amounts of money involved increase the already high risk of behaviours of this nature.

2. The expansion of the concept of corruption is accompanied by the increase of citizen concern on the incidence of this phenomenon that has become a «central issue in our collective life» (Quintero Olivares, 2017, 17). Its effects concerning collective and diffuse victimization merge with individual victimization (López de Zubiría Díaz, 2017, 356) and its high dangerousness from many points of view due to its connexion with economic criminality and organized crime, whose corrupting initiatives (targeting political power and public economy) increase, attacking transparency, stability and good governance not only of States but also of national and international markets.

In any case, the fight against corruption faces problems due to its concealment, its sophisticated mechanisms, and internationalization, among others. As a result, the demands for reform are not limited to substantive aspects –redefinition of offences, appropriate sanctions, liability of legal persons, etc.–; they insist in a prominent way, as above said, on the reinforcement of jurisdictions in order to avoid «spaces of impunity generated by the lack of competence»,⁶ on the specialization of the intervening instances and on the admission of specific investigation techniques (in order to facilitate the evidence of intent and other subjective elements, as well as attempt and participation), on the extension of the protection systems of witnesses and collaborators with justice and, particularly, on the promotion of international cooperation, both judicial (via extradition and mutual assistance) and police cooperation (by the way of joint investigations, training, data collection, analysis and exchange).⁷

Learning from the experience in other fields, it is clear that special efforts should be made to hinder any opportunity of profiting from the funds coming from corruption. This should be combatted not only with the lifting of bank secrecy and the employment of internationally authorized techniques against drug trafficking and, in general, against organized crime (undercover agents, supervised and controlled deliveries...), but also with strategies of an indirect nature: tax law, widening freezing possibilities seizure and confiscation of funds, and extension of the application scope of money laundering (Blanco Cordero, 2017, 27). The introduction of the new criminal offence of illicit enrichment is also demanded from many sectors, despite the problems derived from the inversion of the burden of proof (Acale Sánchez, 2014, 35) and with regard to human rights.

⁶ Nevertheless, States (such as Spain) do not always implement «adequately the duties arising from the conventions» (Quintero Olivares, 2013, 1100).

⁷ Second Section. XVIIth International Congress of Penal Law (Beijing, China 2004). J.L. de la Cuesta / I. Blanco Cordero (eds.), *Resolutions of the Congresses of the International Association of Penal Law (1926 – 2014)*. *Revue Internationale de Droit Pénal*, vol. 86, 2015 (1-2), 188 ff.

VI.A comprehensive criminal policy program against corruption

For a long time Criminology teaches that, even if it is absolutely essential, the best penal (and procedural) system is not sufficient in order to address those criminal phenomena that are characterised by their complexity, social penetration, resistance to be investigated... These need the development by public instances of a rational penal policy (Díez Ripollés, 2003), inserted in the broader frame of criminal policy. Criminal policy cannot face criminal problems only with repression or mere trust in the dissuasive effect of penal threat. A true criminal policy, worthy of such name, must define the intervention line based upon an adequate knowledge of reality and its different profiles and manifestations in each of the three traditional levels of criminological interpretation (Pinatel, 1974, 93): criminality (the phenomenon), the criminal (active subject of the crime) and the crime (the criminal conduct); such knowledge should be complemented with victimological contributions and the results of the analysis on criminalization processes and social reactions, and their effect.

The need for an adequate prevention is increasingly underlined in relation to corruption in the public sector, where the focus is set long time ago on the relevance of the «slow path» (Jiménez Asensio, 2017, 77 and 181): guarantee of the culture of good governance, transparency, integrity, honesty; adoption of codes of ethics and rules concerning conflicts of interests, selection and remuneration of staff; definition of warning signs; strict controls, both internal and external; intensive follow up of politically exposed individuals; promotion of denounces (including protection of reporters and whistle-blowers); creation of specialised instances (ombudsmen, anti-corruption boards) which should be impartial and independent from the public Administration...

The comprehensive approach should promote such type of interventions, and particularly the general and educative campaigns to raise awareness: the indispensable social culture of «zero tolerance» against corruption and fraud will never be credible if it is restricted to corruption in the public sector and ignores corruption related to business, to sport and, in general, in the private sector.

Similar reasons urge the adoption of *Programs of prevention and fight against corruption*. Such criminal-policy programs, created by Governments, should preferably be adopted in Parliament in order to ensure the visibility of the essential political will (Sanz Mulas, 2017, 197): the social and public commitment with regard to the priority of the fight against corruption. In view of the inevitable dispersion of the traditional sectorial policies, the comprehensive inspiration and vocation of these programs would facilitate the definition of common purposes and objectives, as well as the balance between prevention and intervention, reducing the persistent deficits of implementation of policies and measures, and ensuring a more complete, efficient and coordinated action of the intervening instances.

Going into detail in a Program of prevention and fight against corruption exceeds the purpose of this contribution. Without avoiding the penal issue, a Program of that nature should seriously strive to create spaces of social and institutional integrity through the promotion of good governance, transparency and ethics in public and corporative services, both in public life (and, in general, in the public sector) as in the private sector, paying special attention to particularly risky sectors, in line with the *2014 EU Anticorruption Report*. The formulation of ways of political responsabilization, both reasonable and proportionate (and, at the same time, respectful of the presumption of innocence), should also constitute the fundamental content of any criminal-policy Program against corruption.

Concerning criminal law, an *ultima ratio* instrument by its very nature, in addition to the specialization of the competent agencies and services (and the necessary promotion of international collaboration), experience shows the interest in the implementation, as already evoked, of other measures that favour prosecution and the recovery of assets (domestically and internationally) (Ligeti & Simonato, 2017). At the same time, and due to the expansion of this phenomenon, the adoption of a comprehensive Program should be seen as an opportunity to delimitate better the concept of corruption (García Sánchez, 2017, 227): more specifically, to revise the description of offences «that have aged and that require urgent renovation» (Quintero Olivares, 2017, 41), as well as studying the opportunity to incriminate the nuclear conducts in an unitarian way,⁸

⁸ However, De la Mata Barranco (2016, 6) underlines the difficulties of embracing in the same incrimination all corruption modalities.

regardless of the area concerned (public sector, private sector, sports, health...). That would help reinforce the unity of the message in line with the British Bribery Act (Mongillo, 2012, 410) and avoid some too widespread and unwanted confusions, such as the identification of corruption not only with any abuse of power in order to obtain an undue benefice or advantage (Roig Torres, 2017, 300), but also with any offence against public Administration.⁹

In relation to the anticorruption strategies against legal persons and organisations –and their (eventually criminal) liability–, the Program should underline the relevance of self-regulation mechanisms, which are essential elements in the «privatization» of the fight against corruption, and whose extension to the Public Administration is increasingly demanded (however, Quintero Olivares (2017, 43). Taking into account Sect. 7 of the *Bribery Act* (Mongillo, 2012, 431),¹⁰ their reinforcement should also be considered, inserting sanctioning provisions for the specific omission or failure in the implementation of anticorruption programs, which could generate corporative responsibility (Nieto Martín, 2003, 25).

Finally, there is a growing demand for the characterization of big corruption as a violation of human rights and an international crime (Boersma, 2012), which could even fall under the jurisdiction of an International Criminal Court (Bah, 2014; Bloom, 2014, 627). It is clear that such idea poses many difficulties nowadays. However, there are other proposals that could be easier to accept and deserve to be seriously considered: inserting, for instance, unmistakable indicators of corruption among the criteria taken into account in the investigation and prosecution of international crimes (Hava García, 2016, 76) and, particularly, to decide on the admission of the case and/or sentencing.

Bibliography

- ACALE SÁNCHEZ, M. (2014): «La lucha contra la corrupción en el ámbito supranacional y su incidencia en el Código penal español», *Diritto Penale Contemporaneo*, 3-4, 25-49.
- BAH, S. (2014): *L'effectivité des conventions anti-corruption internationales : vers une cour pénale internationale en criminalité économique pour punir le vol d'état*, Gênevè: Schulthess.
- BENITO SÁNCHEZ, C.D. (2010): «Notas sobre la corrupción transnacional. Sus efectos y su combate», in Fabián Caparrós / Pérez Cepeda (coords.), *Estudios sobre corrupción*, Salamanca: Ratio Legis, 237-275.
- BLANCO CORDERO, I. (2017): «Estrategia penal contra las ganancias de la corrupción: blanqueo de capitales, delito fiscal y enriquecimiento ilícito», in F. Jiménez García & J. Roperó Carrasco (dir.), *Blanqueo de capitales y corrupción: interacciones para su erradicación desde el derecho internacional y los sistemas nacionales*, Cizur Menor: Thomson Reuters Aranzadi, 27-48.
- BLOOM, B. (2014): «Criminalizing Kleptocracy? The ICC As a Viable Tool in the Fight Against High Corruption», *American University International Law Review*, 29, 3 627-671.
- BOERSMA, M. (2012): *Corruption: a violation of human rights and a crime under international law?*, Antwerp: Intersentia.
- BROOKS, G. (2016): *Criminology of corruption. Theoretical approach*, Palgrave MacMillan, London.
- DE LA CUESTA ARZAMENDI, J.L. (2003): «Iniciativas internacionales contra la corrupción», *Eguzkilore*, 17, 5-28.
- (2013): «La corrupción ante el Derecho y la Justicia», *Diario La Ley*, 8153, 20 september, 1-6.
- (2017): *Nuevas Fronteras del Derecho Penal*, Santiago de Chile: Olejnik.
- DE LA CUESTA ARZAMENDI, J.L. / BLANCO CORDERO, I. (eds.) (2015): *Resolutions of the Congresses of the International Association of Penal Law (1926 – 2014)*. *Revue Internationale de Droit Pénal*, vol. 86 (1-2).
- (2017): «Corrupción», in J.Boix Reig (dir.), *Diccionario de Derecho penal económico*, Madrid: Iustel, 2nd ed., 219-231.
- DE LA MATA BARRANCO, N.J. (2009): «¿Qué interés lesionan las conductas de corrupción?», *Eguzkilore*, 23, 245-259.
- (2016): «La lucha contra la corrupción política», *Revista Electrónica de Ciencia Penal y Criminología*, 1-25.

⁹ Quintero Olivares (2013, 1088) recalls that «every offence of public officers implies an abuse of function».

¹⁰ Nevertheless, Santana Vega (2013, 266) considers that this is one of the most controversial and reprehensible aspects of the British Act.

- DEMETRIO CRESPO, E. (2003): «La corrupción como freno decisivo a la consolidación del Estado de Derecho: respuesta penal», in *El estado de derecho latinoamericano: integración económica y seguridad jurídica en Iberoamérica*, Universidad de Salamanca, 47-70.
- DÍEZ RIPOLLÉS, J.L. (2003): *La racionalidad de las leyes penales. Práctica y teoría*, Madrid: Trotta.
- GARCÍA SÁNCHEZ, B. (2017): «¿Es posible y necesario un concept unitario de corrupción? Persecución de los delitos de corrupción en los últimos años», in F. Jiménez García & J, Roperó Carrasco (dir.), *Blanqueo de capitales y corrupción: interacciones para su erradicación desde el derecho internacional y los sistemas nacionales*, Cizur Menor: Thomson Reuters Aranzadi, 227-251.
- HAVA GARCÍA, E. (2016): «Gran corrupción: estrategias para evitar su impunidad internacional», *Revista Nuevo Foro Penal*, 12, 87, 60-98.
- JAPIASSÚ, C.E.A. (2007): «A corrupção em uma perspectiva internacional», *Revista Brasileira de Ciências Criminais*, 64, 29-56.
- JIMÉNEZ ASENSIO, R. (2017): *Cómo prevenir la corrupción: integridad y transparencia*, Madrid: Catarata.
- JIMÉNEZ GARCÍA, F. (2015): *La prevención y la lucha contra el blanqueo de capitales y la corrupción*, Granada: Comares.
- LIGETI, K. / SIMONATO, M. (2017): *Chasing Criminal Money: Challenges and Perspectives On Asset Recovery in the EU*, London: Hart Publishing.
- LÓPEZ DE ZUBIRÍA DÍAZ, S. (2017): «Problemas criminológicos en el tratamiento de la corrupción. El desdibujamiento del perfil de las víctimas», in F. Jiménez García & J, Roperó Carrasco (dir.), *Blanqueo de capitales y corrupción: interacciones para su erradicación desde el derecho internacional y los sistemas nacionales*, Cizur Menor: Thomson Reuters Aranzadi, 345-360.
- MONGILLO, V. (2012): *La corruzione tra sfera interna e dimensione internazionale*, Napoli: Ed. Scientifiche Italiane.
- NIETO MARTÍN, A. (2003): «La corrupción en el comercio internacional (o de cómo la americanización del derecho penal puede tener de vez en cuando algún efecto positivo)», *Revista Penal*, 12, 3-26.
- PINATEL, J. (1974): *Criminología*, 2nd ed., Caracas: Universidad Central de Venezuela.
- QUERALT, J.J. (2012): «Reflexiones marginales sobre la corrupción», *Revista Crítica Penal y Poder*, 2, 18-35.
- QUINTERO OLIVARES, G. (2013): «Problemas de la dimensión internacional de la lucha contra la corrupción», in Álvarez García et al. (coords.), *Libro homenaje al profesor Luis Rodríguez Ramos*, Valencia: Tirant, 1083-1106.
- (2017). «La evolución de la corrupción y las limitaciones del delito de cohecho», in R.Castillejo Manzanares (dir.), *Nuevos debates en torno a la justicia española*, Valencia: Tirant, 2017, 17-46.
- RECCHIA, N. (2013): «Internationale Bestechung als Beispiel einer "Amerikanisierung" des Wirtschaftsstrafrechts via internationale Organisationen», *Diritto Penale Contemporaneo*, 8.10.2013.
- ROCA AGAPITO, L. (2009): «La influencia de la Unión Europea en la lucha contra la corrupción pública», in *La adecuación del Derecho penal español al ordenamiento de la Unión Europea. La política criminal europea*, Valencia: Tirant, 759-800.
- ROIG TORRES, M. (2017): «Una aproximación al concept de "corrupción". Las recientes leyes de reforma del Código penal alemán sobre la materia», *Libertas*, 6, 288-345.
- SANTANA VEGA, D.M. (2013): «La Ley Antisoborno del Reino Unido (Bribery Act, 2010)», en *Cuadernos de Política Criminal*, 111, 237-268.
- SANZ MULAS, N. (2017): «Criminalidad de los poderosos e impunidad: la evidente falta de voluntad política en la lucha contra la corrupción», in F. Jiménez García & J, Roperó Carrasco (dir.), *Blanqueo de capitales y corrupción: interacciones para su erradicación desde el derecho internacional y los sistemas nacionales*, Cizur Menor: Thomson Reuters Aranzadi, 197-226.
- TORRES FERNÁNDEZ, E. (2015): «Algunos apuntes sobre el marco normativo internacional contra la corrupción», in J.Roperó Carrasco (dir.), *Estudios de Criminología: Criminología y Derecho penal ante los nuevos fenómenos delictivos*, Madrid: Universidad Rey Juan Carlos, 5-32.
- (2017): «Reflexiones sobre la corrupción en las competiciones deportivas. A propósito del delito del artículo 286 bis 4 del Código Penal», in F. Jiménez García & J. Roperó Carrasco (dir.), *Blanqueo de capitales y corrupción: interacciones para su erradicación desde el derecho internacional y los sistemas nacionales*, Cizur Menor: Thomson Reuters Aranzadi, 277-304.

- VENTURA PÜSCHEL, A. (2009): «Sobre la tipificación de la mal llamada “corrupción entre particulares” (o de cómo la pretendida política criminal común de la Unión Europea entiende la competencia en el mercado)», in Alvarez García *et al* (coords.), *La adecuación del Derecho penal español al ordenamiento de la Unión Europea. La política criminal europea*, Valencia: Tirant, 487-514.
- VERVAELE, J. (2018): «The European Public Prosecutor’s Office (EPPO): Introductory Remarks», in Geelhoed / Erkelens / Mei (eds.), *Shifting Perspectives on the European Public Prosecutor’s Office*, The Hague: T.M.C. Asser Press.