

ETHICAL AND LEGAL GROUNDS FOR THE WHISTLEBLOWING OF CORRUPTION OFFENSES

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ABSTRACT

The article reveals the role and essence of whistleblowing as a mechanism for countering offenses. The author disclosed that the institute of whistleblowers is an object of scientific and legal studies. Prerequisites for the development of a draft Directive of the European Parliament and the Union “On the protection of persons reporting on breaches of Union law” were considered (Proposal for a Directive of the European Parliament and of the Council “On the protection of persons reporting on breaches of Union law”), which aims to enhance the protection of whistleblowers as a means of illegal actions disclosure and promotion of compliance with EU legislation. It was determined that there is no single view on the role of whistleblowers in society, the need to encourage whistleblowers, the acquisition of the status of whistleblower, and most importantly legal protection. It is advisable to develop a separate legal act and a legal doctrine for the protection of the rights of whistleblowers. The conclusions indicate that the ethical and legal framework for the protection of the whistleblower provides for the normative consolidation of effective guarantees for both the whistleblowers and those who are exposed to whistleblowing.

Keywords: Whistleblowing, Whistleblower, Protection of the Rights of Whistleblowers, Ethical Problems of Whistleblowing, Offense, Corruption Prevention.

INTRODUCTION

The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, No. 984_011 of June 27, 2014, defines a system of general principles, among which, in particular, the rule of law, good governance, the fight against corruption, the fight against various forms of transnational organized crime and terrorism, the promotion of sustainable development and effective multilateralism, which are recognized as key to strengthening relations between the parties to Agreement. Special attention is devoted to the problems of corruption in section III of the Agreement “*Justice, Freedom and Security*”, namely:

“The Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption.”

Art. 14 addressing issues related to “*corruption in both the private and public sector*”, at the same time enhancing their commitment to the fruitful implementation of the 2003 UN Convention against Corruption and other international anti-corruption instruments (cl.d of Part 2 of Art. 22). As a result, the main provisions of the UN and Council of Europe conventions, the recommendations of the Group of Council of Europe States against Corruption (GRECO) to create and ensure the functioning of the institute of whistleblowers-persons who assist in preventing and countering corruption or reporting breaches of the anti-corruption legislation-were implemented in the national anti-corruption legislation.

The right of a person to inform about offenses, including corruption offenses, is an innate continuation of the human right to the free expression of his thoughts and opinions. All people have the inalienable right to protect their own well-being and security, as well as the well-being and security of other citizens and society as a whole, and in some cases provided for by law, to report offenses is their duty (Kosytsia, 2019).

However, ethical problems of whistleblowing, the role of whistleblowers in preventing and countering offenses in various spheres of public life remain unsolved.

Problem Statement

Large-scale reforms, including those of a political and ideological nature, are taking place in society. There is no common view on the role of whistleblowers in society, issues of encouraging whistleblowers, acquiring the status of whistleblower, and most importantly their legal protection. In Ukraine, there is no separate regulatory legal act or legal doctrine on the role of whistleblowing in counteracting offenses and the protection of accusers. The whistleblowing has an ethical and legal basis.

LITERATURE REVIEW

Today, the work of many scientists are devoted to the issue of corruption, almost all of them focus on the significant harm which this phenomenon does to financial, economic and other interests of the state (Derevyanko et al., 2018; Shevchenko & Reznik, 2015).

Scientists pay special attention to the role of the institution of whistleblowers in countering corruption offenses. In particular, in Ukraine Benedyk, Gvozdetsky, Kositsia, Nesterenko, Kostenko, Pliska, Shostko, etc. dedicated their works to the ethical side of the problem. In the USA and European countries there are a large number of scientific works dedicated to whistleblowing in various spheres of public life and the problems that arise, among which should be highlighted Benisar (2011), Ellison et al. (1985), Glazer & Glazer (2014), MacDougall (2014), Tara & Todd (2018), Vaughn (2012) and others.

Whistleblowers, informers, rats, betrayers-these are different names for persons who disclosed information about corruption, abuse of power, human rights violation and other information about harm or threat to the public interest. The prevalence of a particular name in a particular society depends on its respect for whistleblowers (Nesterenko & Shostko, 2016).

In Ukraine, a whistleblower is a person who, if reasonably convinced that the information is reliable, reports a breach of the requirements of the Law of Ukraine "*On the Prevention of Corruption*" by another person (The Law of Ukraine on Prevention of Corruption, 2014). The EU whistleblowers are people who report breaches of the law that harm or may harm public interests, such as the environment, public health, consumer safety and EU public finances, if they

become aware of this during their work activities.

Nesterenko (2014) notes that not only legal, but also sociological, ethical and psychological aspects of this socio-legal phenomenon, which in English-speaking countries received the name "*whistleblowing*", require further scientific discussion, require clarification when translating and perhaps another name that would, along with all this, reflect all its features.

One of the most famous American scientists who studies this problem, Professor Vaughn (2012) aptly notes that "*whistleblowing*" injustice and lawlessness is a manifestation of a peaceful way to reveal disagreement with one or another state of affairs, which is a sign and guarantee of democracy and pluralism. Moreover, he argues that peaceful disobedience and "*whistleblowing*" injustice is a moral duty. And any morality, according to Ignatieff (2004), should support the right of individual whistleblowers to disclose the truth about bad things in the organizations where they work.

METHODOLOGY

The methodological basis for the study of the ethical and legal framework for the protection of the rights of whistleblowers is various methods of scientific knowledge, in particular, historical and legal, comparative legal method, system analysis and others. With the help of the historical and legal method, the process of forming the institute of whistleblowers in the current legislation of Ukraine and scientific works was analyzed. Using the comparative legal method, a comparison was made of the views of domestic and foreign scientists on the ethical and legal problems of establishing the institute of whistleblowers. The method of system analysis has helped to identify the shortcomings of the legislation and justify the need to use foreign experience acceptable for Ukrainian realities.

FINDINGS AND DISCUSSION

The problem of the relationship between the right to whistleblow socially significant information and national security is also extremely relevant today. It is obvious that while the world community is in a state of concern regarding such a phenomenon as terrorism, it is necessary to strengthen control over the security of a state and, accordingly, to increase the protection of a certain type of information to keep peace. But it is also impossible to ignore the fact that corruption and other crimes in the system of national security bodies are destructive for the state and the inability to whistleblow important information to the public in this area will undoubtedly have a chilling effect on the development of democracy, law and pluralism. Achieving a balance between public interest and the duty of confidentiality is one of the most difficult challenges for modern states (for example, the famous Snowden case) (Kostenko, 2016).

It is crucial to remember that whistleblowing, in the sense of "*going outside one's organization*," raises numerous moral issues not associated with mere internal reporting about wrongdoing. While Mannion & Davies (2015) bring up a host of considerations that ought to be valuable to managers who are serious about improving their own organizations, there are good reasons to think that these considerations apply only to internal reporting and do not apply in the same way to "*whistleblowing*" in the more restrictive sense. It will always be preferable for organizations to deal internally with issues of wrongdoing than to drag the debate out into public—a process which often produces great harm to both the whistleblower and organization and may or may not benefit society at large. There is much to be gained by improving these

internal reporting policies: most importantly, they can prevent the need for whistleblowing altogether (MacDougall, 2015).

In the European Union, the protection of the rights of whistleblowers is extremely important. The European Commission has developed and submitted to the European Parliament a draft Directive of the European Parliament and of the Council “*On the protection of persons reporting on breaches of Union law*” (Proposal for a Directive of the European Parliament and of the Council, 2018), which aims to enhance the protection of whistleblowers as a means of illegal actions disclosure and promotion of compliance with EU legislation.

The prerequisites for the development and adoption of the Directive, as noted on the official website of the European Commission, are the recent scandals such as Dieselgate, Luxleaks, Panama Papers and the ongoing denunciations of Cambridge Analytical, which show that whistleblowers can play an important role in disclosing illegal activities that harm public interests and well-being of citizens and society. As the results of Global Business Ethics Survey (2018) show, 27% of workers experienced retribution after reporting breaches (Davis, 2013). The European Commission notes that whistleblowers protection will also help to protect freedom of expression and freedom of the media and is important for protecting the rule of law and democracy in Europe (Resnik, 2018). Bjorkelo (2013) stated that empirical studies have documented the connection between the whistleblowing and bullying in the workplace and the subsequent devastating health effects (for example, depression and symptoms similar to post-traumatic stress).

CONCLUSION

The whistleblower is usually associated with corruption offenses. But guarantees of protection should be extended to all persons who, in the course of their work, discovered the offenses and reported them voluntarily. The ethical and legal framework for the protection of the whistleblower provides for the normative consolidation of effective guarantees for both the whistleblowers and those who are exposed to whistleblowing. Protection should be guaranteed only to responsible whistleblowers whose actions are based on the principles of voluntariness, good faith and reasonableness and aimed at protecting the public interest, and include measures to prevent harmful, offensive messages, prevent excessive damage to the reputation of others and the organization in which they work.

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