

КРИМІНАЛЬНЕ ПРАВО ТА КРИМІНОЛОГІЯ; КРИМІНАЛЬНО-ВИКОНАВЧЕ ПРАВО

UDC 351.85

DOI <https://doi.org/10.32840/1813-338X-2021.1.19>

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WHISTLEBLOWERS OF CORRUPTION AS SUBJECTS OF ANTI-CORRUPTION ACTIVITY

The article is devoted to an important and relevant topic - the study of ways in which whistleblowers participate in the fight against corruption and the legal guarantees that apply to them. The importance of the fight against corruption determines the search for new measures, methods and techniques to combat this destructive phenomenon. One of the effective measures was the introduction of the institution of whistleblower. At present, whistleblowers are persons who, having ascertained that the information is reliable, reported possible facts of corruption or corruption-related offenses, other violations of the Law committed by another person, if such information became known to them in connection with it. labor, professional, economic, social, scientific activity, their service or training or their participation in the procedures provided by the legislation, which are obligatory for the beginning of such activity, service or training.

It is emphasized that In the context of anti-corruption, it is especially important to find out all the ways and means of reporting corruption and corruption-related offenses by the whistleblower. The legislator identifies several possible channels for reporting possible facts of corruption or corruption-related offenses, other violations of this Law, namely: internal, regular or external channels.

Whistleblowers play a leading role in uncovering offenses that threaten the interests of society and deplete public finances. Usually, those who report corruption offenses may be harassed by those against whom they testify.

The issue of monetary remuneration for whistleblowers has been studied. The author emphasizes that the amount of remuneration may not exceed three thousand minimum wages established at the time of the commission of a criminal offense. If several persons report the same corruption offense, the amount of remuneration is divided equally among such whistleblowers.

It is concluded that the anti-corruption activities of whistleblowers are implemented by notifying the competent entities of possible facts of corruption or corruption-related offenses and other violations of the Law. To implement this task, it is important not only to create, but also to ensure that the state implements special guarantees aimed at protecting whistleblowers and creating favorable conditions for their anti-corruption activities.

Key words: *corruption, anti-corruption, anti-corruption actors, whistleblowers, legal guarantees.*

Problem setting. The importance of the task of combating corruption necessitates the search for new measures, methods and techniques to combat this destructive phenomenon. One of the effective measures was the introduction of the institution of a whistleblower. At present, whistleblowers are individuals who, in the belief that the information

is reliable, have reported possible facts of corruption or corruption-related offenses, other violations of the Law committed by another person, if such information became known to them in connection with her labor, professional, economic, public, scientific activity, their service or training or their participation in the procedures provided by law, which

are mandatory for the beginning of such activity, service or training.

Analysis of recent researches and publications. Issues of legal status and the role of whistleblowers in combating corruption have been studied by such scholars as O. Kosytsia, L. Gerasysenko, I. Tolkachova, D. Kazyuta, O. Kalitenko, I. Luhovy, V. Vasylynchuk, O. Khamkhoder and others. At the same time, a comprehensive study covering the importance of whistleblowers' activities for the success of the anti-corruption task and the issue of legal guarantees for these individuals was not conducted.

The purpose of the article is to describe the ways in which whistleblowers participate in the fight against corruption and the legal guarantees that apply to them.

Summary of the main matter of research and explanation of scientific results. Over the past two decades, more than 30 countries have developed and enacted special laws to protect whistleblowers or included some measures to protect them in labor codes, anti-corruption laws, or codes of ethical conduct. Countries that have adopted relevant legislation include: Canada (Public Servants Disclosure Protection Act), Australia (The Commonwealth Public Interest Disclosure Act, 2013), New Zealand (Protection Disclosures Act, 2000), USA (The Whistleblower Protection Act, 1989, The Intelligence Community Whistleblower Protection Act of 1998, The Sarbanes Oxley Act of 2002, The Whistleblower Protection Enhancement Act of 2012), Japan (Whistleblower Protection Act (Act No. 122 of 2004)), South Africa (Protection Disclosure Act, 2000), Румунія (Romanian Whistleblower's Law, 2004), United Kingdom (Public Interest Disclosure Act, 1998) [1, p. 6]. Major public reforms that have significantly affected national anti-corruption legislation have implemented key provisions of UN and Council of Europe conventions. As well as GRECO recommendations to support whistleblowers, i.e. those who provide support in preventing and combating corruption or report violations [2, p. 37].

However, as L. Gerasimenko rightly notes, the protection of those who contribute to the fight against corruption has been guaranteed before. In particular, in the Law of Ukraine "On the Principles of Preventing and Combating Corruption" (2009) stressed that those who provide assistance in preventing and combating corruption are under state protection. In the wording of the above-mentioned normative legal act, they were considered as persons who in good faith (without selfish motives,

motives of hostile relations, revenge, other personal motives) reported violations of the requirements of the anti-corruption law by another person [3, p. 26].

In the context of anti-corruption, it is especially important to find out all the ways and means of reporting corruption and corruption-related offenses by the whistleblower. The legislator identifies several possible channels for reporting possible facts of corruption or corruption-related offenses, other violations of this Law, namely: internal, regular or external channels.

Internal channels for reporting possible facts of corruption or corruption-related offenses, other violations of the law – methods of secure and anonymous communication of information reported by the whistleblower to the head or authorized unit (person) of the body or legal entity in which the whistleblower works, serves or trains or to order which performs the work

External channels of reporting on possible facts of corruption or corruption-related offenses, other violations of the law – the way of reporting information by the whistleblower through individuals or legal entities, including through the media, journalists, public associations, trade unions, etc. [4].

On the other hand, to ensure that Transparency International Ukraine is updated to ensure the success of corruption in Ukraine, it is necessary to open accessible and secure channels for disseminating information (privacy policy, sanctions against it is important to spread information about corruption activities, reform the judiciary and law enforcement system, establish an effective policy of an independent body to investigate incidental crimes, develop real mechanisms in legislation [5].

As for the essence of regular channels, they are reports on possible facts of corruption or corruption-related offenses, other violations of the law – ways of protected and anonymous communication of information by the NAPC whistleblower, another subject of power, which is responsible for reviewing and making decisions. issues on which relevant information is disclosed. Regular channels must be created by specially authorized entities in the field of anti-corruption, pre-trial investigation bodies, bodies responsible for monitoring compliance with laws in relevant areas, other government agencies, institutions and organizations.

Whistleblowers play a leading role in uncovering offenses that threaten the interests of society and deplete public finances. Usually, those who report corruption offenses may be harassed by those against whom they testify [6]. We

believe that the constitutional and legal basis for the creation of legal guarantees for the protection of whistleblowers is Art. 60 of the Criminal Code, according to which "no one is obliged to carry out clearly criminal orders or order" Certain provisions on the protection of whistleblowers who disclose information about corruption are contained in Art. 11 of the Law of Ukraine "On Access to Public Information" and Art. 29 of the Law of Ukraine "On Information" provide for exemption from legal liability of whistleblowers for dissemination of information with limited access [1, p. 6.] And in the profile law there is a separate section devoted to the state protection of whistleblowers. In addition, it is necessary to state the lack of adequate mechanisms for the practical implementation of the relevant legislation. This is due to both the imperfection of this law and the lack of detailed regulation of the procedure for submission, consideration and decision-making on the facts contained in the whistleblower's report, as well as inadequate theoretical development of relevant issues. [7, p. 94].

In our opinion, the guarantees can be general, which are inherent in all subjects involved in criminal proceedings, and special, which are specific only to whistleblowers. According to item 16-2 Part 4 of Art. 3 of the CPC of Ukraine, the accuser is a natural person who, in the presence of conviction that the information is reliable, filed a statement or notification of a corruption criminal offense to the pre-trial investigation [8]. That is, a whistleblower is a person who participates in criminal proceedings and proceedings, and therefore he will be subject to all the guarantees provided by the Law of Ukraine "On Ensuring the Safety of Persons Participating in Criminal Proceedings". For example, personal security, protection of housing and property, housing and property of these persons may be equipped with fire and security alarms, their apartment telephone numbers and state license plates of vehicles belonging to them may be replaced (Article 8); individual protection and notification of danger (Article 9), the use of technical means of control and eavesdropping on telephone and other conversations (upon written request of these persons or with their written consent may be eavesdropping on telephone and other conversations, during which audio recording may be used), visual observation (Article 10), replacement of documents and change of appearance, etc. [9].

With regard to special guarantees, which are established exclusively for whistleblowers, they are: 1) guaranteeing the anonymity of persons

who report offenses in the workplace; 2) creation of secure channels through which whistleblowers can report corruption; 3) creation of a special effective pre-trial mechanism to protect the rights of whistleblowers; 4) guaranteeing protection against harassment in the workplace; 5) exemption on the grounds of outstanding legislation from legal liability for disclosure of information; 6) establishing the right to report socially necessary information in the media, public organizations, parliamentary committees or commissions, etc.; 7) establishment of social guarantees in case of dismissal; 8) material reward, etc. [1, p. 6].

Comparing the situation with the protection of whistleblowers in foreign countries, it should be noted that there these issues are mostly regulated by a special law. Among the EU countries, Slovenia, Ireland and the United Kingdom deserve special attention. After all, it is these states that have managed to create not only an effective regulatory framework, but also practical ways to implement legal requirements. Countries such as the United States and South Korea also have mechanisms to protect whistleblowers. However, even good legislation is not always properly applied in practice, as in Romania and Japan. There are also countries where whistleblowers can be accused of slander (Portugal, Czech Republic), breach of confidentiality (Spain, Estonia, Lithuania, Argentina, Australia, China), persecuted by corrupt officials (Poland, Slovakia, the Netherlands, Brazil). In addition, some states have managed to develop effective mechanisms to protect whistleblowers of all criminal offenses, not just corruption (USA, Australia, Great Britain, Japan, South Africa, the Republic of Serbia) [10, p. 36].

We would like to note that the legislation of foreign countries is more aimed at encouraging people to expose corrupt officials. This incentive consists mainly in the fact that whistleblowers receive a certain percentage of the fine paid by the corrupt official or a certain percentage of the illegal benefit received. In our opinion, the state thus creates a basis for further countermeasures against corruption. We consider it necessary to note that whistleblowers are unlikely to abuse this right in their own interests, as most foreign countries have a clear verification mechanism, which in turn makes such actions impossible. Therefore, the population develops intolerance to corruption at the subconscious level [5, p. 289].

In accordance with the domestic approach set out in Art. 53-7 of the Law are entitled to remuneration only those whistleblowers who reported

a corruption offense, the amount of which or damage to the state from which five thousand and more times the subsistence level for able-bodied persons established by law at the time of commission crime. Instead, Art. 130-1 of the CPC of Ukraine stipulates that payment to the whistleblower may be made not only for notification of a criminal offense, but also stipulates the need to actively promote its disclosure. We agree with O. Hamhoder's position that the essential context of the CPC of Ukraine's provision that the whistleblower / person should "actively promote the disclosure of a criminal offense" contradicts not only the provisions of the anti-corruption law, but also other provisions of criminal procedure law. The law provides for the right only to actively facilitate the disclosure of a criminal offense for the suspect and accused, and not for the whistleblower, who may attain procedural status as a witness or applicant. Therefore, the provisions of the Law on the terms of payment of remuneration to whistleblowers, the procedure for which is determined by the CPC of Ukraine, are of paramount importance [11, p. 186].

As for the amount of remuneration for the detective of corruption, it is 10 percent of the monetary amount of the subject of the corruption criminal offense or the amount of damages caused to the state by the criminal offense after the conviction of the court. The amount of remuneration may not exceed three thousand minimum wages established at the time of the commission of a criminal offense. If several persons report the same corruption offense, the amount of remuneration is divided equally among such whistleblowers [4].

In the case of persons who are not entitled to remuneration, they include persons who have reported a corruption offense under a criminal proceeding or who are accomplices to the corruption offenses they have reported; persons who have reported corruption offenses as whistleblowers, while having the opportunity to make an official notification of the identified criminal offense within the exercise of their official powers [8].

Conclusions. In conclusion, we would like to emphasize that the anti-corruption activities of whistleblowers are implemented by notifying the competent entities of possible facts of corruption or corruption-related offenses and other violations of the Law. To implement this task, it is important not only to create, but also to ensure that the state implements special guarantees aimed

at protecting whistleblowers and creating favorable conditions for their anti-corruption activities.

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Бондаренко О. С. Викривачі корупції як суб'єкти антикорупційної діяльності

Стаття присвячена важливій та актуальній темі – вивченню способів участі викривачів у протидії корупції та правових гарантій, які на них поширюються. Важливість протидії корупції зумовлює пошук нових заходів, методів і прийомів боротьби з цим руйнівним явищем. Одним із ефективних заходів стало запровадження інституту викривачів. Нині викривачі – це фізичні особи, котрі за наявності переконання, що інформація є достовірною, повідомили про можливі факти корупційних або пов'язаних із корупцією правопорушень, інших порушень Закону, вчинених іншою особою, якщо така інформація стала їм відома у зв'язку із трудовою, професійною, господарською, громадською, науковою діяльністю, проходженням ними служби чи навчання або їхньою участю у передбачених законодавством процедурах, які є обов'язковими для початку такої діяльності, проходження служби чи навчання. У статті підкреслюється, що в контексті боротьби з корупцією особливо важливо з'ясувати всі способи та засоби повідомлення про корупцію та пов'язані з корупцією правопорушення. Законодавець визначає декілька можливих каналів повідомлення про можливі факти корупції або пов'язаних із корупцією правопорушень, інших порушень цього Закону, а саме: внутрішні, регулярні або зовнішні канали.

Викривачі відіграють провідну роль у розкритті правопорушень, які загрожують інтересам суспільства та виснажують державні фінанси. Зазвичай тих, хто повідомляє про корупційні злочини, можуть переслідувати ті, проти кого вони дають свідчення.

Вивчено питання грошової винагороди викривачам. Автор наголошує, що розмір винагороди не може перевищувати трьох тисяч мінімальних зарплат, встановлених на момент вчинення кримінального правопорушення. Якщо кілька осіб повідомляють про одне і те саме корупційне правопорушення, розмір винагороди розподіляється порівну між такими викривачами.

Зроблено висновок, що антикорупційна діяльність викривачів здійснюється шляхом повідомлення компетентних органів про можливі факти корупції чи правопорушень, пов'язаних із корупцією, та інших порушень Закону. Для реалізації цього завдання важливо не лише створити, а й забезпечити виконання державою спеціальних гарантій, спрямованих на захист викривачів і створення сприятливих умов для їхньої антикорупційної діяльності.

Ключові слова: корупція, протидія корупції, суб'єкти протидії корупції, викривачі корупції, правові гарантії.