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Problems with the Separation of Disciplinary Proceedings and Administrative Proceedings Related to Whistleblower Application

The norms regulating whistleblowing have been in Georgia since 2009[1] which have gone through numerous amendments. Nevertheless, its implementation still experiences some practical challenges. The main difficulty is the separation of administrative proceedings related to the disciplinary procedure and the whistleblower application. Procedural ambiguity establishes a sporadic administrative practice, which negatively affects the functioning and the execution of public administration, in general.

Keywords: *Whistleblowing, Whistleblower, Disciplinary Proceedings, Formal Administrative, Proceedings.*

1. Introduction

Following the 17 June 2022 application for the membership of Georgia in the European Union, the European Commission recommended strengthening the anti-corruption mechanisms.[2] Whistleblowing is one of the mechanisms to fight against corruption in the public sector facilitating the proper functioning as an important component of improving the anti-corruption system. The process of implementing the norms regulating whistleblowing identified some difficulties related to the determination of the procedures to examine the application of whistleblowing. Article 20^6 on the Fight against the Corruption (hereinafter referred to as the Law) establishes the procedure for examining a whistleblower application and determines that the body scrutinizing the application shall review it following the procedure established by the legislation of Georgia and its statute, and in the absence of relevant rules, under the formal administrative proceedings established by the Georgia General Administrative Code ("GGAC"). The practice of public institutions displays that the enforcement of this provision is carried out uniformly. In certain cases, it is complicated for a public institution to determine the proper type of production and initiate not formal administrative proceedings on whistleblower application, but disciplinary proceedings provided by the Law of

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1 Law of Georgia on Amendments and Additions to the Law of Georgia on Conflict of Interest and Corruption in Public Service, Legislative Herald of Georgia, 9, 13/04/2009, <https://www.matsne.gov.ge/ka/document/view/18034?publication=0> [28.02.2024].

2 European Commission, Communication from the Commission to the European Parliament, The European Council and the Council, Commission Opinion on Georgia's Application for Membership of the European Union, Brussels, 17.6.2022, COM(2022), 405, Final, 8, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://eur-lex.europa.eu/resource.html?uri=cellar:32b82429-ee22-11ec-a534-01aa75ed71a1.0001.02/DOC_1&format=PDF> [28.02.2024].

Georgia on Public Service. With such uncertain demarcations and vague differences, the legal order is violated, and the trust in the system and the rate of whistleblowing are reduced.[3]

Based on the abovementioned, the work aims to outline the factors contributing to the complexity of the separation of administrative proceedings related to the whistleblower application from disciplinary proceedings and the ways to solve them. On the other hand, following a scientific analysis of the issue, the paper facilitates the establishment of administrative practices that are in line with the goals of the current legislation and international approaches.

2. Key Aspects of Administrative Proceedings Related to Disciplinary Proceedings and Whistleblowing

2.1. Whistleblowing and Related Administrative Proceedings

2.1.1. The Essence of Whistleblowing

Whistleblowing is a widespread institution, but there is still no international consensus on its exact definition.[4] In the scientific literature, whistleblowing is defined as the disclosure of information from public or private organizations, which avoids gross violations of citizens' rights, neglecting the accountability of the government, or corruption that may cause direct or potential harm to the public interest.[5] It does not involve providing information about any kind of illegal or unethical behavior. Only violations of a particular nature are treated within the definition of expose, which may affect the interests of a wide range of persons. This is indicated by the prehistory of the establishment of whistleblowing as one of the mechanisms to fight against corruption. It has become a means of combating large-scale violations. The interpretation of the Organisation for Economic Cooperation and Development (OECD) also emphasizes the public interest and indicates that whistleblowing is the provision of information about offenses that cause significant damage to the public interest.[6]

In addition, the European Court of Human Rights considers the public interest to be one of the criteria for whistleblowing[7] and assesses the facts that the complainant is not focused on.[8] In the part of the legal system, determining the public interest, not only the factual circumstances but also the vision of the whistleblower is important.[9] Thus, public interest is an integral part of whistleblowing,

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3 See OECD (2016), Committing to Effective Whistleblower Protection, OECD Publishing, Paris, 43, <http://dx.doi.org/10.1787/9789264252639-en>, [24.02.2024].

4 *Thüsing G., Forst G., (eds.),* Whistleblowing – A Comparative Study, Volume 16, 2016, 5.

5 *Santoro D., Kumar M.,* Speaking Truth to Power – A Theory of Whistleblowing, Volume 6, 2018, 1.

6 OECD (2016), Committing to Effective Whistleblower Protection, OECD Publishing, Paris, 18, <http://dx.doi.org/10.1787/9789264252639-en>, [24.02.2024].

7 See Guja v. Moldova, [2008] ECHR (para 74), <https://hudoc.echr.coe.int/#{%22itemid%22:[%22002-2265%22]}> [28.02.2024].

8 Heinisch v. Germany, [2011] ECHR, <https://hudoc.echr.coe.int/#{%22itemid%22:[%2, 2001-105777%22]}> [28.02.2024].

9 This way establishes the balance between freedom of expression and the effectiveness of the institution in the United States and is called the Pickering Test. see*Martic M*., Protection of the Rule of Law Through Whistleblowing, Regional Law Review, Vol. 2021, 68-69.

and any approach should serve it.[10] As for the definition of public interest, according to the 2014 recommendation of the Committee of Ministers of the Council of Europe, it is the privilege of states to determine the content and the areas of public interest.[11] This does not mean that the subject of prosecution can only be a criminal offense. The protection of whistleblowers must also be provided with information that may appear to be the basis for initiating administrative proceedings and relevant liability.[12] There are different models of detection.[13] Georgian legislation relies on a model that establishes a broad definition of whistleblowing and, in addition to legal violations, includes ethical violations.[14] According to Paragraph 'a' of Article 20^1, whistleblowing is to inform (by a whistleblower) the governing body, an investigator, the prosecutor, or the Public Defender of Georgia examining the application about the violation of the norms of the legislation of Georgia or the general rules of ethics by the wrongdoer which has caused damage or may harm the public interest or the reputation of the relevant public institution. It can also be considered as an exposure. The whistleblower must inform civil society or mass media about the above violation after the decision is made by the body reviewing the application, an investigator, the prosecutor, or the Public Defender of Georgia. This definition provides internal, external,[15] and public exposure.[16] Based on the abovementioned, the subject of whistleblowing is a violation of the general rules of legislation or ethics and conduct by the exposed person who has harmed or may damage the public interest or the reputation of a public institution. Both public interest and reputation belong to the category of indefinite concepts. Their contents have no normative reservations, accordingly, the body examining the application should assess a specific case of whether the public interest or reputation of a public institution is being violated and identify the exposure.

2.1.2. General Rule and Characteristics of Administrative Proceedings Related to an Application of Disclosure

The whistleblowing application is considered under the procedure established by the legislation of Georgia and the statute of the relevant institution, and in the absence of such rules, the regulations of formal administrative proceedings are established by the GGAC. The main legislative act regulating whistleblowing does not contain the norms guiding the procedures for reviewing an application of whistleblowing. The current legislation ensures the opportunity for each institution to individually establish the procedure for examining whistleblower applications, which provides them with broad

10 Comp. *Boot E. R.,* The Ethics of Whistleblowing, New York, 2019, 32-45.

11 Recommendation CM/Rec(2014)7 on the protection of whistleblowers and explanatory memorandum, The Committee of Ministers of the Council of Europe, 30.04.2014, 7, <http://rm.coe.int/doc/09000016807096c7> [24.02.2024].

12 See OECD (2016), Committing to Effective Whistleblower Protection, OECD Publishing, Paris, 45-46, <http://dx.doi.org/10.1787/9789264252639-en>, [24.02.2024].

13 *Thüsing G., Forst G.,* Whistleblowing – A Comparative Study, Springer, 2016, 21-22.

14 It should be borne in mind that the legislation of Georgia provides for a mechanism of disclosure only in the public sector.

15 *Kenny K.*, Whistleblowing Toward a New Theory, Harvard University Press, 2019, 19.

16 Ibid., 149.

discretion. Such regulation may be dangerous to protect the whistleblower or initiate appropriate procedures. It is recommended to regulate the main provisions scrutinizing the application to ensure compliance with internationally recognized principles and standards of whistleblowing. Since the majority of public institutions do not have internal regulations for whistleblowing, the only correct way to review applications is through formal administrative proceedings.

In 2013, Transparency International (TI) Georgia published 30 Principles,[17] which is a guideline for the adoption and improvement of whistleblower legislation and demonstrates its essence and the nature of the administrative proceedings related to it. An analysis of these principles elucidates that a whistleblower has special rights that are not usually met with other types of administrative proceedings. Thus, the feature of administrative proceedings is manifested in the special legal regime of the whistleblower[18] which implies taking some special measures to protect the whistleblower.[19]

Paragraph 6 of Article 20^4 creates important guarantees for the protection of whistleblowers in Georgia, which establishes a list of inadmissible acts against the whistleblower and simultaneously furnishes the possibility of applying a special measure of the protection ensured by the Criminal Procedure Code of Georgia not only for the whistleblower but also for his/her close relative or a witness of whistleblowing. privacy Based on the principle, the identity of the whistleblower cannot be disclosed without his sharply expressed will. The principle of anonymity provides the possibility of exposing without identifying a person.[20] Accordingly, during the administrative proceedings related to the application of whistleblowing, the principle of publicity is replaced by the principle of confidentiality.

The involvement of the whistleblower as an informed interested party is of particular importance in the production process. He/she should clarify the application, provide additional information or evidence, be informed of the results of the investigation,[21] which requires special regulation based on the purposes of the protection of the whistleblower. EU directive representing Lex Generalis[22] comprises certain reservations about the administrative proceedings related to whistle-blowing, including establishing the obligation to inform the whistleblower and the relevant timeframes.[23] There are no special norms for informing, getting engaged, and using various means of

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17 See International Principles for Whistleblower Legislation Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest, Transparency International, 2013, <https://images.transparencycdn.org/images/2013_WhistleblowerPrinciples_EN.pdf>, [24.02.2024].

18 The use of the so-called "whistlebots" system as a mechanism for detecting violations is actively discussed using artificial intelligence, which eliminates personal risks and somewhat replaces whistleblowers. See *Brand V.,* Corporate Whistleblowing, Smart Regulation, and RegTech: The Coming of the Whistlebot?, University of New South Wales Law Journal, Vol. 43, Issue 3, 2020.

19 International Principles for Whistleblower Legislation Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest, Transparency International, 2013, 5-6, <https://images.transparencycdn.org/images/2013_WhistleblowerPrinciples_EN.pdf>, [24.02.2024].

20 Ibid., 6-7.

21 Ibid., 9.

22 *Abazi V.,* The European Union Whistleblower Directive: A "Game Changer" for Whistleblowing Protection?, Industrial Law Journal, Vol. 49, No.4, 2020, Oxford University Press, 644.

23 See. The Directive – (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, Official Journal of the European Union, L

communication in Georgian legislation. Their determination falls within the discretion of a particular public institution.

2.2. The Essence and Peculiarities of Disciplinary Proceedings

Determining the grounds, essence, and features of initiating disciplinary proceedings is important to separate it from the administrative proceedings related to the application of whistleblowing. Chapter 10 of the Law of Georgia on Public Service regulates the procedures and rules of disciplinary proceedings, according to which a public institution must establish the fact of disciplinary misconduct and determine the appropriate disciplinary measure. Thus, the disciplinary misconduct, proceedings, and measures shall establish a disciplinary mechanism defined by the Law of Georgia on Public Service. With a detailed regulation of disciplinary liability, the legislation created one of the mechanisms for the legal protection of officers, which integrated the goals of prevention and the purpose of protection of human rights. The objectives of the disciplinary proceedings are expressly defined by law and imply the rapid and full detection of disciplinary misconduct and taking the appropriate measures to eliminate it.[24] It is determined by 5 basic principles:[25]legality, prohibition of imposing disciplinary liability for the same misconduct twice, impartiality (prohibition of conflicts of interest), the so-called "presumption of innocence" and confidentiality, which predominantly preserve the reputation of the officer and the public institution.

To formal content, particularity is characterized by the initiation of disciplinary proceedings. The legislation introduces three bases for initiating disciplinary proceedings, two of which are specific (an application of an officer or a former officer and the results of audit, inspection, and/or monitoring), and one with general content related to the substantiated suspicion of disciplinary misconduct.[26] However, disciplinary proceedings always begin with the issuance of an individual administrative act – a command.[27]

Disciplinary proceedings shall be performed by the unit initiating disciplinary proceedings[28] and it is not conducted directly by the head of the public institution, which is one of the contributing factors to the fairness, impartiality, and objectivity of the production. A final decision on imposing disciplinary liability shall be made by the head of the public institution. In addition, the head of the public institution has the legal leverage to return the conclusion with substantiated remarks and the authority to reduce disciplinary liability (in the case of minor disciplinary misconduct).[29]

305/17, 26.11.2019, Article 9, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1937>, [24.02.2024]. In case of whistleblowing made through external channels, this term can be extended up to 6 months, see Ibid., Article 11.

24 Law of Georgia on Public Service, Article 86, The Legislative Herald of Georgia, 11/11/2015, <https://matsne.gov.ge/ka/document/view/3031098?publication=50>, [24.02.2024].

25 Ibid., Article 87.

26 Ibid., paragraph 1 of Article 88.

27 Ibid., paragraph 3 of Article 88.

28 A unit carrying out disciplinary proceedings may be a structural unit carrying out official inspections of the same or superior institution or an independent commission. See. Ibid., Article 89.

29 Ibid., Article 94(2).

In the process of disciplinary proceedings, a public servant has some legal rights that correspond to the nature of this kind of proceedings and include the standard rights of having a lawyer, introducing materials, participation in the process of proceedings, submission of evidence, appeal, etc. Based on these rights, a public institution shall have many obligations, including informing about the initiation of disciplinary proceedings, the definition of rights and commitments, the procedure for disciplinary proceedings, the familiarity with case materials, etc. In this regard, the Law of Georgia on Public Service contains much more detailed norms than the GGAC.

Although the legislation envisages the involvement of the party in the disciplinary proceedings and the submission of their opinions, it does not establish an unconditional obligation to hold an oral hearing and links it to a specific measure of disciplinary liability – dismissal.[30] The principle of hearing is of particular importance during proceedings since it can have a significant effect on the results of the proceedings. Such an order of the issue establishes a lower standard than is provided during formal or public administrative proceedings.

The legislation explicitly defines the legal consequences that disciplinary proceedings may cause, the imposition of disciplinary liability, dismissal (in case of minor disciplinary misconduct) or termination of disciplinary proceedings.

Thus, the peculiarity of the disciplinary proceedings is expressed in the purpose to which it is directed, in the legal basis of initiation, the procedural process, and the accompanying legal consequences.

3. The Difficulty of Separating Administrative Proceedings related to a Disciplinary Procedure and an Application of Whistleblowing and the Factors Contributing to It

Disciplinary proceedings predominantly provide internal organizational discipline and order, while the whistleblowing mechanism serves the common good and goes beyond the scope of a particular institution. However, they have some crossing points. Failure to fulfill official obligations, and violation of the general rules of ethics can become a subject of whistleblowing, citizens apply to public institutions with such notifications.[31] In such cases, the grounds for initiating formal administrative proceedings related to the application of whistleblowing emerge simultaneously. Since the grounds for initiating disciplinary proceedings are for arising reasonable doubts about alleged disciplinary misconduct, disciplinary proceedings may be initiated when a citizen's application creates a logical assumption of disciplinary misconduct. In addition, informing the relevant institution about the violation makes the basis for initiating formal administrative proceedings. Therefore, a public institution has to choose between the types of the above proceedings.

As the definition of whistleblowing is of fairly broad content, any disciplinary misconduct may be considered as a subject of whistleblowing. The law demonstrates the nature of the violations falling

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30 Ibid., Article 91(6).

31 See *Tkemaladze S., Chachava S.,* Public Service Service/Labor Dispute Management and Effective Resolution Situational Analysis and Needs Survey, 2018, 52, <https://www.undp.org/sites/g/files/zskgke326/files/migration/ge/UNDP_GE_DG_PAR_NVU_Effective-Resolution-of-Labour-Disputes_geo.pdf>, [28.02.2024].

within the whistleblowing but does not define the areas of public interest and the scope of reputational damages. This makes it difficult to accurately determine the content of whistleblowing.

In addition to the material norms, in the process of the determination of whistleblowing, procedural regulations, the rules for identifying and responding to the application of whistleblowing are not prescribed by law. The absence of these rules is of particular importance when a public institution does not have a qualified employee who can accurately and appropriately assess the content and nature of a particular information. The general content of the whistleblowing, the absence of detailed response procedures, and the lack of qualified human resources are the problems of separating these types of proceedings.

4. The Importance of Separation of Administrative Proceedings Related to the Disciplinary Proceedings and the Application of Disclosure and its Main Criteria

4.1. Appropriate Proceedings

Stricto sensu means the set of rules for performing administrative, however, in the modern sense it has acquired a much broader understanding.[32] Public administration as a function of the state must be carried out based on the decisions of the entity implementing public administration. These decisions are made in compliance with certain rules which are termed administrative proceedings. Thus, administrative proceedings are one of the elements of public administration and involve the decision-making process.[33]

The right to fair administrative proceedings is a fundamental human right enshrined in Article 18 of the Constitution of Georgia. It substantially follows Article 41 of the EU Charter of Fundamental Rights[34] imposes an obligation on public institutions to ensure administrative proceedings in agreement with the standard of justice. Thorough conduct of administrative proceedings based on an appropriate procedure determines its legality, reasoning, and expediency.[35]

In the scientific literature, administrative proceedings have two functions, instrumental and non-instrumental. The instrumental function implies the impact of proceedings on the final result, which means that the administrative proceedings ensure the correctness of the substantial result (final decision).[36]

The non-instrumental function is manifested in the importance of administrative procedures, not the final decision made as a result of it. Thus, administrative proceedings with this approach are self-sufficient and independent of the final decision.

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32 *Cane P., Hofmann H. C H, C Ip Eric, Lindseth P. L.,* The Oxford Handbook of Comparative Administrative Law, Oxford, 2021, 933.

33 *Turava P.,* General Administrative Law (Third Edition), Tbilisi, 2020, 28 (In Georgian).

34 Charter of Fundamental Rights of the European Union, Official Journal of the European Union, C 326/391, Article 41.1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>, [24.02.2024].

35 Decision of the Supreme Court of Georgia of July 20, 2023, on the case Nobs-1510(K-22).

36 *Millet L.*, The Right to Good Administration in European Law, 47 Pub. L. 309, 310 (2002), See quote.: *Ponce J.,* Good Administration and Administrative Procedures, Indiana Journal of Global Legal Studies, Vol. 12, No. 2, (Summer 2005), 553.

Based on the above, it can be clearly stated that the determination of the proper type of proceedings in the process of public administration is of multifaceted consequence. Formal administrative and disciplinary proceedings are different from each other, their confusion affects the legality of making decisions, the principles of good administration, and the realization of human rights and freedoms. That is why a public institution should make a decision following the relevant procedures, which creates the correct primary identification of the application.

4.2. Identification of Whistleblowing

The problem of separation of administrative and disciplinary proceedings related to the application of whistleblowing essentially arises when a public institution cannot determine the nature of the whistleblowing. In this case, reviewing the application rests on disciplinary proceedings that raise the risk for the whistleblower to remain beyond the guarantees of protection provided by the legislation. Accordingly, the law must create solid legal grounds for the identification of whistleblowing, especially in terms of determining its material content. The existing definition of whistleblowing covers general provisions and does not design a solid orientation for a public institution, including not establishing the main areas and directions of public interest. The EU directive identifies 12 main areas of whistleblowing, including public procurement, prevention of money laundering and financing terrorism, safety of transport, environmental protection, radiation and nuclear safety, food security, public health, etc.[37] Applying such an approach, specifying the definition of whistleblowers has become a good practice.

In addition, the process of whistleblowing has excluded specific applications related to human resource management (HR grievance)[38] and personal complaints[39] that are contrary to the nature of whistleblowing. By the prima facie definition of whistleblowing, it is the protection of general social benefit, not personal interests.[40] Consequently, where there is public interest, there is whistleblowing.

Despite these efforts, an exhaustive definition of whistleblowing (without evaluative categories) and its unequivocal separation from other institutions is virtually impossible. Even a personal complaint dealing with favoritism, or sexual harassment, may indicate a general nature of the problem.[41] Therefore, the appropriate mechanism for whistleblowing should include a multilateral

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[37] The Directive – (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, Official Journal of the European Union, L 305/17, 26.11.2019, Article 2(1), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019 L1937>, [24.02.2024].

[38] *Terracol M.,* Internal Whistleblowing Systems Best Practice Principles for Public and Private Organisations, Transparency International, 2022, 15, <https://images.transparencycdn.org/images/2022_ Internal-Whistleblowing-Systems_English.pdf>, [28.02.2024].

[39] *Tsukhishvili N.,* Whistleblowing in Public Service Comparative Analysis of International Practice and Georgian Legislation, Tbilisi, 2020, 23-24 <http://csb.gov.ge/media/3138/%E1%83%9B%E1%83%AE% E1%83%98%E1%83%9A%E1%83%94%E1%83%91%E1%83%90-%E1%83%A1%E1%83%90%E1%83 %AF%E1%83%90%E1%83%A0%E1%83%9D-%E1%83%A1%E1%83%90%E1%83% 9B%E1%83%A1 %E1%83%90%E1%83%AE% E1%83%A3%E1%83%A0%E1%83%A8%E1%83%98_disclosure-in-public-service_external.pdf>, [28.02.2024].

[40] *Martic M.,* Protection of the Rule of Law through Whistleblowing, Regional Law Review, Vol. 2021, 68.

[41] *Brown A. J., Lewis D., Moberly R. E., Vandekerckhove W.,* International Handbook on Whistleblowing Research, 2014, 10.

process, from consultation to final decision. If there is no unequivocal regulation of the issue, it is important to inform a person properly (for example, in the form of an expository officer, or guideline),[42] which helps him/her select the appropriate mechanism for providing information and determine the expected legal consequences. Even for cases when the application is dualistic combining the bases for starting different types of proceedings by the persons with relevant knowledge and qualifications, an initial assessment and the proceedings should be carried out considering the clear criteria to determine the final results. [43]

4.3. The Logic of the Law

Administrative practice revealed another aspect of the separation of administrative proceedings and disciplinary proceedings related to the application of whistleblowing. Some public institutions identify the applications but they are reviewed not through formal administrative proceedings, but based on disciplinary proceedings. When the subject of the prosecution is alleged disciplinary misconduct, some of the institutions consider it unnecessary to perform formal administrative proceedings and start the process of disciplinary proceedings.[44] Analysis of the law shows that disciplinary proceedings cannot replace formal proceedings to review an application of whistleblowing. To determine the will of the legislator, according to Paragraph 2 of Article 20,[6] if after examining the application of whistleblowing it becomes clear that the violation may serve as the basis for imposing administrative, civil, or criminal liability on the exposed person, the body reviewing the application is obliged to apply to the relevant authorized bodies. This norm indicates that whistleblowing is the initial mechanism for responding to an application, within which a violation and its nature (criminal, civil, administrative, disciplinary) is assessed and determined by further procedures. Accordingly, if the action has some signs of a crime, studying the issue must ensure the standard of evidence of a substantiated assumption to transfer it to the investigative authorities. Similarly, if the application of whistleblowing contains a violation related to disciplinary misconduct, examining the issue should raise reasonable doubt about the issue of disciplinary misconduct to start disciplinary proceedings. Based on the abovementioned, the logic of the law is violated by the initiation of disciplinary proceedings following the application of whistleblowing.

5. Conclusion

Corruption can become a major obstacle to the development and advancement of the states. The states are trying to fight it through systemic approaches and various mechanisms. Over the past decade, whistleblowing has met almost all areas of law[45] and has become a part of the anti-corruption

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42 *Terracol M,* Internal Whistleblowing Systems Best Practice Principles for Public and Private Organisations, Transparency International, 2022, 15, 19, <https://images.transparencycdn.org/images/2022_Internal-Whistleblowing-Systems_English.pdf>, [28.02.2024].

43 *Terracol M,* Internal Whistleblowing Systems Best Practice Principles for Public and Private Organisations, Transparency International, 2022, 27, <https://images.transparencycdn.org/images/2022_Internal-Whistleblowing-Systems_English.pdf>, [28.02.2024].

44 This issue was highlighted during the workshop.

45 *Thüsing G., Forst G., (eds.),* Whistleblowing – A Comparative Study, Volume 16, 2016, 3.

system. Therefore, the constant development of the whistleblowing system is one of the concerns of the state. Articulation of whistleblowing and disciplinary proceedings, in some cases, is difficult as there are some overlapping points between these systems. Consequently, a non-uniform practice of reviewing whistleblower applications is formed based on disciplinary proceedings.

Disciplinary and formal administrative proceedings initiated on the application of whistle-blowing differ from each other. Most importantly, in the process of whistleblowing, the whistleblower has protection guarantees, determined by law, which cannot be realized in the process of disciplinary proceedings. The analysis of the legislation shows that the so-called two-step model of consideration of whistleblowers' applications connected to disciplinary misconduct is valid. The mentioned means scrutinizing the application of whistleblower based on formal administrative proceedings and then initiating disciplinary proceedings. The final of the formal administrative proceedings determines the type of violation the whistleblower indicates and what procedures should be enacted to deal with it.

The mentioned approach does not exclude the problem of separation of whistleblowing and other types of complaints, moreover, there is a natural connection between them, the main prerequisite for the solution of which is the detailed regulation of the material content of whistleblowing and the procedures for responding to it.

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