



Whistleblower Protection in Southeast Europe Moving to the Next Step



Southeast Europe
**COALITION ON
WHISTLEBLOWER
PROTECTION**



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Center
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Whistleblower Protection in Southeast Europe: Moving to the Next Step

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FOREWORD

During the last decade whistleblowing has increasingly been mainstreamed in the South-eastern European countries. Presently all South-eastern European countries have adopted whistleblower legislation since 2019 have embarked on the process of reviewing their legal frameworks to align them with the EU Directive on whistleblowing.

Civil society organisations, the media, and governments have played active role in the adoption of the legislation, monitoring and review of the implementation, advocacy for improvement and changes, in addition to their active involvement in protecting individual whistleblowers from retaliation and teaming up to uncover and report corruption and wrongdoing.

As a result, whistleblowing is more and more recognised as key additional tool in the toolkit of the anti-corruption and integrity building activities, underpinning the overall efforts to consolidate rule of law, human rights and democracy in the region.

One of the main contributions of the civil society organisations since 2015 has

been the continual review and evaluation of the whistleblower frameworks in 10 South-eastern European countries. The reports have served as a basis for identifying successes and shortcomings and for guiding stakeholders' future actions.

As of the contributors and authors of the two previous reports, I'm pleased to introduce this latest update on the Whistleblower Protection in Southeast Europe produced with the contribution of organisations members of the Southeast Europe Coalition on Whistleblower Protection.

This new report is timely as the countries of the region are aiming to stepping up their action to align legislation and practices with the EU Directive on whistleblowing, which constitutes one of the most advanced frameworks in the world.

On the other hand, the report marks a new milestone in the commitment of the civil society organisations to continuing play an active role in the strengthening of whistleblowers protection, freedom of expression and rule of law.

Arjan Dyrmishi

*Executive Director of the Center for the Study of Democracy and Governance
and Co-Coordinator of the Southeast Europe Coalition on Whistleblower Protection*

EXECUTIVE SUMMARY

Steady Progress: Whistleblower Protection in Southeast Europe Reaches Next Step

In our first report on whistleblowing published in 2015, we were pleased to announce that nearly every country in Southeast Europe had passed a whistleblower protection law. These countries had reached step 1. Eight years later, we are more pleased that nearly every country in the region is at step 2. This means they have set up an official system to receive, investigate and respond to retaliation complaints and reports of misconduct submitted by witnesses in the workplace.

This report looks at whistleblower policies and practices in 10 countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Moldova, Montenegro, North Macedonia, Romania and Serbia. With the exception of Bulgaria and Romania, every country has enacted a whistleblower law and

appointed a public institution with designated staff to handle cases. Compared to most other regions in the world, Southeast Europe is well advanced.

Citizens have responded to this opportunity by submitting reports and filing cases in the hundreds. This confirms many long-held assertions in the region: corruption and misconduct are real problems, citizens care about these problems, public authorities need citizens' assistance to root out corruption, and many people are willing to report violations regardless of the risks.

From this perspective, these countries have taken the difficult first steps to engage their own citizens in anti-corruption efforts.

In this report, we describe each of the 10 countries' whistleblower laws, protection frameworks and performance in handling cases. In summary:

- **Albania**, which passed the Law on Whistleblowing and Protection of Whistleblowers in 2016, received six requests for retaliation protection from six disciplined employees in 2016-20. Details on these cases are unclear. In at least one case, a public authority was notified to cease retaliation against an employee.
- **Bosnia and Herzegovina**, which passed the Law on Whistleblower Protection in 2013, has approved 9 of 29 requests for protection. In 2021, two out of three requests were granted, and public sector employers were ordered to reinstate two whistleblowers.
- In **Croatia**, 84 reports of alleged misconduct have been filed since the Law on the Protection of Reporters of Irregularities was passed in 2019. Information on protection measures is incomplete. Courts have reinstated at least two public employees who had suffered retaliation for reporting misconduct.

- In **Moldova**, which passed the Law on Integrity Whistleblowers in 2018, has preemptively protected at least one employee from being retaliated against, and has intervened on behalf of several victimized employees in court.
- **Montenegro**, whose whistleblower provisions are included within the Law on Prevention of Corruption, has received more than 450 reports of alleged misconduct since it was passed in 2016. Among 20 requests for retaliation protection, seven have been granted and two were pending at the time of this writing.
- In **Serbia**, which passed the Law on the Protection of Whistleblowers in 2016, does not have a designated whistleblower agency and instead relies fully on the courts to reinstate and compensate victimized employees. Various levels of courts have heard more than 840 cases. Data on case outcomes is incomplete. According to one NGO, more than 30 employees have received judicial protection and 15 have received final verdicts in their favor.
- **North Macedonia** and **Kosovo**, which passed whistleblower laws in 2015 and 2018, respectively, have not released information on requests for retaliation protection.
- **Bulgaria** and **Romania** do not regularly release information on whistleblower reports. Because neither country has a designated whistleblower office, there is no official information on protection requests.

Despite this progress, none of the countries release sufficient information to the public on the reasons that protection requests have been granted or denied. Five countries – Albania, Bosnia and Herzegovina, Moldova, Montenegro and Serbia – regularly release basic though incomplete information on protection request.

And, no country releases complete information on compensation for victimized employees, including financial relief for lost wages and legal fees.

Without complete transparency, the public cannot be assured that:

- whistleblower protection laws are being properly followed and enforced,
- whistleblower caseworkers are sufficiently skilled and trained,
- cases are being fairly, objectively and promptly decided,
- victimized employees deserving of relief are being adequately protected and fully compensated, and
- people, companies and public institutions that retaliate against whistleblowers are held to account for this wrongdoing.

In order to reach step 3, all countries must release complete information on cases and their outcomes. Step 4 will be achieved when all employees have a guarantee that they will not suffer any reprisals or threats if they report crime or corruption in the public interest.

ALBANIA

ALBANIA



ALBANIA

Introduction

Albania passed the Law on Whistleblowing and Protection of Whistleblowers in 2016. This legislation is fairly comprehensive, with internal and external whistleblowing mechanisms, and safeguards for protecting the rights of whistleblowers, applicable to employees in both the public and private sectors.

Under the law, every public authority with more than 80 employees and every private entity with more than 100 employees must have a responsible unit for handling whistleblower cases internally. Externally, the competent

authority is the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI), which is the main authority in charge of implementing the whistleblower law.

The law protects the rights of whistleblowers, such as their confidentiality, protections against unconventional harassment and gag orders, enabling transfer options, and personal accountability in cases of acts of retaliation.¹ To date, whistleblower cases filed under the law in Albania remain relatively low.

Current Legislation and Regulations

As another step towards opening EU accession negotiations and furthering its anti-corruption agenda, Albania adopted its whistleblower law in June 2016, aiming to prevent and combat corruption in the public and private sectors. The law entered into force for the public sector in October 2016 and in July 2017 for the private sector.

The whistleblowing law is fairly comprehensive, containing mechanisms for receiving reports, investigating disclosures, safeguards against the retaliation of whistleblowers and breach

of confidentiality, and institutions for implementation and oversight. The law's stated purpose is to prevent and combat corruption in the public and private sectors, to protect whistleblowers from retaliation, and to promote whistleblowing on acts of corruption.²

The law provides that within two months from entering into force, among others, HIDAACI and the Council of Ministers should issue implementation bylaws. These bylaws³ have been enacted, albeit with delay – two months for the Council of Ministers and one year for

¹ See also Mark Worth and Arjan Dyrnishi, "Protecting Whistleblowers in Southeast Europe: a Review of Policies, Cases and Initiatives" (Blueprint for Free Speech, 2017): p. 8.

² Article 2 of the Law.

³ HIDAACI Order no. 1222 (11.07.2017) and CoM decision no. 816 (16.11.2016).

HIDAACI, regarding the adoption of internal and external whistleblowing mechanisms.⁴ In addition, the HIDAACI Law⁵ was amended in 2017, as foreseen in the National Plan on

European Integration 2017-2020,⁶ to harmonize it with the HIDAACI's competencies and tasks related to whistleblower protection.

Protection and Investigation Frameworks

The law envisages that in every public authority and private entity that has more than 80 employees and 100 employees respectively, there must be a “responsible unit” in charge of the administrative investigation of whistleblower reports and the review of protection requests. Thus, these responsible units serve as an internal whistleblowing mechanism. Currently, there are around 168 responsible units in the public sector, while around 440 units in the private sector.⁷ These units report to HIDAACI.

HIDAACI is the main authority responsible for implementing the law, while also serving as an external whistleblowing mechanism. Besides reports from responsible units, people can make reports directly to HIDAACI in

certain cases. This includes if there are no responsible units within an entity (for example, because there are fewer than 80 or 100 employees, respectively); the responsible unit was not effective in conducting the administrative investigation; there is a reasonable doubt that the responsible persons within the unit are themselves the culprits or will be biased or dishonest; or when the evidence may be compromised by the entity.⁸

After conducting the administrative investigation, HIDAACI may refer the case to competent authority for further measures depending on the subject matter – for example, to prosecutors, Supreme Audit Institution or High Inspectorate of Justice.

Under the whistleblower law, HIDAACI's competencies include:

- issuing instructions to monitor implementation of internal and external disclosure;
- inspecting the functioning of internal reporting mechanisms;
- investigating administrative offenses and issuing fines under the law;
- receiving and investigating requests for protection from retaliation and protecting whistleblowers from retaliation;
- drafting assessments and recommendations for implementing the law on the basis of annual reports from disclosure units;
- providing advice and support on implementing the law; and

⁴ Albanian Helsinki Committee, “Sinjalizimi i Korrupsionit në Shqipëri: Sfidat e Zbatimit të Kuadrit të ri Ligjor” (2020): p. 14-15.

⁵ The Law On the Declaration and Audit of Assets, Financial Obligations of the Elected and Certain Public Officials (2003).

⁶ CoM decision no. 42 (25.1.2017), “Për miratimin e Planit Kombëtar për Integrimin Evropian 2017-2020.”

⁷ HIDAACI, “Raporti Vjetor: 2020”: p. 9.

⁸ Article 11 of the Law.

- raising public awareness of whistleblowing and protecting whistleblowers, and enhancing the cultural acceptance of whistleblowing.⁹

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Address: “Reshit Collaku” Street; Tirana, Albania

⁹ Worth and Dymishi, “Protecting Whistleblowers in Southeast Europe: a Review of Policies, Cases and Initiatives” (Blueprint for Free Speech, 2017): p. 8.

Performance on Reports and Cases

According to civil society organizations that monitor the implementation of the whistleblower law, the level of corruption in Albania is high, whereas the number of whistleblowing instances remains relatively low.¹⁰ From when the law was adopted in 2016 until 2021, there have been about 66 whistleblower reports or cases in Albania.¹¹ Of these, 17 were internal reports in the public sector, as reported by the responsible units to HIDAACI,¹² two came from the private sector,¹³ and 47 from external whistleblowing directly to HIDAACI.¹⁴ Thus, the vast majority of whistleblower reports have been external, about 70 percent.

In the 17 instances of internal whistleblowing, the reports came from public institutions including the Supreme Audit Institution, Albanian Radio and Television, Social Insurance Institute and ministerial agencies. For the private sector entities, no such data is available. HIDAACI's annual reports do not provide full data on how many of these internal reports were grounded and how many were dismissed by HIDAACI. Such data is given only for 2018 and 2020.

In 2020 there were five internal whistleblowing instances in the public sector. Two of them were deemed to be grounded by HIDAACI. In 2018, among three whistleblower reports in the public

sector, two were deemed grounded by HIDAACI; the others were dismissed.

Regarding external whistleblowing, the reports usually are related to abuse the office, mainly in violating procurement law, irregularities in issuing judicial and administrative decisions, and conflict of interest.¹⁵ After the administrative investigation of cases by HIDAACI, the grounded cases are referred to other authorities for further measures.

HIDAACI refers cases to the relevant authority depending on the subject matter of whistleblowing cases (for example, to the prosecution, the Supreme Audit Institution, the High Inspectorate of Justice, the Independent Qualification Commission, etc.) Whether any measure or sanction will be taken will depend on the extent to which the authority deems the case to be grounded.

So far, no reported case referred to the prosecution has led to any criminal conviction.¹⁶ A shortcoming of HIDAACI in this regard was identified to be a frequent lack of administrative investigation before referring the case.¹⁷

Regarding requests for protection against retaliation, HIDAACI received six requests in the period 2016-20.¹⁸ The

¹⁰ Albanian Helsinki Committee, "Sinjalizimi i Korrupsionit në Shqipëri," p. 10.

¹¹ As indicated by the HIDAACI annual reports for these years. See the HIDAACI annual reports for the year 2016, 2017, 2018, 2019 and 2020, at: <https://www.ildkpkj.al/raporte-vjetore/>.

¹² In 2017, 7 cases; in 2018, 3 cases; in 2019, 2 cases; and in 2020, 5 cases.

¹³ One in 2019 and one in 2020.

¹⁴ In 2017, 8 cases; in 2018, 16 cases; in 2019, 14 cases; and in 2020, 9 cases.

¹⁵ Albanian Helsinki Committee, "Sinjalizimi i Korrupsionit në Shqipëri," p. 16-17.

¹⁶ Albanian Helsinki Committee, "Evaluation of Human Rights and Rule of Law during the Albanian Presidency of OSCE" (2021): p. 11.

¹⁷ Albanian Helsinki Committee, "Sinjalizimi i Korrupsionit në Shqipëri," p. 25.

¹⁸ One in 2017, three in 2018, one in 2019, and one in 2020.

requests came after whistleblowers said they were dismissed duty as a disciplinary measure.¹⁹ In these cases, HIDAACI concluded that the discharges did not entail retaliation, either directly or indirectly.²⁰ In at least one instance,

however, HIDAACI took action *ex-ante* to protect the whistleblower from retaliation by notifying the public authority to take precautionary measures.²¹

Recent and Ongoing Whistleblower Cases

There is no available data regarding very recent or ongoing whistleblower cases. HIDAACI is yet to publish the annual report that covers cases from 2021. The cases treated here already have a conclusion, either by HIDAACI or the referred authorities.

Whistleblower Support and Advocacy Organizations

Organizations whose mission incorporates certain aspects of whistleblowing support and advocacy include:

Center for the Study of Democracy and Governance

office@csdgalbania.org
<http://csdgalbania.org/>

Helsinki Committee Albania

+355 4 223 3671; 068 20 236 99
office@ahc.org.al
<https://ahc.org.al/en/>

Partners Albania

+355 4 225 4881
partners@partnersalbania.org
<https://partnersalbania.org/>

The Southeast Europe Coalition Whistleblower Protection, a regional NGO comprised of about 40 NGOs and individual members in 16 countries, is based in Tirana:

adyrmishi@csdgalbania.org
<https://see-whistleblowing.org/>

¹⁹ Albanian Helsinki Committee, “Sinjalizimi i Korrupsionit në Shqipëri,” p. 28.

²⁰ Patris Pustina, “Albania’s Whistle-Blowers Remain Reluctant Despite Legislation Guaranteeing Their Protection,” *Exit News* (2020).

²¹ HIDAACI, “Raporti Vjetor: 2020,” p. 11.

BOSNIA AND HERZEGOVINA

BOSNIA
AND
HERZEGOVINA



BOSNIA AND HERZEGOVINA

Introduction

As of the beginning of 2022, Bosnia and Herzegovina had three laws that, in their own way, are intended to protect whistleblowers – at the levels of Bosnia and Herzegovina (BiH), Republika Srpska (RS) and Brčko District (DB), though not in the Federation of Bosnia and Herzegovina (FBiH).

Since the adoption of these laws, no final verdicts are known to have been reached on illegal actions reported by whistleblowers. But there is a long list of employees who have lost their jobs or ended up in court for exposing a trade secret or for defamation. For many years, EU institutions have warned that BiH's judiciary is not independent and that corruption is high. The anti-corruption NGO Transparency Inter-

national says it is concerned about the decline in corruption reports in BiH prosecutors' offices, linking this to some extent to poor whistleblower protection.

At the end of 2021, the Regional Anti-Corruption Initiative (RAI) [published an analysis](#) of whistleblower protection in BiH. Regardless of specific remarks and recommendations, the analysis did not receive significant attention of the media and the general public.

According to research by some BiH institutions, the main obstacles to reporting corruption are fear of personal security, fear of retaliation, fear of losing a job, corruption of institutions, and poor protection of whistleblowers.

Current Legislation and Regulations

Bosnia and Herzegovina has three laws on the protection of whistleblowers:

- at the state level the Law on the Protection of Persons Reporting Corruption in BiH Institutions was adopted in 2013;
- in the RS the Law on the Protection of Persons Reporting Corruption was adopted in 2017; and
- and the DB Law on the Protection of Persons Reporting Corruption was adopted in 2018. Information

As of the beginning of 2022, a proposed law for FBiH resembling RS's law had

drafted and was ready for the parliamentary procedure.

The law the BiH level only covers people employed in government institutions at the level of BiH (about 22,000 people). Through the granting of official whistleblower status, the law provides for pre-trial protection, even on the basis of suspicion that retaliation could occur against the applicant. The applicants themselves can decide whether to go to court, regardless of the official whistleblower status, though they cannot obtain the status of a protected witness. The BiH Ministry of Justice and the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) supervise the implementation of this law.

The RS law covers all people and “legal persons” (for example, companies) that report corruption in the public and private sectors, and provides for judicial protection. The law does not designate an agency to oversee or monitor implementation.

DB’s law covers all people over the age of 18, regardless of their employment status. Judicial protection is not provided. Protection is provided by the Office for Prevention of Corruption and Coordination of the Fight against

Corruption, which can revoke protection and file criminal charges against whistleblowers if it is established they did not act in the good faith.

All three laws stipulate that people can receive protection only if they make a report in “good faith,” meaning without bad intentions. The report should be made primarily to the organization in which the misconduct occurs, and/or to civil society organizations that fight corruption or the media.

The BiH chapter of Transparency International (TI) has said that only about 10 percent of whistleblowers in BiH can use legal protection mechanisms because the current laws do not recognize them and do not provide sufficient, broad and strong protection.

According to the recommendations of several organizations, including TI BiH and RAI, it is necessary to improve all three laws – including by expanding the definition of corruption, and protecting all people who report corruption or threats to public health or environmental protection.

Protection and Investigation Frameworks

At the level of BiH, whistleblowers can contact APIK, which is obliged to make a decision on granting whistleblower status within 30 days, regardless of whether harmful measures have occurred or are suspected. Whistleblower status can be obtained by employees of public institutions of BiH, have a reasonable suspicion or believes that there is corruption, and who submit reports in good faith. If APIK’s orders to protect or reinstate an employee are not followed, the Ministry of Justice’s Administrative

Inspection may impose fines on institution directors of €5,000 to €10,000.

In the Brčko District, whistleblower protection is planned to be overseen by the Office for Prevention of Corruption and Coordination of the Fight against Corruption, which was established in early 2022. There is no specialized agency in RS that whistleblowers can seek protection or assistance.

Some NGOs including as TI BiH have whistleblower programs through free legal aid for citizens.

Performance on Reports and Cases

In 2021 APIK received applications for whistleblower status from three people and approved two, and in both cases APIK requested the employees be returned to work. In 2020 APIK received two applications and both were denied.

From the beginning of the application of BiH's law until the beginning of 2022, APIK received 29 protection requests and approved 9. The explanation is that more than half of the requests came from persons not covered by the law, and the rest were found to not have acted in good faith.

The 2020 analysis "Legislation and Practice for the Protection of Whistleblowers in BiH," by TI BiH and the Center for Civil Initiatives, states that when APIK decides whether to grant whistleblower status, attention is paid to issues of complex interpersonal relations in institutions, the time lag between reporting corruption and applying for status, and whether the applicant waited for the completion of other procedures before applying. The analysis says these and other factors considered by APIK

are not prescribed by the whistleblower law.

To make it easier for potential whistleblowers, APIK produced an [animated brochure](#) that simplifies the protection that the agency can provide, but APIK does not publish annual lists of institutions where corruption has been reported, with the review of harmful actions and information on whether the corrective measure ordered by APIK has been implemented, which makes it difficult for the system to be monitored.

There are no unified records for Brčko District and RS. In RS the Basic Court has been designated for judicial protection, according to the location, consequences or place of residence. In BD, judicial protection is not provided and a public whistleblower office has not been established.

According to surveys of BiH public institutions, 52 percent of respondents said they have encountered corruption, 39 percent said they might report corruption, and 43 percent said they would make a report

Recent and Ongoing Whistleblower Cases

As an employee of the Indirect Taxation Authority (ITA) of BiH, Emir Mešić pointed out corruption and crime in that state institution several times. He warned that terminals that bring in multi-million euro earnings to the state are handed over to private owners without any reason. The ITA has continued disciplinary proceedings against him due to the alleged damage to the reputation of the institution. At the end of 2018, Mešić received whistleblower status, but he

was suspended from work. He has been disciplined three times and demoted twice. By all accounts, the ITA has ignored and not honored APIK's protection order.

Nermin Alešević was targeted by the Court of BiH because he recorded a conversation with the then-president of the High Judicial and Prosecutorial Council of BiH, Milan Tegeltija, about a certain case. He was charged with

unauthorized eavesdropping or audio recording, unauthorized photography, and violating citizens' privacy. Alešević was later acquitted but the recording was declared illegal evidence because it is not possible to use such recordings in BiH in case of public interest.

Sabahudin Mujčić, a technical manager at Iskraemeco, a company owned by Elektroprivreda BiH and Iskraemeco Kranj from Slovenia, reported corrupt practices in 2014, after which he was demoted to a lower-ranking position. He was subjected to intimidation, salary reduction, and due to additional reports he was suspended in 2020 and then fired. He filed a lawsuit with the Municipal Court in Sarajevo. According to available information, court proceedings were still pending in early 2022.

Jasna Bedak was a spokesperson for the Tuzla Canton Employment Bureau who spoke publicly about nepotism and

corruption at the agency. She was disciplined, threatened and transferred to a lower-ranking job she could not accept due to severe illness. She passed away in 2021.

Nada Vasiljević is a teacher who was fired after speaking publicly about an effort to collect signatures for the needs of a political party. She refused to cooperate because the Law on Education bans political activity in schools.

Sanjin Sinanović is a former employee of the Central Bank of BiH who reported suspicions of irregularities in public procurement, employment and other issues to the Prosecutor's Office and the State Investigation and Protection Agency (SIPA) in 2017 and 2018. The Central Bank began six disciplinary proceedings against him. Though Sinanović has won some court rulings, he has not received whistleblower status from APIK, which he approached five times.

Whistleblower Support and Advocacy Organizations

APIK (www.apik.ba) is a state institution in charge of protecting whistleblowers, but only those who are employed in public institutions at the level of the state of BiH.

Transparency International BiH (ti-bih.org) is part of the global Transparency International network. This organization monitors the perception of citizens about the presence of corruption, advocates responsible behaviour of the judiciary, raises awareness of citizens, all with the aim of establishing responsible, transparent and efficient governance.

The Center for Civil Initiatives (cci.ba) encourages and promotes the active

participation of citizens in democratic processes and works to strengthen the capacity of organizations and individuals to more effectively address problems in communities throughout BiH.

The Infohouse Foundation (infohouse.ba) is committed to strengthening civil society organizations that promote the protection of human rights and information literacy and its activities seek to influence positive democratic change in BiH, especially strengthening CSOs in the fight against corruption, empowerment of women in economic and political terms.

BULGARIA

BULGARIA



BULGARIA

Introduction

Despite a range of efforts to strengthen whistleblower rights over the past 10 years, Bulgaria continues to have no specific laws to protect employees from retaliation if they report crime, corruption or public health threats. This inaction is due to many factors, including a lack of expertise and interest among public officials, political instability, and lingering Communist-era perceptions of whistleblowers as “spies” or “snitches.”

Many NGOs and policy experts, including at the international level, have provided input and assistance on developing a whistleblower protection law, to no avail. Compared to most EU countries, there is comparably little public debate and sparse research on the issue.

Some limited provisions were proposed in 2015 but these did not advance, and there have been no significant developments since. Like every EU country, Bulgaria has generic provisions for citizens to report crime and misconduct, but these are dispersed in different laws and lack unification. There are no designated channels for

employees to report misconduct and no specific provisions to protect them from reprisals.

Because “whistleblowing” is not an officially recognized concept in Bulgaria, no public institution oversees the issue or investigates retaliation complaints. As of this writing, a draft whistleblower law has been developed to comply with the EU’s 2019 Directive. Bulgaria missed the EU’s deadline of 17 December 2021 to enact the law, and prospects for its eventual passage are unclear.

A number of whistleblower-type cases have been heard in courts, and judges have ruled in favor of several people who suffered retaliation and faced defamation charges after reporting wrongdoing. The Commission for Anti-Corruption and Illegal Assets Forfeiture has received disclosures from citizens that led to the sanctioning of public officials. These cases have received some media coverage. Under one current legislative proposal, the Commission would oversee a new whistleblower protection system.

Current Legislation and Regulations

According to the Center for the Study of Democracy (CSD), Bulgaria has no coordinated mechanism for whistleblower protection. The identity of whistleblowers can be disclosed easily, making them vulnerable to risks. Support measures are insufficient, the organization said.

Generic provisions for reporting alleged crimes and corruption are included within the Administrative Procedure Code. Passed in 2006, the Code enables people and organizations to report government wrongdoing to public authorities for follow-up investigations. This includes abuse of power, corruption, mismanagement of state or municipal property, and illegal or inappropriate acts by public officials. The Code requires officials who receive disclosures to investigate the reports, but it does not name the specific institutions to which a person can submit a report. The Code does not include any protection measures, so it cannot be considered a whistleblower protection law.

Other laws under which people can report misconduct include:

- the Law on Prevention and Disclosure of Conflict of Interest, which includes identity and retaliation protection, and compensation for victimized whistleblowers,
- the Public Administration Act, which allows people to report violations by public officials, though anonymous signals will not be investigated, and
- the Anti-Corruption and Illegal Assets Forfeiture Act, which in 2018 established a Commission of the same name to receive corruption reports.

There are no publicly available statistics on reports and retaliation complaints that have been filed under these laws.

In November 2021 the Justice Ministry published opinions submitted on a proposal to develop a whistleblower law to comply with the EU Directive. Opinions were submitted by the Supreme Bar Council, a law firm and two NGOs that work in areas of law and judicial cases. A draft law was released in spring 2022, but as of this writing it had not been officially approved by the government. No timetable for parliamentary consideration of the law has been released.

Protection and Investigation Frameworks

There is no public institution or agency in Bulgaria that is authorized to accept, investigate or respond to disclosures and retaliation complaints from whistleblowers – meaning, witnesses in the workplace. All administrative institutions reportedly have internal reporting procedures in place, though they are limited to ethical violations.

Among several sector-specific programs, a public forest agency announced in 2021 it had set up a cellphone-based system to enable people to report irregularities such as timber violations, animal poaching, unauthorized vehicle traffic and pollution.

Performance on Reports and Cases

Bulgaria currently does not centrally collect statistics or data on whistleblower disclosures or retaliation complaints. Reports typically are directed to individual government ministries and institutions. The government's central administration tracks the overall number of reports of wrongdoing, by category. No additional information on these reports is available – for example, on

how many were filed by government and corporate whistleblowers, and how many were filed by citizens.

Recent reviews on Bulgaria's anti-corruption efforts by international organizations such as the European Commission and OECD do not address whistleblowing. There is no detailed public research on whistleblower reports and cases in Bulgaria.

Recent and Ongoing Whistleblower Cases

The Anti-Corruption and Illegal Assets Forfeiture Commission has reported some information on several cases initiated by citizens' reports, including:

- a conflict of interest involving a deputy agriculture minister, who continued to serve on a company's board after assuming the public office, and
- a conflict of interest involving the mayor of Krasno Selo, who allegedly contracted with two lawyers for official business while they also represented her in a personal capacity.

Bulgarian media reported in March 2022 that Parliament Member Desislava Atanasova, chair of the GERB-SDF party, planned to submit a report on public procurement irregularities involving a new waste plant in Ruse, the country's fifth-largest city. Atanasova said she would send a report on the €12 million project to Prime Minister Kiril Petkov and the Interior Ministry. Desislava said a person anonymously sent her documents that contained evidence of "a number of violations."

In July 2016 two employees at Sofia's National Art Gallery – Vladimir Rumenov and Maria Vasileva – were fired after appearing on Bulgarian National Television and speaking against new legislation on cultural heritage. Rumenov, who has worked at the gallery for 38 years, soon was reinstated following large protests and public calls for Culture Minister Vezhdi Rashidov to resign.

Bulgarian courts have heard several cases in which whistleblowers faced charges of criminal defamation. Among them, a court ruled in 2013 that an individual could not be charged with defamation for making disclosures about the management of municipal property because "the rights of whistleblowing are constitutionally guaranteed."

Whistleblower Support and Advocacy Organizations

No government agencies focus specifically on whistleblower issues – that is, involving retaliation against witnesses in the workplace. Through the Anti-Corruption and Illegal Assets Forfeiture Commission, citizens can report misconduct via telephone or online (www.caciaf.bg/bg). The Center for Prevention and Countering Corruption and Organised Crime has researched Bulgaria's whistleblower-related laws.

A growing number of NGOs is focusing on whistleblower and related issues, including the Center for the Study of Democracy, Media Development Center, and RiskMonitor Foundation. The Bulgarian Helsinki Committee focuses on freedom of expression issues including criminal libel and defamation, and the public information law. Among the journalism organizations that specializes in receiving tips via encrypted channels and investigating these reports is Bivol.bg.

CROATIA

CROATIA



CROATIA

Introduction

As a member of the EU, Croatia had an obligation to harmonize its law defining the protection of whistleblowers with the EU's whistleblower Directive (2019/1937). As of early 2022, the Croatian Parliament was in the process of adopting the Law on Protection of Reporters of Irregularities, passed in 2019.

At the end of 2021, in a survey cited by the Ombudsman's Office, as many as 97 percent of citizens believe that corruption is widespread in the country (71 percent is the EU average), while 54 percent believe corruption affects them personally. The Ombudsman sees this attitude as one of the reasons for the strong wave of emigration from Croatia during 2021, which again speaks in favor of the need for better protection of whistleblowers.

From 2017 to 2019, when the current law was adopted, the percentage of people who considered the lack of

whistleblower protection to be the main reason for not reporting corruption increased from 29 percent to 39 percent. There are estimates that Croatia loses more than €8 billion a year through corruption.

The debate on the protection of whistleblowers in early 2022 shows that many people believe whistleblowers in Croatia are not in a better position than before the law was passed, and that they still bear the consequences. Other people believe Croatia is a safe place for whistleblowers because the consciousness of citizens has changed over the past 20 years.

According to surveys by Transparency International, two-thirds of Croatian citizens say they would report corruption, yet more than half think whistleblowers would regret their decisions and there will be no change after corruption is exposed.

Current Legislation and Regulations

Croatia passed the Law on the Protection of Reporters of Irregularities in July 2019. The law refers to reports of corruption and violations of laws and other regulations that pose a threat to the public interest.

A whistleblower is a person who performs work for an employer – employment, work outside employment, volunteering, performing duties, employment contracts, student work, participation in employment procedures as a candidate, as well as any other participation in the activities of a legal

or natural person. Related persons include spouses, common-law partners, adoptive parent and other relatives.

Three channels of alerting are envisaged: internal – persons within a company or institution (each employer who employs at least 50 persons); external reporting to the Ombudsman (if there is a fear of retaliation or harmful acts), and public disclosure through the public and/or the media.

Harmful action is endangering rights or putting employees at a disadvantage. Whistleblowers can ask the court for an

interim measure of protection for three years from the day they learned of the harmful act, or five years from the time it was taken. They are exempted from paying court costs in cases related to reporting irregularities, and the procedure is urgent and organizations can intervene, dealing with the fight against corruption or the protection of human rights.

Employers who do not have a rulebook on the protection of whistleblowers or a trusted person who exceeds the authority can be fined from €100 to €7,000.

Protection and Investigation Frameworks

The Labor Inspectorate monitors whether each company with more than 50 employees has a confidential person and regulations on reporting irregularities.

The Ombudsman is responsible for external reporting of irregularities. It has the obligation to examine the report, assess whether the rights of the complainant have been violated and, if so, to submit the report to a competent authority. The whistleblower also may send the report to a competent state agency, which has the obligation to take

measures within 30 days and submit a report to the Ombudsman.

Competent courts for whistleblowers who have suffered revenge or retaliation, or harmful action, are municipal courts according to the place of residence or stay of the plaintiff or those in whose territory the harmful action was taken or occurred, and the procedure is urgent.

The Ministry of Justice conducts training for people in charge of implementing the whistleblower law and conducts public educational campaign.

Performance on Reports and Cases

There is no state agency in Croatia that monitors and records whistleblowing cases, so the total number of reported cases is unknown as well as their outcomes.

In 2019 the Ombudsman received 23 reports that were being processed by the end of the year. There is no reliable information on any court proceedings

initiated to protect the rights of whistleblowers.

In 2020 the Ombudsman received 61 complaints and processed 45 of them, 13 of which were transferred from 2019. Of the 32 newly received and accepted complaints, 10 were referred to state agencies, 7 to public services, 5 to public local provincial services, 5 to employers in the economy and crafts, 3 to bodies with public authority, and 2 to

legal entities founded or in which Croatia manages. According to the Ombudsman's report, these were mostly violations of employment rights, not dangers to the public interest.

The Ombudsman notes that in two cases the "confidential person" acted on the report of a person who is not employed by the employer, and that they acted on anonymous and incomplete reports. This indicates a lack of understanding of obligations on the law. Based on this, the NGO Human Rights House assessed that the possibility of reporting irregularities

to most citizens is still unknown and they often give up reporting for fear of consequences, and that the applicants are not sufficiently familiar with the law or do not trust the procedure.

The Ombudsman recommended to the Ministry of Justice and Administration and to trade unions that the continuous education of various stakeholders.

The effectiveness of the law was expected to be demonstrated by 2020, but early 2022 data on court proceedings were not yet available.

Recent and Ongoing Whistleblower Cases

Adriana Cvrtila from Kutina, as the director of Eko Moslavina, cited political employment with the aim of preserving the majority in the city legislature, after which Kutina Mayor Zlatko Babić was arrested. Cvrtila was removed from the position of director on the basis of the new systematization. This was stopped by the Municipal Court in Kutina in early 2022 with a temporary measure to stop the new systematization. Cvrtila also received nine criminal defamation charges from persons arrested on the basis of her report. The new director of Eko Moslavina said he would respect the court order.

Maja Đerek was fired as one of the directors in the company State Real Estate in September 2020 after warning about the misuse of state business premises a year earlier. No rent was paid for renting a large number of premises, and some were further rented out, causing the loss of significant funds. She was fired for "inappropriate behaviour towards parties and colleagues," after which she filed a lawsuit. According to the criminal charges, there were no responses except

she was questioned by the Office for the Suppression of Corruption and Organized Crime.

Robert Puljić was a bus driver for the utility company Autotrolej who warned his superiors in 2021 about problems in the organization of timetables. When they did not react, he warned the leaders of cities and municipalities that own the company and the media. He was fired, although the company was looking for 10 new drivers at the time; his fixed-term contract was not extended. He returned to work in early 2022 after 60 of his colleagues said they would go on sick leave in solidarity with him and, presumably, after the intervention of the mayor of Rijeka.

Josip Vitez was the director of the company Komunalac Požega d.o.o. in Požega who was asked to "set up" a competition for the energy renovation of several residential buildings. After he refused, he was threatened, intimidated and later fired because 'he did not establish quality and full cooperation with the President and members of the Supervisory Board, which prevented

them from fully performing their function.” At the end of 2021 a court ruled in favor of Komunalac.

Viktor Šimunić is the mayor of Oroslavje who was offered by the head of the

local Croatian Democratic Union party (HDZ) “whatever he wants” in exchange for support in the 2021 local elections. Šimunić sued two HDZ members and they were removed from their party positions.

Whistleblower Support and Advocacy Organizations

Human Rights House (www.kucaljudskihprava.hr) is a network of civil society organizations: BaBe - Be active. Be emancipated; CMS - Centre for Peace Studies; Documenta - Centre for Dealing with the Past; GOLJP - Civic Committee for Human Rights; UPIM - Association for the Promotion of Equal Opportunities; and Svitanje - Association for the Protection and Promotion of Mental Health. The network aims to protect and promote human rights and fundamental freedoms, through research, monitoring, public advocacy and education.

Green Action (zelena-akcija.hr) is an association of citizens that works to

improve environmental protection by encouraging change through campaigns, non-violent direct actions, and public participation in decision-making. In this context it works to encourage citizens to better protect whistleblowers.

Gong (gong.hr) is an NGO that works to improve democratic processes and institutions. It encourages active and responsible participation of citizens in political processes, protection and promotion of the rule of law, and protection of human rights and solidarity. It conducts research and analysis, and education and public information programs. It is a “civic megaphone” that works to hinder corruption and build a more democratic, just and equal society.

KOSOVO

KOSOVO



KOSOVO

Introduction

Kosovo passed its first law designed to protect whistleblowers in 2011. At that time this was known as the Law on Protection of Informants,²² but it was generally a flawed law that did not provide a proper reporting and protection system.

Then, in January 2019, the Law on Protection of Whistleblowers²³ entered into force in Kosovo, through which many previously unregulated issues were better addressed. This law clearly provides for rights and protection of whistleblowers, whistleblowing types, the responsible institutions, judicial protection, misdemeanor provisions, as well as annual reporting. Among other things, this law also regulates whistleblowing in the private sector.

The law regulates confidentiality and reporting procedures. It provides that every public employer with more than 15 employees, and a private employer

with more than 50 employees are obliged to appoint a responsible officer to handle whistleblower cases internally. For the public sector, the competent authority to handle external cases is the Anti-Corruption Agency (ACA); for the private sector this authority is the Labor Inspectorate.

In addition to the law, although not within the legal deadline, the Ministry of Justice adopted the Regulation on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing.²⁴ This provides rules and procedures for receiving and handling whistleblower cases and the duties of responsible officers.

Despite the legal grounds and additional bylaws, the biggest challenge remains their implementation in practice, since there has not yet been any major whistleblower cases.

²² Law No. 04/L-043 on Protection of Informants (2011).

²³ Law No. 06/L-085 on Protection of Whistleblowers (2018).

²⁴ Regulation (GRK) - No.03/ 2021 On Determining the Procedure for Receiving and Handling the Cases of Whistleblowing (2021).

Current Legislation and Regulations

Following the adoption of the Law on Protection of Whistleblowers, Kosovo has managed to build a system for reporting or whistleblowing certain violations in public and private institutions. The law entered into force for the public sector in December 2018 and a year later for the private sector.

This law sets out the rules for whistleblowing; procedures, rights and protection of whistleblowers; and obligations of public institutions and private entities.²⁵ The law provides that a person can make a report for an offense that has been, is being, or is likely to be committed.²⁶ It states that public interest reporting is protected if it is related to :

- failure to comply with any legal obligation,
- miscarriage of justice,
- endangerment of the health or safety of any individual,
- environmental damage,
- abuse of official duty or authority, public money or resources of a public institution,
- an act or omission by or on behalf of a public institution is discriminatory, oppressive, grossly negligent or constitutes serious mismanagement, or
- information tending to show any matter falling within any of the preceding subparagraphs has been, is being or is likely to be concealed or destroyed.

The accompanying regulation defines the rules and procedures for receiving and handling the cases of whistleblowing as well as the rights and responsibilities of the responsible officer. Among other things, the regulation provides actions following investigations, including:

- termination an administrative procedure,
- reversal or annulment of an administrative decision,
- initiation of disciplinary proceedings or other relevant proceedings against officials.

Protection and Investigation Frameworks

In each institution that has a certain number of employees, depending on the public or private sector, a responsible officer should be appointed. In this regard, the law provides that whistleblowers have at their disposal three types of whistleblowing: internal (to the employer), external (to the

competent authority) and public (media, NGOs, internet, public meetings).²⁷

In each case, there is a procedure to be followed, and in each case the information must be understandable and complete in terms of the data and facts presented. Thus, the whistleblowing can

²⁵ Article 2 of the Law on Protection of Whistleblowers.

²⁶ Article 5 (1.1) of the Law on Protection of Whistleblowers.

²⁷ Article 13 of the Law on Protection of Whistleblowers.

be presented in writing, by mail or e-mail, or verbally.²⁸

Internal whistleblowing is enabled in any case, while external whistleblowing takes place in cases after having performed the internal whistleblowing, or directly in cases when internal whistleblowing is not possible.²⁹

The public authority that handles external whistleblowing cases for public institutions is the Anti-Corruption Agency (ACA), whose report shows that during 2020 there were 129 institutions which reported to the ACA regarding whistleblowing.³⁰ Whereas, in 2019, based on the annual report of ACA, turns out that there were only 14 institutions which reported,³¹ even though by law all have been obliged to report annually.

For private entities, the Labor Inspectorate is the competent authority to receive and handle cases of external whistleblowing. According to the law in force, the provisions which refer to private entities, have entered into force since 2020, namely end of 2019, but unfortunately are still not being implemented in practice. Consequently, this institution does not have any specific report regarding cases or annual reports received from private entities.

In general, regarding the Labor Inspectorate (LI), it is worth mentioning that this is an independent body of the State Administration which operates within the Ministry of Labor and Social Welfare. Furthermore, this is the competent body to monitor the implementation of legislation in the field of labor relations and safety and health at work.³²

Contact details of the ACA as well as the LI, can be found below:

Anti-Corruption Agency:

Address: Str. Nazim Gafurri No. 31,
10000 Pristina, Kosovo
e-mail: info@akk-ks.org
Tel: 0800 10 800 (free of charge)

Labor Inspectorate:

Address: Str. Qamil Hoxha, No. 30
10000 Pristina, Kosovo
Tel.: 0800 775 77 (free of charge)

²⁸ Article 14 (3) of the Law on Protection of Whistleblowers.

²⁹ Article 18 (1) of the Law on Protection of Whistleblowers.

³⁰ Anti-Corruption Agency, “Annual Work Report 2020”, p. 17.

³¹ Anti-Corruption Agency, “Annual Work Report 2019”, p. 17.

³² The official website of the Labor Inspectorate: <https://ip.rks-gov.net/>.

Performance on Reports and Cases

Anti-Corruption Agency at the end of each year publishes the annual report, which among other things from the year 2019 provides data concerning to whistleblowing cases.

In this regard, according to this institution, in 2019, information was received for 3 cases of external whistleblowing, all of which were rejected.³³

According to the explanations given in the report, the first case is said to have been rejected because since the information was handled as internal whistleblowing, and the consumption of criminal offenses was ascertained, then the institution that forwarded the information had to inform the competent body and not send the information further to the ACA.³⁴ For the second case, according to the ACA's data and the assessment given, the information does not constitute a report of a threat or violation of the public interest.³⁵ While the third case was rejected, because according to the assessment of ACA, it should initially be handled within the institution through internal whistleblowing, and it was also assessed that it does not constitute a report of a threat or violation of public interest.³⁶

During 2020, ACA has submitted 23 requests to initiate misdemeanor proceedings, in the Basic Court in Pristina – Department for Minor Offenses, against public institutions which have not appointed the Responsible Officer within the legal deadline under the Law on Protection of Whistleblowers.³⁷

This law provides such misdemeanor provisions.

Regarding the cases of 2020, ACA has received information for five cases of external whistleblowing. Of these, four were rejected and one was closed.³⁸

The first case was rejected for several reasons, where it is initially stated that the whistleblower was notified about the result of the investigation for one case, while for the other it was notified that it's still in the administrative investigation procedure. The ACA in the report also states that they have not concluded that the measures taken against the whistleblower are a result of his whistleblowers.³⁹ Three other cases were rejected on the grounds that the information should initially be handled within the institution, through internal whistleblowing, or directly to the ACA. Whereas a case has been closed because, as stated in the ACA's report, it does not meet the requirements that a whistleblowing must contain.⁴⁰

Regarding the year 2021, the ACA has not yet published an official report, but the information shows that this agency for this year, has received 9 cases of external whistleblowing. Of these, six cases have been closed, thus closing, or terminating the external whistleblowing procedure, while three cases have been transferred to 2022. Of these, one case has been sent as a misdemeanor due to non-fulfillment of obligations under the law, one case is information for the

³³ Anti-Corruption Agency, "Annual Work Report 2019", p. 16.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Anti-Corruption Agency, "Annual Work Report 2020", p. 16.

³⁸ Ibid, p. 16-17.

³⁹ Ibid.

⁴⁰ Ibid, p. 17.

Prosecution Office, while a case is still pending in the ACA.⁴¹

Meanwhile, the institution responsible for the private sector, the Labor Inspectorate, have stated that they do not have data on how many businesses have more than 50 employees, who have the obligation to appoint the Responsible officer to handle whistleblowing cases.⁴²

Recent and Ongoing Whistleblower Cases

Although in legal terms Kosovo stands really well, in practice it seems that there is still stagnation and hesitation in terms of whistleblowing. Despite the high perception of the level of corruption in Kosovo and the opportunities to fight it through the Law on Protection of Whistleblowers, still in practical terms there are problems in implementing it.

It seems that the working conditions and the lack of trainings of the Responsible officers are also a problem, which then affects the proper treatment and identification of whistleblowing cases. Since the entry into force of the law, no organized trainings have been held for the Responsible officers.⁴⁴ Thus as soon as possible, the competent authorities in Kosovo need to address this issue in order to build proper capacities to handle whistleblowing cases.

So far, following the entry into force of the Law on Protection of Whistleblowers, a case of public whistleblowing can be identified that occurred at the end of October 2020, at the University Clinical

Center of Kosovo (UCCK), namely at the Radiology Clinic, where a technician of this Clinic had published images which showed the endangerment of the health of workers and citizens due to the poor conditions.

Six days later, this whistleblower had published an urgent request made by the Director of the Radiology Clinic, in which the imposition of disciplinary measures was requested, which was related to the publication of video recordings demonstrating the danger to the life and health of medical staff and citizens, due to the poor conditions at the Radiology Clinic.

In this case, it was clear that the whistleblower used its own right to public whistleblowing, as provided by the law.⁴⁵ Therefore the request to impose disciplinary measures against the whistleblower, violated the whistleblower law. Furthermore, this law stipulates that “any action or omission aimed at preventing public interest reporting or disclosure is null and void

⁴¹ Tv Show “Tempus”, transmitted on February 15, 2022 (<https://betimiperdrejtesi.com/gjate-2021-tes-akk-ka-pranuar-9-raste-te-sinjalizimit-te-jashtem-6-prej-tyre-jane-mbyllur-perderisa-3-raste-jane-bartur-ne-vitin-2022/>).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Tv Show “Tempus”, transmitted on February 15, 2022 (<https://betimiperdrejtesi.com/si-ti-sinjalizojme-keqperdorimet/>).

⁴⁵ Article 20 (1.1.3) of the Law on Protection of Whistleblowers.

and the responsible official or any other person in respective cases is criminally prosecuted.”⁴⁶

Regarding this situation, Kosovo Law Institute (KLI), a specialized NGO in this field, published a reaction,⁴⁷ where among other things, had recommended to the director of the Radiology Clinic and all other stakeholders of the UCCK to cease all disciplinary proceedings against the Radiology technician, which

came as a result of his public whistleblowing. KLI also invited the State Prosecutor that within its legal mandate, to initiate legal proceedings, in order to give a positive note concerning the implementation of the Law on Protection of Whistleblowers.⁴⁸

It is necessary to emphasize that the disciplinary proceedings against the whistleblower in this case were ceased after a short period of time.

Whistleblower Support and Advocacy Organizations

The law’s adoption has made tremendous progress in addressing this issue in Kosovo, especially as whistleblowing is one of the best ways to fight corruption. All this is conducted due to the fact that the whistleblower gets the necessary protection under this law and also that retaliation against whistleblowers in Kosovo is criminalized by the Criminal Code. However, despite the legal aspect, in practice it does not seem to have addressed everything, as we do not yet have any major case of this nature.

In order for the whistleblowing to be successful and the whistleblower to enjoy the proper protection, it is necessary to follow the exact procedure and the required steps. For this reason, knowledge of the legislation, or rather obtaining legal advice from professionals in the field is necessary in these cases.

In Kosovo, the provision of legal advice and legal aid in these cases is professionally provided by the Free Legal Aid Center of Kosovo Law Institute (LAC-KLI).⁴⁹ LAC-KLI has been operational since 2019 and aims to provide equal opportunities for all citizens and foreigners in Kosovo for access to justice, as well as to respect human rights and freedoms in accordance with the standards and principles defined by the Constitution of the Republic of Kosovo and international instruments applicable in Kosovo.

One of the main categories for which LAC-KLI provides free legal aid, are whistleblowers, for whom it provides confidentiality, professional legal advice and at the same time follow-up of the case, continuously until the end of it. This enables whistleblower to get all the necessary information on their rights, the means to be followed and has an ongoing support since the beginning.

⁴⁶ Article 6 (1) of the Law on Protection of Whistleblowers.

⁴⁷ Public Reaction of the Kosovo Law Institute, on October 29, 2020 (<https://kli-ks.org/ikd-drejtori-i-klinikes-se-radiologjise-shkeli-ligjin-per-mbrojtjen-e-sinjalizuesve/>).

⁴⁸ Ibid.

⁴⁹ For more information, please refer to the official website of the Free Legal Aid Center of Kosovo Law Institute: <https://ndihmajuridikeikd.org/en/>.

Free Legal Aid Center of Kosovo Law Institute

Str. "Rrustem Statovci", Entrance 1, No. 1

10000 Pristina, Kosovo

0800 22 222 (free of charge)

info@ndihmajuridikeikd.org

MOLDOVA

MOLDOVA

The bottom of the page features a decorative graphic consisting of several overlapping, semi-transparent green shapes. These shapes are layered to create a sense of depth and movement, with colors ranging from a light, pale green to a darker, forest green. The shapes are positioned in the lower right and bottom center of the page, creating a modern, organic feel.

MOLDOVA

Introduction

Over the last decade, the whistleblower protection mechanism has been continuously under scrutiny in Moldova. As part of the national strategic policy documents and external commitments with the EU, the normative framework has been shaped to legally define the whistleblower notion, create secure complaints and disclosure channels, and raise public awareness about the protection mechanism.

Since 2018 Moldova has a designated whistleblower protection law that includes most basic European and international standards, establishing the reporting and protection procedures and institutions. The law seeks to increase the number of cases of illegal practices' disclosure and other reports of public interest by strengthening and promoting the integrity climate in the public and

private sectors, ensuring the protection of whistleblowers against retaliation related to disclosures of illegal practices in the public interest, and preventing and sanctioning retaliation against whistleblowers.

The whistleblowing mechanism largely was discussed at the beginning of the COVID-19 pandemic, due to the public disclosures by the healthcare employees related to alleged wrongdoing. Shortly, the potential whistleblowers were provided with an [on-line tool for the submission of the requests](#) for protection to the Ombudsman's Office (People's Advocate), an [e-learning course on whistleblowing/whistleblowers protection](#), and dedicated [awareness-raising campaigns](#) were conducted. Still, only a few disclosures have been made so far and cases are pending.

Current Legislation and Regulations

The protection of whistleblowers is one of the institutional integrity policies (according to the Integrity Law No. 82 as of 2017) that shall be ensured and applied effectively by the head of the public or private institution according to an established procedure.

The Law on Integrity Whistleblowers was adopted by Moldova's Parliament in December 2018, and it first introduced the notion of whistleblower protection. It

established the National Anti-Corruption Center as the authority responsible for the investigation of reports of wrongdoing, and the Ombudsman's Office as the authority responsible for the protection of whistleblowers. The law established that the disclosure of illegal practices is the disclosure of corruption, environmental violations, violations of fundamental human rights and freedoms, national security violations, as well as

other violations, actions or inactions that threaten or harm the public interest.

The authorities responsible for examining disclosures of illegal practices are the employers in case of internal disclosures of illegal practices, and the National Anti-Corruption Center in case of external disclosures of illegal practices.

The employee who is subject to retaliation (actions, inactions or threats) due to the disclosure he/she has made, from the employer or another person within the public or private entity in which he operates is entitled to seek protection from the employer in the case of internal disclosures of illegal practices; and from

the Ombudsman in case of external and public disclosures of illegal practices.

In 2020 the government adopted the Regulation on the Procedures for the Internal Examination and Reporting of Disclosures of Illegal Practices (Decision No. 23). This established the procedure for internal reporting by employees of public and private entities, as well as the procedure for recording and examining disclosures of illegal practices. For the employers, the regulation describes the disclosure mechanism that shall be created within each public or private entity, and the protective measures that shall be applied to employees who disclose illegal practices.

Protection and Investigation Frameworks

In Moldova whistleblowers can choose the appropriate channel to make the disclosure, although typically the first option is the employer (internal reporting). Under certain circumstances, external reporting may be made to the National Anti-corruption Centre, and the public disclosure can be made in the media or social networks.

The National Anti-Corruption Center and Ombudsman's Office were designated by the National Integrity and Anticorruption Strategy for 2017-2023. These authorities created the needed methodological framework to strengthen the guarantees of effective protection of whistleblowers against retaliation, as well as to prevent the violations of the law through a detailed regulation of the communication channels and on the

The employee can make the disclosure:

- in written form the employer, or by leaving a notification in the mailboxes located at the NAC headquarters or by sending it to the NAC's postal address: 198 Stefan cel Mare bd., MD-2004, Chisinau;

disclosures of illegal practices, aiming to guarantee and respect fundamental rights of whistleblowers: freedom of expression and information, the right to protection of personal data, the freedom to conduct a business, the right to a high level of consumer protection, the right to protection, effective attack and defense.

Regardless of the internal or external character of the disclosure, the examining authorities are required to take immediate precautionary measures to prevent the damage of the public interest and order the suspension of those actions. The examining authorities may establish internal channels for communicating disclosures of illegal practices and corruption manifestations (trust telephone lines, mailboxes, e-mail addresses).

- online, through the National Anti-Corruption Center's [module](#) or employer's electronic disclosure system (if any);
- verbally, by communicating to the employer or to the National Anti-Corruption Center hotline (080055555).

The whistleblower is entitled to request protection against retaliation to:

- the employer, in case of internal disclosures;
- [Ombudsman's Office](#), in case of external and public disclosures (also in written form or by filling the [online](#) template on the Ombudsman's Office webpage, via email: ombudsman@ombudsman.md, or via phone: (+373) 60002657).

In order to have their retaliation complaint examined, whistleblowers must submit a written request for protection to the employer or the Ombudsman's Office, meeting the following requirements:

- the person is recognized as a whistleblower (by the employer or National Anti-Corruption Center) or has made a disclosure publicly;
- the person is subject to retaliation;
- there is a link between the disclosure of illegal practice and the retaliation allegation.

The request is examined by the employer or Ombudsman's Office within 15 days. After examining the retaliation complaint, the employer or Ombudsman's Office can admit or reject the protection request and inform the whistleblower on the request or about the reasons for refusal.

Performance on Reports and Cases

The Moldovan mechanism allows whistleblowers to report suspicions on illegal practices internally within public or private entities and externally, to the National Anti-Corruption Center. Despite the comprehensive regulatory framework on whistleblowing, no authority is publishing any annual/ periodic reports on whistleblowing cases, especially in the cases of internal disclosures.

Through February 2022, the National Anti-Corruption Center registered 10

external disclosures on illegal practices. Often, the disclosing persons prefer to make an ordinary report on the corruption case and do not seek protection.

During the same period, 11 protection requests were registered by the Ombudsman's Office. Eight persons were granted whistleblower status. As of this writing, three requests were denied by the Ombudsman's Office due to the lack of the whistleblower status.

The Ombudsman (according to the Ombudsman's Law No. 52/2014) ensures the protection of whistleblowers in accordance to existing internal instruments and procedures and has duty to:

- receive and examine whistleblower protection requests;
- examine the notifications on protection of whistleblowers who have made public disclosures (*ex officio*), having their consent to benefit from Ombudsman's protection;
- contribute to the annulment of retaliation measures and to the amicable settlement of conflicts between whistleblowers and employers;
- develop recommendations for immediate reinstatement of whistleblowers;
- ensure the initiation of lawsuits, intervene and submit conclusions defending whistleblowers' rights and freedoms

Once the Ombudsman's Office acknowledges the violations of the rights and freedoms of whistleblowers, they notify the employers by sending an opinion with recommendations for the immediate reinstatement of whistleblowers, immediate termination of retaliation measures expressed through bullying, pressure, threats, disadvantages or discrimination which are connected to or result from a disclosure made by the employee. Also, the Ombudsman recommends the cancellation of any administrative acts connected to the retaliation and the reparation of financial and non-financial damages to the employee.

Although the Ombudsman sends recommendations to employers, the response often requires them to proceed by filing a complaint to the court in a civil

procedure. The Ombudsman's Office has acknowledged the success of the protection measures only in one case, where the Employer has ceased the retaliation measures and stopped the negative actions. In all the remaining cases, the files are in different stages of examination in court. In their decisions, the Courts rarely refer to the Ombudsman's opinion.

Due to the fragility of the justice system and low level of confidence of the citizens in the justice act, the number of whistleblowers in Moldova is very slowly advancing. It is obvious for a whistleblower that the disclosure might affect his/her personal and professional stability and security, so as we will see below, most of the whistleblowers hold high public positions and are capable of defending themselves.

Recent and Ongoing Whistleblower Cases

The first and most relevant whistleblowing case registered in the Moldovan whistleblowing practice after the adoption of the law is the case of a former employee of the Border Police in a middle-management position. The whistleblower disclosed a fictional hiring and reported the illegality to the internal

specialized anti-corruption division. A criminal proceeding has been initiated to investigate the reported wrongdoing, but the whistleblower has suffered retaliation measures in the form of an internal investigation on alleged misconduct, and finally was dismissed.

Just after the dismissal, the person reported the illegal practice externally to the NAC and requested protection from the Ombudsman. The case has been examined by the national courts at all three stages. The first court took into account the whistleblower statute and the opinion of the Ombudsman and reinstated the person in the position, ordered for the reimbursement of the salary for the period after the dismissal, the Appeal Court maintained this decision, but the Supreme Court has completely canceled the decisions of the first two courts and ordered for the immediate dismissal from the position. Having the support of specialized lawyers from the Center for Analysis and Prevention of Corruption (CAPC), the whistleblower filed a complaint with the European Court for Human Rights in Strasbourg, claiming the violation of judicial procedure and human rights.

Another important whistleblowing case is of the former [Anti-Corruption Prosecutor of Moldova](#), who was allegedly intimidated after disclosing on several deficiencies within the prosecuting system. This case was undergoing judicial examination as of this writing, as the former prosecutor was previously accused of corruption acts, suspended and then dismissed from the position.

Another [prosecutor disclosing on corruption acts](#) has reported to the Superior Council of Prosecutors and requested protection from the Ombudsman's Office following retaliation measures that have been applied to him as a result of an investigation of a €200,000 bribe involving other two prosecutors and allegedly, the

suspended Deputy General Prosecutor, who is now investigated for illicit enrichment.

A judge from a regional court disclosed on the wrongdoings and fraud in the repairing works at the court premises which finally conducted to non-execution of the contracted works and public money loss. The whistleblower has been subject to retaliation measures and the Ombudsman's Office assisted the person in filing a complaint and ceasing the retaliation.

The COVID-19 pandemic resulted in several public whistleblowing cases. The manager of a national hospital disclosed deficiencies in the health system response and protection measures for health workers and was dismissed immediately. The [case was won in court](#), having the illegal dismissal canceled, but the person was formally reinstated only one day prior to contract expiration and retirement age without having the opportunity to perform his duties and was forced to leave the position.

Another healthcare worker who disclosed deficiencies in financial management at Balti Hospital was subject to retaliation and intimidation, but the measures ceased after Ombudsman's intervention and the amicable agreement of CAPC's lawyer with the employer.

The cases described emphasize the necessity for the whistleblowing mechanism to be strengthened and further developed, and to be replicated by all local, central public authorities and private entities.

Whistleblower Support and Advocacy Organizations

NGOs in Moldova often emphasize the importance of the whistleblowing mechanism. Investigative journalists and media ([Ziarul de Garda](#), [Centrul de Investigatii Jurnalistice](#)) help whistleblowers make public disclosures, maintaining their confidentiality and revealing the damage brought to the public interest. Their continuous efforts to encourage potential whistleblowers to speak publicly put pressure on the authorities to ensure investigation of the wrongdoings and communicate about the results.

A distinct effort has been made by the Center for Analysis and Prevention of Corruption, an NGO, to create a reporting infrastructure, and provide confidential professional lawyer support to whistleblowers and to public authorities. CAPC has set up a website for whistleblowers www.avertizori.capc.md, providing news on the whistleblowing cases and activities related to the mechanism. CAPC has provided trainings for the Ombudsman's

Office representatives, for lawyers, prosecutors and judges and drafted a [Handbook for whistleblowers](#) and a [Guide on the specifics of the institution of whistleblowers](#).

Since 2019 CAPC's lawyers have represented the interests of seven whistleblowers: four were identified following publicly available disclosures and three cases were referred by the Ombudsman's Office. CAPC has consistently ensured representation of whistleblowers in front of the court and in relation with the employers. The disclosures have revealed wrongdoings in the justice sector, healthcare system and public enterprises.

CAPC's contact information is available to the public, including the support provision and they can be contacted through e-mail at: contact@capc.md, via phone: (+373) 2223 8384, or by post: 27 Sfatul Tarii str., office 013, MD-2012, Chisinau.

MONTENEGRO

MONTENEGRO



WHISTLEBLOWER PROTECTION IN MONTENEGRO

Introduction

Montenegro has had legal protections for whistleblowers in place since 2016, when the Law on Prevention of Corruption was passed. This measure placed the Agency for the Prevention of Corruption (APC) in charge of receiving and handling whistleblower cases.

Some NGOs and some whistleblowers have said they are not satisfied with the whistleblower protection system.

According to some surveys, only 15 percent of people in Montenegro say whistleblowers have adequate protection. Some activists have warned that

nothing has changed under the new government. Although the new leadership established the National Anti-Corruption Council in mid-2021, some activists claim that “crime passes under their noses.” Still, there are those who appreciate the progress of whistleblower protection following a change in the ACA’s management in 2021.

The Organization for Security and Co-operation in Europe (OSCE) said in 2018 that the whistleblower provisions could be improved, including temporary protection, but as of this writing no official changes had been made.

Current Legislation and Regulations

Under the corruption prevention law, a “whistleblower” is a person or legal person reports threats to the public interest that indicate the presence of corruption. The whistleblower has the right to protection if he/she has been harmed, including if harm is possible; if their life, health or property is endangered; if they have been fired or demoted; if a business contract has been

cancelled; or if disciplinary proceedings have been taken against them.

If a person undertakes a court proceeding in response to being victimized, the APC may provide professional assistance to prove a connection between the filing of a report and the ensuing harm. The whistleblower has the right to judicial protection against discrimination and harassment at work, and is entitled to a reward of 3 to

5 percent of funds recovered due to the disclosure.

Since the law took effect, the Center for the Development of Non-Governmental Organizations (CRNVO) has warned that the opportunity to protect whistleblowers in a precise and comprehensive way has been missed. The NGO says legal solutions are insufficiently defined and leave room for different interpretations, thus jeopardizing essential protections.

According to the Comparative Analysis of the Montenegrin Legislative and Institutional Framework in the Field of Whistleblower Protection, new EU rules passed in 2019 would ensure greater protections and encourage citizens to report corruption. These rules were not included in the government's work 2021 program, however, which the report says "is a matter of concern." The APC's director responded by saying Montenegro's law is well defined and mostly harmonized with EU rules.

Protection and Investigation Frameworks

The APC is an independent public institution established by Parliament that is tasked with preventing conflicts of interest and handling whistleblower reports. The agency is responsible for investigating whistleblower allegations, warning companies and institutions about wrongdoing, and protecting employees who report misconduct from retaliation.

The APC also can initiate *ex officio* procedures if there is a suspicion of corruption. In 2021, an *ex officio* procedure was completed and corrupt acts were identified. The APC recommended that the target organization improve transparency and eliminate corruption risks, which it proceeded to do.

Performance on Reports and Cases

In the first six months of 2021, the APC received 75 reports of alleged misconduct, of which 13 were anonymous. This figure is higher than in all of 2016 (56) and 2017 (69). In three of the cases in 2021, harm to the public interest was determined—two in companies founded by a municipality and one in local government. The APC made three recommendations aimed to improve transparency and eliminate corruption risks.

In the first quarter of 2021, two employees received retaliation protection. The APC issued six recommendations to eliminate the harm, all of which the agency says were followed.

Since its establishment in 2016, the APC's Department for Reporting and Protection of Whistleblowers has received 457 reports of alleged misconduct. Of these, during the first three months of 2021, it received 37 reports, 5 of which were anonymous. Among 20 requests for retaliation protection, seven have been granted, 11 have been rejected, and two were being processed at the time of this writing.

The APC notes it does not receive regular reports on actions taken following its recommendations, but it is confident that its activities are growing. The APC refers to a public opinion survey conducted in December 2020, in which 64 percent of people said they were trust making a report to the APC. This is 14 percentage

points higher than a year earlier. However, a 2021 survey by the Center for Civic Education found more than half of people believe whistleblowers do not have legal protection.

CRNVO estimates that 22 requests for misdemeanour proceedings have been

filed since 2016 for non-compliance with the APC's recommendations, leading to fines of €10,290. The group says illustrates that protection measures are inadequate because individual fines under the corruption prevention law range from €1,000 to €20,000.

Recent and Ongoing Whistleblower Cases

According to CRNVO there are no reliable, comprehensive statistics in Montenegro about whistleblower cases, but several cases are known to the public.

Patricia Pobrić, manager of the Ramada Inn in Podgorica, was fired in 2016 after she revealed evidence that a meeting of a political party close to then-Prime Minister Milo Đukanović was paid for with taxpayers' money. Djukanovic praised the dismissal: "It has nothing to do with the government. This is an employee of Ramada. If someone dared to give information about your stay in a hotel, I am sure that the hotel owner would suspend them." This case received a judicial epilogue in 2021. Several Social Democrat officials, though not the head of the party, were convicted of abuse. All were still employed and some were even promoted, while Pobrić, a single mother, remained out of work. Although the court proceedings proved the allegations were true and resulted in a conviction, Pobrić was not protected by

the APC because "the legally prescribed conditions for protection were not met."

Milislav Dragojević, a railroad engineer for 40 years, is one of the few employees who officially has been recognized as a whistleblower. He was pressured to resign in 2018 from Railway Transport of Montenegro (ŽPCG), after which he received legal support from the NGO Action for Human Rights. ŽPCG sued Dragojević for "unreasonably disturbing the public" by exposing improper train maintenance, illegal tenders for procurement, insufficiently professional staff, violation of safety regulations and other problems. However, ŽPCG did not submit evidence to refute Dragojević's disclosure. The APC recommended that ŽPCG "suspend without delay and refrain from any behavior that aims or violates the dignity, reputation, personal and professional integrity, health, position of the employee, and which causes fear or creates a hostile, degrading or offensive environment, worsens working conditions or leads to the isolation of the whistleblower."

Whistleblower Support and Advocacy Organizations

The Agency for the Prevention of Corruption (www.antikorupcija.me/me) is in charge of implementing the corruption law and protecting employees from retaliation. The APC organizes training for public agencies on the importance of fighting corruption and the role of whistleblowers. The APC is a member of NEIWA, the Network of European Integrity and Whistleblowing Authorities, which supports the implementation of the 2019 EU Directive on whistleblower protection. The APC published the manual, “Clearly and Loudly Against Corruption,” which explains the importance of fighting corruption and protecting of whistleblowers.

The Center for the Development of Non-Governmental Organizations (CRNVO) (<https://crnvo.me>) analyzes national and regional legislation, including

institutional frameworks in the field of whistleblower protection.

Human Rights Action (www.hraction.org) provides free legal assistance to whistleblowers and advocates for stronger of protections.

The Center for Monitoring and Research (CeMI) (cemi.org.me/me) cooperates with the International Foundation for Electoral Systems, the Central and Eastern European Legal Initiative, the Bulgarian Institute for Legal Initiatives (BILI) and Expert Forum in Romania.

The implementation of the corruption prevention law and the protection of whistleblowers in Montenegro is supported by USAID, EU, Regional Anti-Corruption Initiative, and the Embassy of the Kingdom of the Netherlands.

NORTH MACEDONIA

NORTH MACEDONIA



NORTH MACEDONIA

Introduction

Whistleblowing and whistleblower protection were introduced in North Macedonia as legal concepts in November 2015,⁵⁰ with the adoption of the Law on Protection of Whistleblowers. The measure entered into force in May 2016.⁵¹ At the time the law was passed, whistleblowing was not familiar and not well known among public and public institutions. Rather, it was perceived in a more rudimentary sense.

Whistleblowing is recognized in a broader sense today, both by the general public, public officials, media, government and legislators. It is a driving force that slowly has gained

recognition and importance in the national context.

According to some reports, the State Commission for Prevention of Corruption (SCPC) has become more purposeful in comparison to the period when the law was passed. The SCPC has proactively approached whistleblowing both as a concept, and also as a matter that requires strengthened institutional protections. In this regard the SCPC has established cooperation with Transparency International (TI) Macedonia, which has spent more than 10 years advocating for whistleblower rights and participated in drafting the whistleblower law.

Current Legislation and Regulations

The current Law on Protection of Whistleblowers is to a large extent compatible with the 2019 EU Directive on whistleblower protection. North Macedonia has a satisfactory legislative and overall structured institutional mechanism in regards to whistleblowing. Being a candidate country for EU membership since 2005, Macedonia aims to additionally synchronize national

legislation to the EU aquis and the Directive.

The whistleblower law underwent reforms in 2018 and 2020, mainly to upgrade the definitions in regards to the protection of the broad public interest, and regarding fines and penalties for public officials and for failing to protect employees from retaliation.

⁵⁰ *Law on Protection of Whistleblowers*, Official Gazette of RM, No. 196, 10 November 2015, <https://bit.ly/3p65BY5>

⁵¹ *Law on the protection of Privacy, and Law on the Protection of Whistleblowers of the former*

Yugoslav Republic of Macedonia; Venice Commission, Council of Europe, Strasbourg, 25 January 2016, <https://bit.ly/3v5f3i1>

The 2018 amendments⁵² encompassed a broader understanding regarding the terminology for whistleblowing and its scope in societal. Mainly, the law includes the private sector in addition to the public sector, and also now includes the term “public interest.” Title of the law also was changes, as in the Macedonian language there is no such word that will clearly classify the notion, the purpose and the status of a person acting as a whistleblower.⁵³

On the other hand, the 2020 amendments⁵⁴ have caused some concerns mainly regarding the significant

reductions in the sanctions for responsible persons in legal entities and for legal entities for actions such as not accepting whistleblower reports, not acting or conducting an investigation, or not taking measures to protect a whistleblower’s identity, employment or security.

TI Macedonia reacted to this with public announcements^{55,56,57} saying that these amendments do not guarantee the protection of whistleblowers, and that the low fines could cause a lack of institutional action and disregard to the status of whistleblowers and their reports.

Protection and Investigation Frameworks

Besides the enhanced activity by the SCPC to implement the law, this has been additionally facilitated by the government’s Action Plan 21⁵⁸ adopted and promoted in 2021 by the Deputy Prime Minister for the Fight against Corruption and Crime, Sustainable Development and Human Resources. The plan introduced an obligation for state institutions to appoint an authorized person to receive reports for protected internal reporting. The appointments were to be published on their websites. In addition, a model rulebook contains

information on how internal reporting is to be conducted.

According to whistleblower law, there are three types of protecting reporting: internal (within the workplace), external (to public authorities) and public (i.e. media, public meetings, online). In regards to protection, whistleblower and the people close to them are to be protected against any kind of violation of their rights, in particular termination of employment, reassignment to a lower job position, discrimination, suspension,

⁵² *Law amending the Law on Protection of Whistleblowers*, Official Gazette of RM, No. 35, 23 February 2018, <https://bit.ly/36iXRLC>

⁵³ “ukazhuvach” (Macedonian: укажувач) has been introduced and replaced the word “prijavuvach” (Macedonian: пријавувач) which stood for “informer”, or a person who reports a wrongdoing, not having a strong legal definition which caused open interpretation by the decision-makers and the ones who were in direct contact with the matter of whistleblowing.

⁵⁴ *Law amending the Law on Protection of Whistleblowers*, Official Gazette of RM, No. 257, 29 October 2020, <https://bit.ly/33H11KU>

⁵⁵ *The decreased fines in the Law on Protection of Whistleblowers will lead to even weaker*

enforcement of the Law, Transparency International Macedonia, 7 December 2020, Lokalno, <https://bit.ly/3s8vBUF>

⁵⁶ *The decreased fines in the Law on Protection of Whistleblowers will lead to even weaker enforcement of the Law*, Transparency International Macedonia, 7 December 2020, Makpress, <https://bit.ly/3h5bnVw>

⁵⁷ *The decreased fines in the Law on Protection of Whistleblowers will lead to even weaker enforcement of the Law*, Transparency International Macedonia, December 2020, <https://bit.ly/3sVbqJ1>

⁵⁸ Action 21 – Anticorruption Plan, Government of the Republic of North Macedonia, March 2021, <https://bit.ly/33KtvAY>

sanction or other type of harmful act due to making a report.

Four public institutions are authorized under the law to receive reports: the SCPC, Ministry of Interior, Public Prosecution, and the Ombudsman's Office. The SCPC, Ministry of Interior

and Ombudsman have appointed staff to do this. The Public Prosecution has not yet appointed an official or has failed to publish this information on its website. TI Macedonia is monitoring the process and has requested information from the Public Prosecution Office.

Performance on Reports and Cases

The SCPC is directly responsible for protecting whistleblowers and acting upon reports. The agency is required to publish information regarding its performance and measures to fight corruption and protect whistleblowers. Under the law, all public institutions are obliged to submit semi-annual reports on whistleblowers reports received. The SCPC said that in 2019 and 2020, the Ministry of Interior, Ombudsman and Public Prosecution did not fulfill their obligation to submit reports to the SCPC on whistleblower cases.

The SCPC said it received 19 reports from citizens in 2019, 6 in 2020, and 9 in 2021. In 24 of these cases, the SCPC found the allegations were not confirmed and decided there were no elements for further action. After handling the cases and getting acquainted with the content of the reports, the SCPC concluded it had no legal authority to act because other institutions were involved. As of this writing, the SCPC was still gathering information on eight cases.^{59,60}

Recent and Ongoing Whistleblower Cases

The SCPC reported one case in 2019 in which a whistleblower requested protection from retaliation.⁶¹ The case involved an employee in a public enterprise who reported irregularities in the director's working procedure. Shortly after submitting the report, the whistleblower and the director had miscommunication and misunderstandings at the workplace. The SCPC submitted a request to the other institutions for inspection of the report.

In this case, the whistleblower has faced retaliation at the work by the director and was reassigned to a work location 50 km further from the city where he/she previously worked. The SCPC has requested information from the director regarding the employee's allegations, but the director was unwilling to cooperate and has sent no responses.

The director has withdrawn the decision to reassign the employee in a different location. Instead, the a disciplinary

⁵⁹ *Unprotected whistleblowers do not alert to inconsistencies in society*, D.M.M, Nova Makedonija, 18 February 2022, <https://bit.ly/3Hn6bqN>

⁶⁰ *Unprotected whistleblowers do not alert to inconsistencies in society*, Ukazhuvach, 21 February 2022, <https://bit.ly/352sHb3>

⁶¹ *Presentation*, Irena Popovska, Official for receipt of reports for protected internal and external reporting at the State Commission for Prevention of Corruption, Workshop "Protection of Whistleblowers", DCAF Geneva Centre for Security Sector Governance

procedure was filed that resulted in a decision to dismiss the employee. Following a request for information from the SCPC, the director said there was a breach in work discipline and employment conditions by the whistleblower.

The SCPC submitted an initiative to the government to determine liability by the director and an initiative to the Public

Prosecution for criminal prosecution. The whistleblower also initiated a labor dispute before in court, which was ongoing at the time of this writing.

The SCPC has said that although most institutions have implemented a system to protect internal reporting, most have not submitted a report to the SCPC because they have not received any whistleblower cases.

Whistleblower Support and Advocacy Organizations

TI Macedonia is the only NGO that has promoted the status of whistleblowers, has an online platform to receive whistleblower reports, and has published helpful information for whistleblowers.

TI Macedonia conducted research in 2021-22⁶² on whether public institutions and ministries are fulfilling their obligations to appoint whistleblower point persons. Most institutions have fulfilled this obligation. However, there is a lack of appointments in the primary courts, higher instance courts and the public prosecutions. This information has been published on the web platform for whistleblowers, which is the only platform of its kind in the country.⁶³

Additionally, TI Macedonia is an accredited member of the global coalition for the fight against corruption Transparency International, a member of the Southeast Coalition on Whistleblower Protection, the UNCAC Coalition and the national Platform of CSOs for the Fight against Corruption. As such it is an organization that strives

for strengthening the status of whistleblowers and the fight against corruption. TI cooperates with journalists, media and other stakeholders who are vocal in the field of whistleblower protection.

The Platform of CSOs published research that gives an overview of the functionality and factual situation in comparison with the theoretical approach regarding the whistleblower law.⁶⁴ The research gives a glimpse of the reality in the country, and the lack of political and institutional will to reinforce the law and proactively implement a safe reporting mechanism.

Furthermore, the need to demonstrate practical will from all stakeholders to protect whistleblowers has been assessed by journalists who considered practical implementation as an encouragement for people who would be brave enough to report misconduct: “irregularities and corruption are present, but whistleblowers are afraid to

⁶² *List of Institutions with Appointed Officials for Receipt of Reports for Protected Internal Reporting according to the Law on Whistleblower Protection*, Transparency International Macedonia, <https://bit.ly/3IeQwuI>

⁶³ *Ukazhuvach – Whistleblower*, online web platform for whistleblowers in RM, Transparency International Macedonia, <https://ukazuvac.mk/>

⁶⁴ *Is the Law on Whistleblower Protection operational and to what extent?*, Aleksandar Pisarev <https://bit.ly/3Ic6o14>

report crime and corruption because of a lack of protection.”⁶⁵

TI Macedonia has implemented one of the safest online mechanisms for

anonymous whistleblowing and whistleblowing in general via the GlobaLeaks platform.⁶⁶ TI Macedonia cooperates closely with the SCPC and other public institutions.

⁶⁵*For whistleblowers to exist, there must be someone to hear them*, Aleksandar Samardzhiski, 360 stepeni, 30 December, 2019
<https://bit.ly/35cNJUe>

⁶⁶ *Online platform for receiving reports*, Transparency International Macedonia, GlobaLeaks
<https://report.transparency.mk/#/?lang=en>

ROMANIA

ROMANIA



ROMANIA

Introduction

Romania has been the home of many high-profile whistleblower cases in recent years including the Bucur case, which reached the European Court of Human Rights. Even though Romania's whistleblower protection law has been on the books since 2004, and is considered among Europe's strongest on paper, many whistleblowers have not been adequately protected from retaliation and threats. And, the law only applies to public sector employees.

Many experts, including officials within the Romanian government, have said the Law on Whistleblower Protection has

been poorly implemented and enforced. Studies have shown the law has produced only a few successful cases, and that not enough information on cases has been made public. It is unclear what data and information on whistleblower cases is maintained by public authorities. Without civil society and media support, many whistleblowers would have little or chance to preserve their careers and reputation.

The Romanian citizenry historically has been sceptical of whistleblowing, but opinions and perceptions slowly are moving in a positive direction.

Current Legislation and Regulations

Romania's current legislation on whistleblowing is Law No. 571/2004 on the Protection of Personnel from Public Authorities, Public Institutions and other Units Reporting Violations of the Law.

Even though Romania was one of the first countries in the world to adopt such a specific regulation on whistleblower protection in public entities, the law's implementation has been uneven at best and weak at worst, thus undermining its impact. The reasons are a mix of unclear and lax legal provisions and the lack of institutional and political will and knowledge to comply with the law and

set up the necessary internal and external channels and protections.

As a result, there are few publicly documented whistleblower cases. Those that have been under public scrutiny have not contributed to improving the general climate of distrust as to the actual support given to people by the public authorities.

As of this writing, public officials were working to comply with the EU's Directive on whistleblower protection passed in 2019.

Protection and Investigation Frameworks

Systematized information on the progress of the current whistleblowing law in public institutions through dedicated measures, procedures and tools is available via various assessments and reports on the implementation of the National Anti-corruption Strategy (NAS) 2016-20.

The NAS contains a specific objective as well as measures dedicated to improve the effectiveness of regulatory gaps and inconsistencies in this area. This mainly consists of assessments of and recommendations in complying with the existing law as well as the organization of public campaigns and specialized technical trainings of staff in public entities.

The NAS audit report from the previous period, 2012-15, concluded there was a significant lack of knowledge among public servants on the legal standards of integrity including whistleblowing, as well as formalism in complying with or

fully implementing sectoral plans in a context of a lack of financial and human resources.

Similarly, the OECD's evaluation the 2016-20 NAS pointed out that whistleblower protection continued to be weak. This was evidenced through peer review missions in various public institutions. In conclusion, whistleblower protection improvement measures did not reach the envisaged targets, a fact confirmed by a 2020 Justice Ministry survey that indicated these were among "the least effective of all preventive measures."

In November 2021 the Justice Ministry sent a draft law to Parliament aimed transpose the EU Directive and replace the current whistleblower law. As of this writing it had not been passed. Its passage could be delayed due to criticism from the Parliament's Legislative Council and the Human Rights, Religious and Minorities Committee.

The draft law seeks to improve and streamline reporting, as well as discourage violations of the law. In this sense, the most important legislative changes that would be brought about include:

- Protection would extend to private sector employees. Companies with 50 to 250 employees would be obliged to set up internal whistleblowing channels by December 2023. Companies with fewer than 50 employees would be exempt, meaning that employees could use external channels directly.
- Whistleblowers would be encouraged to take a step-by-step approach by first reporting within the workplace. However, the possibility would remain to report directly to an external channel or to the public.
- Anonymous reports would be accepted. Prior to the public consultation on the draft law, anonymous reports were to be banned. However, after several NGOs presented arguments, the draft law now includes reports that lack identification to be accepted and analyzed. Moreover, anonymous reports can also be filed via a lawyer who will respect the client's confidentiality.
- The definition of worker would be expanded and other types of people would included The draft law includes media outlets, professional organizations, trade

unions and NGOs that receive public disclosures and which suffer retaliation as a result of their support.

- The National Integrity Agency (NIA) would be the public authority to receive and act upon whistleblower reports. The NIA was chosen in light of its current role in managing an administrative verification system of public officials' unjustified incomes, conflicts of interests and incompatibilities. The NIA could delegate reports to other competent state authorities.
- Clear sanctions would be put into place. The draft law regulates civil, disciplinary and criminal liability for not implementing obligatory internal channels, actions that impede their functioning, retaliatory actions and breaching confidentiality. Making a knowingly false report would result in a misdemeanor fine of €1,000.

These proposed improvements point to the lack of legal clarity vis-à-vis definitions, roles and responsibilities, monitoring and reporting tools, channels and enforcement methods that make the present legal framework weak and difficult to implement. In this sense, the new law would be a welcome change to the Romanian whistleblower landscape. However, an improved regulatory framework does not guarantee that will be fully and correctly applied, considering Romania's continuing challenges in terms of administrative capacity and human resources.

Performance on Reports and Cases

Some statistical information is available in the interim audit report on the implementation of the NAS for the period 2016-18. According to the audit, the overall reported progress is 67 percent "under implementation," while 33 percent is reported as "under implementation with delays." The report does not offer statistical data on the progress or effectiveness of measures aimed at improving whistleblowing legislation.

However, each public institution covered by the Strategy received evaluation missions to track progress and all peer review reports have been published on the NAS website. Therefore, information on implementation progress in public

institutions and state owned companies is available but only for specific moments in time.

A recent qualitative research report conducted by two NGOs active in the integrity field found that consulted whistleblowers actually did not know about the existence of a legal framework. Most used internal channels first but then decided to go public because of a lack of internal action. This was followed by increased retaliation especially for affecting the institution's public image. Also, whistleblowers within the police were not recognized as such, with the argument that the law does not apply.

Recent and Ongoing Whistleblower Cases

In 2020 police officer and union leader Valer Kovac was fired from the Timiș County Police Inspectorate (IJP Timiș) after he reported on shortcomings in the system: the lack of adequate equipment in the police force and an imposed plan on police officers to fine citizens during the state of emergency. Following public pressure, Kovacs was re-employed but retaliation ensued by moving his office to another city. Even though the court ruled in his favor and high-ranking police officials in Bucharest admitted his superior was wrong, the head of IJP Timiș was not only not sanctioned, but was even promoted. In September 2021 IJP Timiș contested in court Kovacs' whistleblower status because he did not use internal channels and, as a result, tarnished the police's reputation and public image.

In 2020 Ovidiu Ianculescu, an engineer and director of the Mureș Water

Management System, spoke out against the politization practices occurring in local public institutions after Ervin Molnar, member of the Romanian Liberal Party, took over the leadership of the state's national water management administrative body, Apele Romane. Molnar sent out envoys to Ianculescu to pressure him into resigning because his office was promised to another party member who had no qualifications. After protesting Ianculescu was demoted and his office moved to another city via an unmotivated official order, which he contested. Retaliation also continued in the form of bad press, accusing him of having himself political connections which enabled him to be hired and move up the ranks in the local water management administration. In December 2020 the court suspended this order and Ianculescu was reinstated as director in November 2021.

Whistleblower Support and Advocacy Organizations

Under the current law, Romania has no government agency assigned to receive and investigate whistleblower disclosures and retaliation complaints, or to handle whistleblower issues in general. According to the current draft law, the National Integrity Agency would assume this role.

The high-profile adoption of EU Directive in 2019 revived NGO activities and advocacy efforts to improve whistleblower protection. The entities that were already active in this sector contributed to the public debate on the national draft law, while others expanded their research and outreach activities to include this topic.

In November 2020 five NGOs launched the CivicAIP Network, which promotes whistleblowing practices as a fundamental way to ensure a responsible working climate, characterized by integrity and the absence of any abuse and discrimination, in public and private organizations. The network engages in advocacy as well as training sessions on integrity in general and whistleblowing in particular.

APADOR-CH and ActiveWatch have been active since 2020 on a civic project aimed to increase public awareness on whistleblowers in Romanian society and strengthen this role by creating an

effective protection system, including a resource center in collaboration with public institutions and the private sector.

The Romania chapter of Transparency International continues to advise and support whistleblowers in both public and private sectors, through its Anti-Corruption Assistance Center. It also continues its work in supporting the private sector in complying with anti-corruption legislation as well as

implementing integrity measures in companies.

Beginning in 2018 the Romanian Centre for Independent Journalism participated in the European project Expanding Anonymous Tipping, which set up the GlobaLeaks platform to receive confidential and anonymous reports. FAIR-MediaSind, the only representative federation for media and culture workers in Romania, has announced it also will use this tool.

SERBIA

SERBIA



WHISTLEBLOWER PROTECTION IN SERBIA

Introduction

In 2014 Serbia passed one of Europe's most comprehensive whistleblower protection laws. Elected officials, policy-makers, activists and international experts worked together for several years to develop the law, marking a successful cooperative effort by government and civil society.

The Law on the Protection of Whistleblowers was developed and passed mainly on the initiative of Rodoljub Šabić, then the Commissioner for Information of Public Importance. The effort was supported by European institutions, organizations including the Council of Europe and USAID, and two former whistleblowers.

The law contains most international standards, including protection for public and private sector employees from a wide range of retaliatory acts. It protects disclosures to the public under

certain conditions, permits the reporting of classified information, and penalizes the failure to protect a whistleblower and other violations.

In 2021 the Regional Anti-Corruption Initiative (RAI) published an analysis finding the law is largely in line with Council of Europe recommendations, while still recommending some improvements. The International Bar Association found the law is closely aligned with best practices.

Almost daily, new whistleblower cases and stories appear on the website of the NGO Pištaljka ("The Whistle"), reporting abuses and corruption at all levels of government. This shows that many people in Serbia are willing and able to report misconduct. The law allows them seek judicial remedies if they are dismissed or demoted out of retaliation.

Current Legislation and Regulations

The purpose of Serbia's whistleblower law is to protect the public interest and the common good by permitting people to disclose information about corruption, violations of regulations or human rights, abuse of public authority, danger to life, public health, safety or the environment.

Under the law, a whistleblower can be any person who reveals information about misconduct in connection with his/her employment or business relationship. Victimized employees may seek reinstatement and damages in court. Temporary measures enable employees to be protected from harmful actions until a court makes a final decision. Such interim measures enable an employee to return to work via an

urgent court decision or be compensated for damages.

Only judges who have been trained and certified by the Judicial Academy are permitted to rule on whistleblower cases. The High Judicial Council, Supreme Court of Cassation and Ministry of Justice use a specific code for whistleblower cases in court registers, which eases the monitoring of these cases.

Labor inspection and administrative inspection officials have a role in implementation of the law. The *Anti-Corruption Agency, which handled whistleblower cases before the 2014 law was passed, no longer has an official role on whistleblower protection.*

Protection and Investigation Frameworks

Employees victimized for exposing misconduct may file court actions with High Courts, which decides in the first instance, and may file appeals with the Court of Appeals. They also may turn to the Supreme Court of Cassation, Basic Court, Administrative Court and Misdemeanor Court.

Courts must make decisions on temporary relief within in eight days. According to Pištaljka, the average case is decided in about 20 days, ranging from one day (the High Court in Pirot) to

40 days (the High Court in Belgrade). The general belief is that the key element for the relatively successful implementation of the law is the training of judges and prosecutors, in cooperation with the Judicial Academy and with the support of Norway and USAID.

Pištaljka says it has filed criminal complaints against employers who refused to comply with court decisions, which led to the orders being followed.

Performance on Reports and Cases

According to the Ministry of Justice, a total of 842 cases were resolved through the end of 2020: 37 cases in the Supreme Court of Cassation, 277 in appellate courts, 418 in higher courts, 33 in administrative courts, 19 in

misdemeanour courts, 16 in misdemeanor courts of appeal, and 42 in other courts. In 2019 the Supreme Court received 152 new whistleblower cases, about 25 percent more than the previous year.

Noting that some cases have not been resolved within three years, the Supreme Court has asked the heads of lower courts to speed up these proceedings, saying “their importance is great.”

There are no aggregate statistics in Serbia regarding the number of reports sent to employers and state institutions. Two ministries have compiled data. The Ministry of Justice reported 89 retaliation cases since the law took effect, and 56 were filed within the Ministry of Defence.

According to the data from Pištaljka, in 2019, 142 applications were submitted to employers, which is less than in 2018, when there were 168 applications, but this is also incomplete data because

these are only persons who called the organization to seek legal advice.

Pištaljka says that as of April 2020 more than 30 whistleblowers received judicial protection and 15 received final verdicts in their favor. Data on the enforcement of these verdicts, however, is incomplete.

Some activists believe whistleblowers are endangered by the 2021 Law on Protection of Business Secrets. This law could allow employers to conceal certain information in order to cover up abuses and take legal actions against whistleblowers. The law also could go against a 2016 EU Directive stating companies may protect information unless keeping business secrets negatively affects freedom of speech or damages the public interest.

Recent and Ongoing Whistleblower Cases

In 2019 Aleksandar Obradović was dismissed from his job at the state-run Krušik weapons factory on charges of revealing trade secrets. He gave internal documents to journalists showing alleged abuses and impropriety in arms exports involving the father of the Serbian defense minister. Obradović was released following three months of detention, after 25,000 people signed a petition calling for him to be freed. Obradović remains out of work and under criminal indictment.

Duško Kovačević is a Novi Sad police officer who in 2017 reported that his colleagues beat a suspect into unconsciousness. After facing pressure, degradation and threats, Kovačević received whistleblower status in 2020.

Ivan Ninić is perhaps the youngest whistleblower in Serbia. As a 16-year-old student, he told BBC news that that

dormitory in which he lived illegally charged students a fee for a student membership card. He estimated the school administration earned around €50,000 through the scheme. Through a public records request, it was determined that the money was spent on gifts, alcohol and salary bonuses. As retaliation, the Ministry of Education revoked his scholarship. The people involved with the scheme reportedly are still in their positions.

In 2021, after six years of waiting, Predrag Simonović received a first instance verdict confirming he had suffered abuse at work at the Internal Affairs Ministry. He was a member of a working group investigating the murder of journalist Slavko Ćuruvija. After reporting alleged illegality and omissions, which his superiors tried to cover up, he suffered harassment and disciplinary proceedings.

Goran Perić was a lecturer at the *Business School of Applied Studies* in Blace who was fired after reporting a conflict of interest involving a person who was being paid by the school while also deciding on the school's accreditation. A court ruled in his favor, but the school refused to comply with the judgment, claiming there were no job vacancies. A criminal complaint was filed against the school's director, who was fined €300 and banned from being the director of any public institution. The director was fired and a new director rehired Perić. Novi Sad municipal worker Marija Beretka reported that managers were waiving parking fines for wealthy

people and those with connections. She filed a report with the police, which launched an investigation on an order from prosecutors. In response Beretka was demoted, as was a colleague who helped her make the report. Both won court rulings and returned to their jobs. Beretka became Serbia's first whistleblower to obtain a final verdict, and her colleague was the first associated person to win a case. A Novi Sad municipal manager received a suspended prison sentence, marking what is believed to be the first case of a whistleblower disclosure leading to the conviction of a public official.

Whistleblower Support and Advocacy Organizations

Pištaljka (founder of the association Eutopia, pistaljka.rs) investigates corruption and other abuses in government and companies, and works to protect the rights of whistleblowers. The NGO cooperates with whistle-blowers on a daily basis and has staff lawyers who provide no-cost legal aid. Pištaljka publishes case files, documents and source information, and it has prepared a manual for public prosecutors that is used court proceedings.

The Belgrade Center for Security Policy (<https://bezbednost.org>) is an independent research organization that works to improve the security of citizens in accordance with democratic principles and respect for human rights. Due to inaction by institutions and problems faced by whistleblowers, the group formed the Civil Committee for the Protection of Human Rights Defenders and Whistleblowers, a team of experts, lawyers and media representatives that responds to threats.

Partners for Democratic Change (www.partners-serbia.org) is a civil society organization dedicated to improving the rule of law, civil society development and institution building in Serbia and the region while strengthening local capacities and using the knowledge of domestic experts. The partners developed expertise in the areas of alternative dispute resolution and mediation, conflict management, rule of law, development of democracy and protection of human rights, anti-corruption and protection of privacy and personal data.

