

ABOUT US WITH US

Protection of whistleblowers in the Czech context
and in comparison with other countries

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Whistleblowers
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IPA is a leading Polish think tank and an independent centre for policy research and analysis established in 1995. Its mission is to contribute to informed public debate on key Polish, European and global policy issues. Main areas of study include European policy, social policy, civil society, migration and development policy as well as law and democratic institutions.

OŽIVENÍ o. s.

Civic association Oživení is a non-profit non-governmental organization founded in 1997. Oživení endeavours to increase the transparency of decision-making processes and financial management at public institutions in the Czech Republic, as well as the personal liability of public officials, and thereby boost the active participation of citizens. The main areas of interest include the right to information, public procurement and management of public property. Last but not least, Oživení is involved in spreading anti-corruption know-how and educating and networking anti-corruption and civic activists.

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The Eötvös Károly Institute was created in January 2003 by the Soros Foundation in order to establish a novel, unconventional institutional framework for shaping democratic public affairs in Hungary. Acting hand in hand with other entities, including advocacy groups, watchdog organizations and other institutions, the Eötvös Károly Institute wishes to contribute to raising professional and general public awareness and to shaping the political agenda in issues with an impact on the quality of relations between citizens and public power.

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TIS belongs to the global movement which leads the fight against corruption and brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. The mission of TIS is to create change towards a world free of corruption. TIS works together with other national branches and exchanges experiences associated with finding system solutions on how to curb corruption and increase transparency.

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Transparency International Estonia is a leading civil society organization in the fight against corruption in Estonia. TI Estonia is an accredited national chapter of Transparency International. TI Estonia's main fields of activity are analysing and highlighting the risks of corruption, awareness raising and strengthening cooperation between public institutions and private persons in the fight against corruption.

Special thanks to all whistleblowers who bravely took a stand against wrongdoing and were willing to share their story.

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Foreword

Some consider them snitches or lunatics. Others see them as heroes. But no matter which side you are on, one thing is certain. Those who have decided not to look away when rules are being violated, whether legal or moral, have become a group of citizens standing alone in a corner; a group that has been forgotten and that is being overlooked, silenced or ostracised.

But who are these people really? Constant troublemakers and diehard complainers? Lifelong warriors of justice? Or who exactly? In fact, most whistleblowers are regular people who had been doing their jobs for years. Some initially stood silent while actions were taking place that they suspected were against the rules until one day their patience ran out and they decided to act. Others were suddenly facing a decision of whether or not to take an active part in these violations and chose not to.

In the current, dire situation where there is no legal framework protecting whistleblowers and where the society itself mostly sees them as snitches or rats¹, there have been numerous personal stories with a very unhappy ending. Of course, their lives as such are rarely threatened; they are “only” facing the loss of employment and job, debt, depression, health complications, physical assaults, threats or “mere” loneliness. Their stories are stories of heroism, but perhaps also of lunacy, because the decision to step out of the silent crowd while knowing that none of those whom their decision might benefit are likely to give them any support, let alone voice their thanks, requires a mind prepared for risk and stressful experiences. State authorities are playing the passive role of those who naturally will compliment whistleblowers after uncovering highly important cases in front of the public, but who are rarely able to offer a helping hand.

If we are to have a truly constructive discussion on whistleblower protection, the doors that have been shut for so long have to be thrown open and all stakeholders must be invited to talk at a single table. This means not only lawgivers or representatives of the civil society, but primarily those who have the most to say – the whistleblowers themselves. How did they report the incident and how was it investigated? Where did they make mistakes? What forms of retaliation were they facing? Who gave them a helping hand and who was adding fuel to the fire?

We will try to answer these questions in the following analysis in order to determine whether the currently proposed legislation corresponds to the needs of whistleblowers and can provide effective protection. We are convinced that the lack of understanding of the specifics of whistleblowers’ experiences may prove a significant obstacle on the path leading to their strong legal protection.

For this reason, we hope that this analysis will complement the existing materials describing the legal framework of the currently (non-)existent or proposed protection of whistleblowers, resulting in a comprehensive foundation on which a solution can be built.

Lenka Franková, občanské sdružení Oživení

¹ WORTH, Mark: *Whistleblowing in Europe: Legal protection for the whistleblowers in the EU*. Transparency International, 2013, p. 15.

Executive summary

40 analysed interviews with whistleblowers from the V4 countries and Estonia show that whistleblower protection is inadequate both in terms of applicable law and the utilisation of various options in practice, and also in terms of the real needs of whistleblowers.

Most of the whistleblowers were reporting illegal behaviour in the workplace. In general, whistleblowers were trying to resolve the case within their respective organisations. For this reason, they usually contacted their manager or a supervisory authority, following the procedures defined in internal regulations. But in most cases, the report they wanted to make concerned misconduct at precisely those levels – among people representing the organisation’s management. These persons then tried to influence the investigation of the case or create obstructions. Overall, internal mechanisms proved entirely ineffective and non-functional.

For this reason, three in four whistleblowers contacted a public institution to report on the unethical or illegal activity. About 80% of cases were investigated; only about 30% of those investigations were finished or resulted in punishment. In one third of cases, the investigation of the report did not involve the whistleblower. More than half of all respondents rate their experience negatively or have their reservations; only a handful thought it was positive. It usually took dozens of months from the time a report was first made to the conclusion of the investigations and punishment of those responsible. Whistleblowers in general agree that there is no protection available to them.

Submitting their report led to dramatic changes in their personal and working lives. With one sole exception: all whistleblowers had to face various forms of retaliation. One half of whistleblowers lost their job as a consequence. In more than one third of cases, there were attempts to justify these retaliatory measures by law. In 13% of cases, termination of employment also affected the whistleblowers’ co-workers or sympathisers.

Due to the poor level of institutional support, whistleblowers are looking for other means to report unethical or illegal behaviour or defend themselves, and sometimes both. One half of respondents were convinced that there was no chance of doing anything to defend themselves and no one to turn to. The other half decided to actively defend against retaliation, typically through lawsuits or media publicity. The media were involved in 85% of cases. One third of whistleblowers believe the media played a crucial role without which their report would not have been investigated at all. 60% of cases involved non-governmental organisations and other stakeholders who were providing counselling and/or support.

Whistleblowing is an early warning system that plays a key part in the fight against corruption, wasting of public money and other unethical behaviour of people who have a certain degree of power. The current status of functional whistleblower protection is completely insufficient. International obligations as well as other factors require this situation to be resolved.

To improve the system, we recommend the following:

- The legal framework of whistleblower protection should first of all define the terms “whistleblowing” and “whistleblower”. It should apply to people in both the public and private sector, and not be limited only to employees.
- Effective internal and external mechanisms should be introduced. The method for submitting reports should have a clear functional definition that also guarantees objective and independent investigation. For internal mechanisms within an organisation, a good solution may be the appointment of an internal ombudsman. Such measure is independent on the state of the law.
- It seems prudent to establish an institution that would be responsible for investigating reported cases or at least act as coordinator of the work of various institutions and cooperate with the whistleblower during

the investigation. It is not necessary to create a new institution for this purpose, but instead for example extend the current powers and capacities of the ombudsman role.

– Whistleblower protection should be extensive, address various retaliatory measures and include a compensation system.

– A public awareness campaign should promote whistleblowing as something that protects public interest or money and promotes participation in public affairs.

Introduction

This brochure was written as part of **“Promoting effective institutional anti-corruption framework in the countries of Central and Eastern Europe”**, a joint project of 5 countries (the Visegrád Four and Estonia). The objective of the project is to strengthen the institutional anti-corruption framework while supporting more efficient application of anti-bribery measures. The project focuses in depth on the spectrum of “soft corruption areas” which are often seen as having the potential to prevent deeper forms of corruption. This approach involves research, comparative analyses, case studies of best practices and recommendations for the specific situation of post-communist countries. Results of research and examples of good practice will be used to formulate a set of general recommendations for the countries of Central and Eastern Europe in selected anti-corruption measures and their deployment, including the possibility of creating or improving national anti-corruption agencies in accordance with international obligations.

Analyses of whistleblower protection in the V4 countries and Estonia point to shortcomings in the legal framework that make it very difficult to provide adequate or effective protection of whistleblowers reporting unethical or illegal behaviour. The deficiencies of these laws have been analysed extensively. Despite that, all countries show a certain effort to strengthen the laws on whistleblower protection. There are, however, virtually no case studies of specific examples, and these law-making efforts are therefore largely based on insufficient data.

Methodology

Since there have already been many analyses of whistleblowing that in particular focused on shortcomings in legal protection, we have decided to perform an in-depth examination of the whistleblowers' personal experiences. The objective of the analysis was to describe selected and still widely known cases of whistleblowing from the last five years and focus on their shared features and on the possibilities of protection from the perspective of the whistleblowers themselves.

This document is based on the results of a qualitative analysis; specifically semi-standardised interviews with people who had reported unethical or illegal behaviour.

For the purposes of this analysis, we used the following broad definition of whistleblowing in order to capture all potential forms of reported actions:

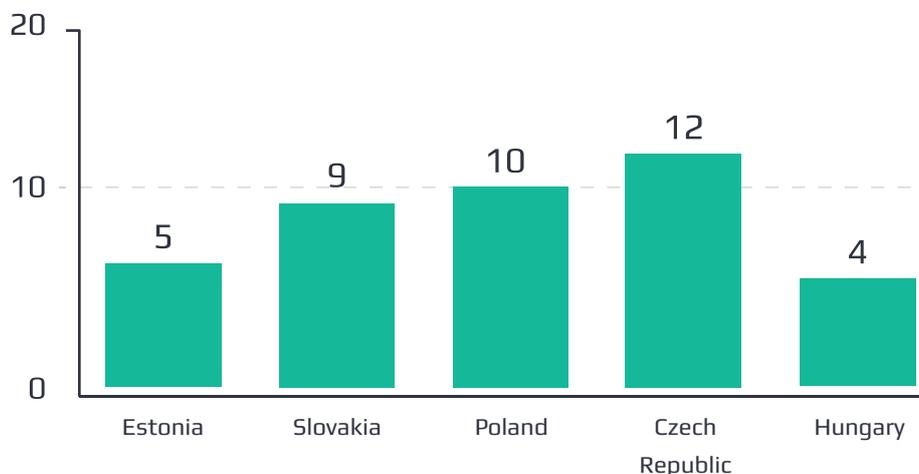
The disclosure of information about such potential breaches of law or ethical principles in an institution or a state, municipal or private enterprise which harm society or a group thereof.

Whistleblowers were selected in six categories encompassing both the public and private sector to show the broadest possible spectrum of potential whistleblowers and examine the differences between the methods of submitting reports and their results in these categories. Specifically, we were looking for whistleblowers in the following categories: state government, local authorities, political parties/politicians, semi-state institutions, private organisations, security forces and courts. Some whistleblowers were contacted on the basis of publicly available information about their reports; others contacted us on their own initiative to share stories of unethical or illegal actions. In order to obtain the contact information of whistleblowers, we also approached entities who we assumed could be potential recipients of their reports – the ombudsman, labour unions, journalists, etc.

The objective was to conduct interviews with at least 2 whistleblowers in each category per country. This figure was determined with some uncertainty regarding the availability of suitable whistleblowing cases in the countries participating in the analysis whose national data were to be used for comparison. Unfortunately, the total number could not be achieved due to the national specifics of the individual countries in each sector. In total, we conducted 40 interviews with whistleblowers who agreed with publishing.

Number of conducted interviews

Chart 1



Source: Oživení, 2014

The interviews used a prepared list of open-ended questions primarily relating to whistleblowers' options when submitting a report within the organisation where they had witnessed unethical or illegal behaviour (internal mechanisms) and at other institutions (external mechanisms), as well as questions about the options and utilisation of individual whistleblower protection measures and the role of the whistleblower and other stakeholders – the media, non-profit organisations, etc. The interviews were recorded in handwritten notes to achieve maximum possible authenticity and credibility. Whistleblowers were first asked to provide a brief summary of the whole story and its time frame, and then answered individual questions focusing on all relevant events related to their report. The interview concluded with subjective experience: the specific impact of the report on the whistleblower's life, how it had been changed, etc.

The obtained data and notes were then analysed for each individual category, summaries of the stories were created and compared with each other. Whistleblowers were asked for consent to provide their personal data or whether they requested to remain anonymous to maintain maximum possible confidence of information.

The interviews were conducted between September and November 2013; the presented outputs and summaries of the individual cases are current as of January 2014. Some cases of whistleblowing are still undergoing criminal or other proceedings and their current status may differ from what is presented here. Because emphasis was placed on the options for whistleblower protection and the reporting itself, further dynamic development of the individual stories does not diminish the value of the presented data.

1. BACKGROUND

Whistleblowers are people who often act on their moral principles, such as honesty and responsibility, to try and stop corruption and exploitation. Whistleblowing is the active reporting of a specific unethical or illegal action occurring (typically) in the workplace. Employees are usually among the first to know about unethical or illegal behaviour and may draw attention to it. In this situation, however, employees are facing many dilemmas, in particular whether to breach loyalty and confidentiality with a colleague, supervisor or employer and threaten their position, or whether to put public interest first.

This means that whistleblowing is one of the most important tools leading to disclosure and prevention of fraudulent activities and corruption in public administration and private companies, which may ultimately save a considerable amount of public money or protect the safety of the population or even save lives. The contribution of whistleblowers to the uncovering and prevention of corruption is clear. Despite that, only 4 countries of the European Union have introduced advanced laws protecting people who report unethical or illegal behaviour. From the remaining 23 EU countries², 16 have adopted partial protection of whistleblowing employees and 7 countries have only a very limited legal framework or none at all. From countries taking part in this project, all are in the group that has adopted only partial measures, or, in the case of Slovakia, measures that are severely limited or non-existent.

Even though the vast majority of member states, including those included in this analysis, have signed various international agreements, the obligations that arise from them have not yet been fulfilled and the current state only partially corresponds to the principles of whistleblower protection recommended by international organisations to be incorporated into national laws.

1.1 Legal framework of whistleblower protection in EU member states³ and the position of whistleblowers in society

An analysis of the legal approaches to whistleblower protection was published by Transparency International in November 2013. The report provides an analysis of laws covering protection of whistleblowers against termination of their employment contracts and other forms of retaliation, the scope of the laws, options for submitting reports and other indicators. It does not however focus on implementation or enforceability, meaning that it is not concerned with how these laws are employed in practice, if at all.

Table 1

ADVANCED <i>A country's laws include comprehensive provisions and procedures for whistleblowers in the public and/or private sectors</i>	PARTIAL⁴ <i>A country's existing laws include partial provisions and procedures for whistleblowers in the public and/or private sectors</i>	NONE OR VERY LIMITED <i>A country's existing laws include no or very limited provisions and procedures for whistleblowers in the public and/or private sectors</i>
Luxembourg Romania Slovenia UK	Austria Belgium Cyprus Czech Republic Denmark Estonia France Germany Hungary Ireland Italy Latvia Malta Netherlands Poland Sweden	Bulgaria Finland Greece Lithuania Portugal Slovakia Spain

Source: Transparency International, 2013

²The analysis of the legal framework of whistleblowing in EU countries that these figures are based on was published by Transparency International in November 2013 and does not include the newest member state, Croatia, which joined the EU on 1 July 2013, increasing the total number to 28.

³WORTH, Mark: *Whistleblowing in Europe: Legal protection for the whistleblowers in the EU*. Transparency International, 2013.

From the investigated⁵ countries, only Hungary has a comprehensive legal framework for whistleblowing, but does not possess a functional mechanism of whistleblower protection. In other countries, relevant regulations are fragmented and found in many different laws, and as such do not provide adequate whistleblower protection. The individual measures, even though potentially effective, will often remain unused because the laws are too disorganized.

In the Czech Republic, there is currently no law that would address whistleblowing comprehensively. The topic remains virtually unknown in the Czech legal system. Neither the term whistleblowing nor any equivalent is used in any law currently in effect in the Czech Republic, with one exception⁶. Whistleblower protection is partially addressed by specific sections of the Labour Code, the Criminal Code and some other laws. Even though in theory, these legal mechanisms are not entirely ineffective, they can hardly provide a sense of security to potential whistleblowers, for example because the methods of submitting reports or carrying out investigations of these reports are unclear. Even though the Labour Code guarantees fair treatment of employees, it does not in effect provide any protection. Employees have to defend themselves through courts. The criminal code on the other hand defines a duty to report criminal actions, including those related to corruption, but does not provide any protection related to public interest⁷. The Administrative Procedure Code enables employees to submit their reports confidentially and anonymously to their superiors, but does not offer any corresponding protection mechanisms. The role of the ombudsman is also limited, as the ombudsman may investigate individual cases, but his or her conclusions are only recommendations that are not binding.

Estonian law addresses whistleblower protection only in one section of the Anti-Corruption Act. This law creates a duty for public officials to report any corruption or unethical or illegal behaviour, and sets forth disciplinary penalties if the duty is violated. For example it automatically assumes that the name of the whistleblower will remain confidential. There are however no laws for whistleblowers outside the public sector. Poland has no separate comprehensive law on whistleblower protection. The protection of whistleblowers can be derived from several laws and regulations (labour, criminal and others), which under specific conditions may create a certain level of protection for those who disclose unethical or illegal behaviour. These general provisions, however, are subject to interpretation by courts and the degree of subjectivity may be very high. Moreover, verdicts of the Polish Supreme Court indicate that in disputes over employment termination, protection of public interest cannot be accepted as a supporting argument for the employee's behaviour.

Slovakia not only lacks a complex whistleblowing or whistleblower protection law, but in fact no other laws make a single explicit mention of any even partial protection for those who report unethical behaviour. There are some laws and stipulations that are tangentially related to the topic, but these are usually very brief and fragmentary, which makes any orientation in them virtually impossible. Theoretical protection is limited to certain sections of the Labour Code that are only applicable to employees of private entities. Employees of the state do have a duty to report any damages to property, but this stipulation cannot be interpreted as a legal standard for reporting unethical or illegal behaviour. For the general population, the penalty for not reporting corruption as a crime represents a lower risk than any potential retaliations for doing so; this is true not only for Slovakia, but also for the Czech Republic.

Hungary is the only analysed country that has a special Whistleblowing Act. This law forbids retaliation against whistleblowers in the private or public sector who disclose unethical or illegal behaviour related to the exchange of public money or property. So far, Hungary sounds like an example of good practice. However, even though the act has been in effect since 2010, it is not fully functional, because the implementation agency to which reports should be submitted and that should be investigating them does not yet exist. Despite that, some of the provisions of the act may be applied in practice, as they provide a standard option for employees to report unethical behaviour to their employers, an internal supervisory body or an anti-corruption agency. The report may be confidential if the whistleblower chooses so. The employer must also prove that any steps taken against the employee were not related to the report.

⁴ International comparisons represent certain level of simplification in the examined features. For example, the Czech Republic has no legal framework that would regulate the protection of whistleblowers. A partial legal framework in the case of the Czech Republic considers such legislative provisions that only touch upon examined issues such as labor right standards. These, however, do not provide explicit protection for whistleblowers. In details: Transparency International Czech Republic, An alternative to the silence, for better protection and greater support for whistleblowers in the EU, (2013). See: www.transparency.cz/doc/Czech_Republic_-_WB_CR_peklad.doc

⁵ We are focusing on the Czech Republic, Estonia, Hungary, Poland and Slovakia.

⁶ The exception is a regulation of the Czech National Bank no. 123/2007 Coll., on the rules of prudent economic behaviour of banks, savings banks, loan associations and traders of securities, adopted during the transposition of a European regulation related to regulatory reforms of the financial market. Its Section 34 (2) somewhat randomly defines whistleblowing as a mechanism for reporting significant concerns of employees regarding the functionality and efficiency of controlling and management systems outside standard flows of information; if there is such a mechanism in place, it must be made available to all employees, guaranteeing the right of maintaining confidentiality if it is used.

⁷ A more detailed analysis of the Czech legal framework is provided in Ochrana oznamovatelů (whistleblowerů): analýza zpracovaná pro účely vzniku nové právní úpravy v ČR Sochovský a kol. Oživení, 2012.

In the Czech Republic, like in many other countries, whistleblowing is not a widely known topic among the general or professional public. General awareness of this phenomenon was first raised only recently with the case of Libor Michálek who publicly drew attention to alleged corruption at the Ministry of the Environment.

The national languages of Poland as well as the Czech Republic lack an equivalent for “whistleblowing” or “whistleblower”, and their society does not have a generally accepted concept of a whistleblower as a protector of public interest. For this reason, whistleblowers are often facing hostility or rejection from the general public. This effect seems strongest in Estonia. Public perception is however slowly and gradually changing. There are a growing number of those who see whistleblowers as heroes defending public well-being, and not snitches, rats or political opportunists. The concept of an honest citizen working for justice is gaining traction.

In post-communist countries, however, the act of reporting on any third person to official institutions still carries negative connotations derived from the historical experience in which citizens were forced to inform on each other to the ruling power⁸. The way state institutions perceive whistleblowers is well illustrated by the comments made in 2012 to the draft Whistleblower Protection Act by the Czech Office for Personal Data Protection⁹:

“Any institutional foundation promoting anonymous snitching is fundamentally wrong, does not correspond to the traditions of European (continental) law and contributes to the insidious spreading of a surveillance society where people mistrust each other.” ...

*“Whistleblowing needs to have a Czech term. It is **inappropriate to use English terms** in Czech laws. There are other terms we might be using, derived from the words for **putting down, reporting or informing.**”¹⁰*

It is true that it is difficult to find a suitable Czech equivalent for “whistleblower” that would avoid negative connotations. For this reason, we prefer the neutral term “**oznamovatel**” (“**reporter**”), which we used in our Czech publication of this report, even though we are aware that it is too broad in meaning.

The difficult position of whistleblowers in the process of reporting unethical or illegal behaviour and their protection against retaliation from employers is, with some minor exceptions, generally ignored by Czech, Polish, Slovak or Estonian laws. This is despite the fact that those who report unethical or illegal actions in the workplace may play an important role in uncovering fraud, uneconomical behaviour or corruption in institutions of the private or public sector. Their decision to act may save lives, help protect human rights and promote compliance with laws. In order to protect public interest, whistleblowers are often taking a very large risk that after making their report, they may be (and usually are) facing mobbing or bossing in the workplace; they may be fired, sued or threatened to be sued by the employer for breaching confidentiality or for slander, and they may be facing criminal penalties. In extreme cases, whistleblowers may be threatened with physical violence to themselves and their families.

Inadequate, fragmented or missing legal frameworks for whistleblowing which provide only partially effective or theoretical means of protection for whistleblowers reporting unethical or illegal behaviour, give little opportunity to use these limited legal tools in practice. Lack of acceptance by society and fear of retaliation together with inadequate legal protection mean that many potential whistleblowers decide to remain silent.

⁸ SOCHOVSKÝ a kol. Oživení. *Ochrana oznamovatelů (whistleblowerů): analýza zpracovaná pro účely vzniku nové právní úpravy v ČR*. Oživení, 2012. p. 11.

⁹ <http://www.bezkorupce.cz/wp-content/uploads/2013/02/%C3%9A00%C3%9A-a-shazovac.pdf>

¹⁰ In Estonian anti-corruption act instead of whistleblower “the one who reports on corruption” is used.

1.2 International obligations towards whistleblower protection

In whistleblower protection, most European states fail to set an example of maintaining human rights and liberties or promoting the rule of law, as they are unable to provide protection to whistleblowers or safe means of submitting reports. Despite the fact that all of the analysed states have adopted the United Nations Convention against Corruption¹¹, as have all EU member states except Germany¹², the principles contained within are still not widely implemented. The Convention requires the signatories to consider the adoption of measures for protecting whistleblowers.

Most laws protecting whistleblowers in member states fail to meet even the requirements of the European Convention on Human Rights which in some of its stipulations creates a foundation for whistleblower protection – specifically in freedom of speech, protection against unjustified termination of employment and right to an effective remedy. Most laws also do not meet the standards and recommendations of the Council of Europe and Organisation for Economic Co-operation and Development (OECD) or other international recommendations of various organisations including NGOs such as Transparency International.

1.3 Basic principles of whistleblower protection

In recent years, there has been an increasing pressure by international organisations and citizen initiatives on the adoption of effective whistleblower protection that would provide safe methods for reporting unethical or illegal behaviour. This movement is a response to a series of scandals¹³ that European countries have experienced in recent years.

A citizen's right to report unethical or illegal behaviour must be seen as a natural extension of the freedom of speech that is also related to the principles of transparency and integrity. Each citizen has the right to defend his or her own interests as well as the interests of one's fellow citizens and society as a whole. The lack of effective whistleblower protection represents a clear dilemma between the duty and right to report corruption and other crimes and the threat of retaliation.

Basic requirements for a functional protection of whistleblowers and strengthening the options for submitting reports include a broad legal definition of whistleblowing as well as the need to provide to all employees in the private or public sector:

- available, reliable and safe methods of reporting unethical or illegal behaviour
- robust protection against retaliation
- mechanisms for publishing information that will support the improvement or amendment of laws, policies and process shortcomings, as well as prevent unethical or illegal behaviour in the future

Specifically, whistleblower protection should apply to all disclosures of unethical or illegal behaviour, including reports that are incorrect, if they were made in good faith. If it can be proven that a report was knowingly incorrect, the person who submitted it will face corresponding sanctions. Whistleblowers should be protected against all forms of retaliation or discrimination in the workplace related to or arising from their report, including termination of employment or other work-related sanctions, harassment, postponing promotion, denying training or business trips, withdrawing benefits or making threats of anything of the above. Employers are obliged to prove that any measures taken against a whistleblowing employee are not related to the report. Whistleblowers should have the option to submit their report while keeping their identity confidential, unless they choose otherwise. If someone submits their report anonymously and their identity is later discovered, they must still be under full protection as whistleblowers. Whistleblowers or their family members facing threats to life or safety are entitled to adequate protective measures.

¹¹ After eight years, the Convention was ratified by the Czech Republic as one of the last member states towards the end of 2013.

¹² Germany started the ratification process in 2003, but it still has not been finished as of March 2014.

For the list of signatories, see: <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

¹³ *Trial and error: a few examples*, The Communications Journal, November 2008, <http://irfcom.ch/wpcontent/uploads/fachzeitung13.pdf>

Everyone has the right to refuse participation in unethical or illegal behaviour. Internal rules or agreements are invalid if they restrict the rights of the whistleblower, for example through confidentiality or loyalty clauses.

There should be a suitable process for submitting reports. Internal regulations for submitting and investigating reports should be clear and understandable, respect confidentiality and anonymity, should the whistleblower choose to remain anonymous, and ensure that the investigation will be independent, timely and thorough. Similar provisions should apply to mechanisms for investigating a whistleblower's reports of retaliation. An expedient solution is the creation of an external body (or public institution) that would be verifying reports in cases where submitting them internally within an organisation is impractical or impossible. In urgent matters where public interest is at stake, there must be an option to make a report to other individuals or organisations as well (non-governmental and non-profit organisations, the media, interest groups, professional associations). Whistleblowers must have the option to explain the circumstances or details of their report and the right to be informed of the investigation and its results.

Whistleblowers should be compensated for all retaliatory measures, including the loss of their job, costs of legal representation, etc. The right to a timely and fair trial if their rights were violated is a fundamental necessity. Optionally, it is possible to consider rewarding whistleblowers with some of the saved money.

These principles should be defined in national laws in accordance with the political and social context of the country and its current legal framework. For clarity, it is better to have separate whistleblower protection laws; it is also beneficial to appoint a monitoring body that receives and investigates reports and raises awareness. Information on whistleblowers and their reports should be regularly published. There should be sanctions for the violation of the rights of whistleblowers.

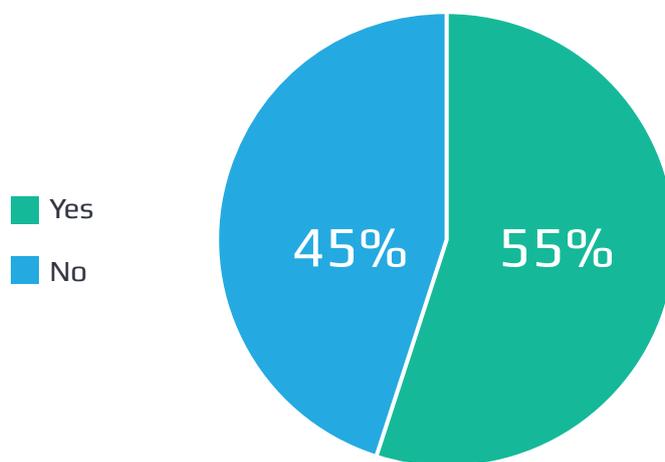
2. ANALYSIS OF WHISTLEBLOWING CASES IN FIVE EUROPEAN COUNTRIES

2.1 Base data analysis

More than half of all whistleblower respondents agreed with publishing their personal information. All Slovak whistleblowers provided this consent. It is debatable to what extent this might be related to the fact that all Slovakian stories had already been publicized. On the other hand in Estonia, all whistleblowers wished to remain anonymous and were strongly concerned that their story could be traced back to them. In the initial overview, Estonia was one of the countries where the general public is very strongly against the practice, believing that problems should be handled within an organisation or institution and not “aired outside”. Czech whistleblowers agreed with publishing their personal information in 58% of cases and Hungarians in 75%; the figure was lower in Poland, with 30% of whistleblowers providing their consent.

Consent with publishing personal information

Chart 2



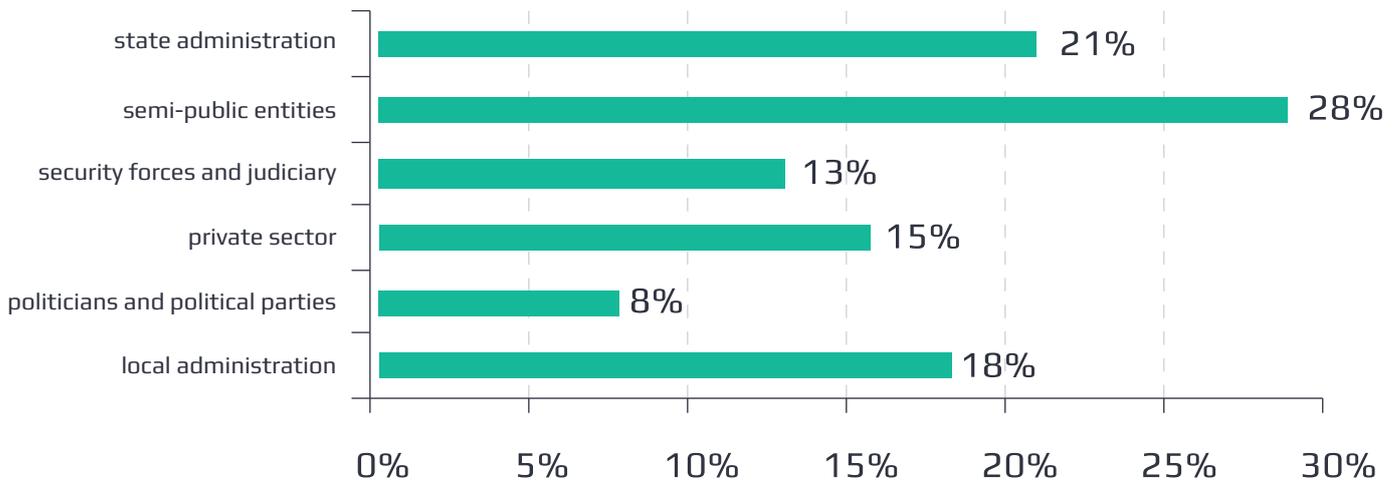
Source: Oživení, 2014

This refusal to publish personal information by almost half of all respondents shows that whistleblowers usually do not wish to be associated with their report in public, which corresponds to the predominantly negative perception of whistleblowing and a strong fear of further repercussions. Whistleblowers who had their cases published in the media were more likely to provide consent with disclosing their information.

In many countries, whistleblower protection – for no particular reason – only applies to employees in state administration, even though other parts of the public sector as well as the private or non-governmental sectors also spend money or manage assets. The study attempted to find a comparable number of cases of whistleblowing in various sectors, creating a representative sample for analysis. This goal was not fully achieved in all countries. Most recorded cases concerned semi-state institutions, a category that included organisations between the public and private sector, such as those funded or co-funded by the state, partially owned by the state, state funds, etc. Because the selection of cases was to a large extent influenced by the availability of information, the importance of whistleblowing for each sector cannot be determined. It is however clear that whistleblowers come not only from the ranks of employees of the state or public officials, but also employees of private companies, semi-state institutions and many others. These results support the argument that whistleblowing should not be limited to public administration only. It should be noted that some, in particular international private companies have internal mechanisms for reporting unethical or illegal behaviour, even though no law requires them to do so, because they realise the importance of whistleblowers for protecting their money and other assets. But there is a risk these companies regard their interests above the public interest. However, any such mechanisms in private companies were outside the scope of this analysis.

Number of reported behaviours by sectors

Chart 3

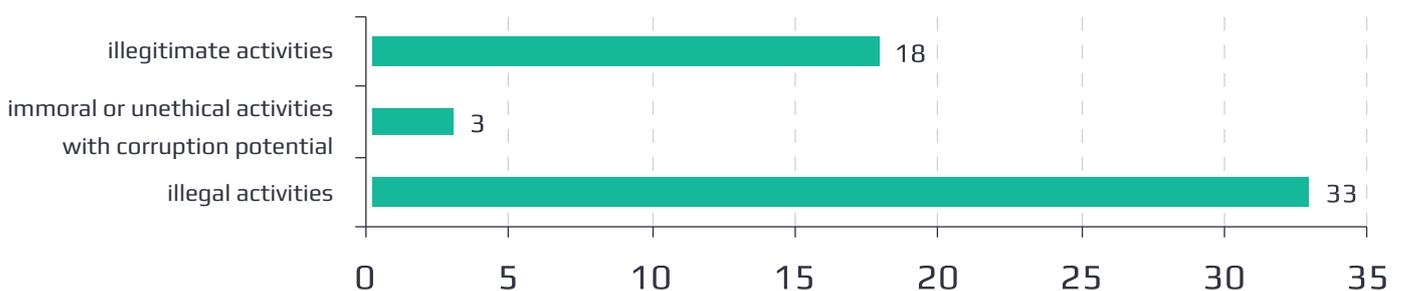


Source: Oživení, o.s.

Most reports concerned behaviour that the whistleblower considered illegal. In about one half of cases, these actions were also breaching internal regulations. It is likely that it was this transgression against internal rules that led to violation of the law. A smaller percentage of cases reported only a breach of internal regulations, and a handful dealt with immoral or unethical behaviour with a high potential for corruption. It can be concluded that whistleblowers are more sensitive to violations of the law; loyalty to employers and organisations is likely to play a role in deciding whether to make a report or not.

Reported behaviour

Chart 4



Source: Oživení, 2014

The average time it took for a reported case to be fully investigated was 24 months, also taking into account cases that effectively were not investigated at all. The actual figure, however, is higher than that, as the calculation is based on data from the end of 2013 when 13 of the cases still had not been closed. Individual cases are investigated for years rather than months, which means that the right to an effective remedy is often unfulfilled.

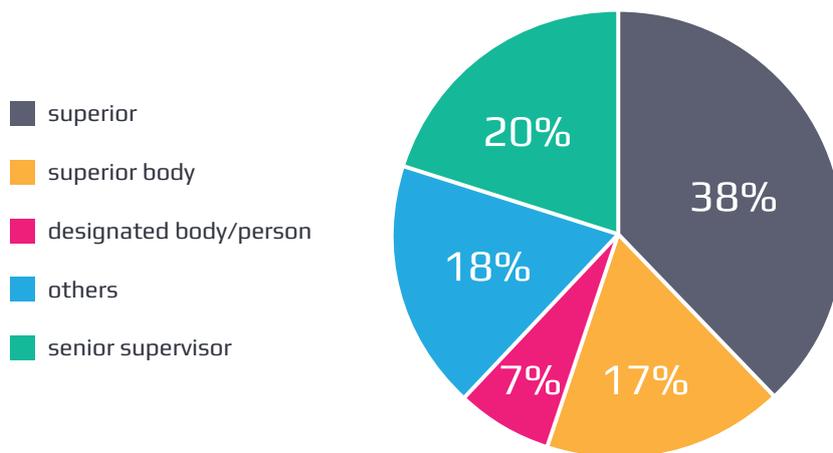
2.2 Internal whistleblowing mechanisms

In 90% of cases, whistleblowers made an attempt to resolve the matter in the workplace. They often tried several methods of making a report in succession; 33% of whistleblowers used two different forms of contact and 11% more than that.

In many cases, there was an internal regulation defining who the report should be made to, and the first choice usually was the whistleblower's direct supervisor. In some examples, whistleblowers turned to trusted people within the organisation regardless of their position.

Recipients of reports in the workplace

Chart 5



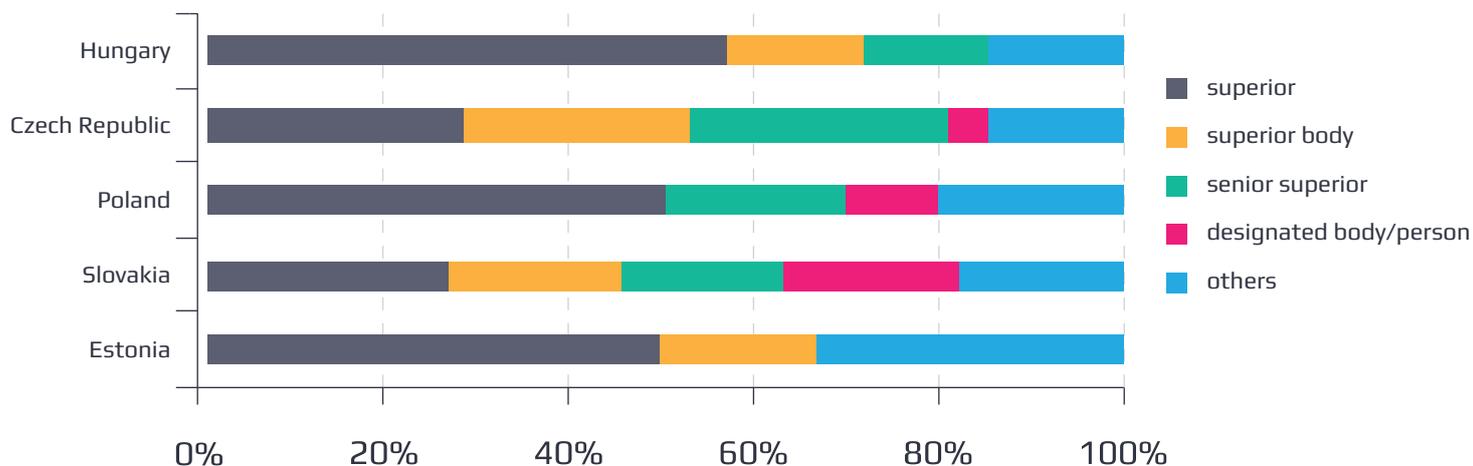
Source: Oživení, 2014

In more than half of cases, whistleblowers contacted their supervisor or a collective supervisory body. The reports were usually made in writing and in one fourth of cases also orally. The collective supervisory bodies included town councils, audit or review committees or relevant ministries. In 7% of cases, the contacted body or person could be considered specialised for this purpose, such as the inspection department at the ministry of the interior or a person appointed to resolve unethical behaviour in the workplace. In 18% of cases, whistleblowers also contacted their colleagues or various departments of their organisation (e.g. HR or accounting). About one in seven respondents said that there was also another option for making a report in the workplace; half of them did not take this option due to a lack of trust or because they considered it unusable. Even despite the lack of a comprehensive legal framework, some public institutions have their own internal mechanism in the form of an ombudsman, which shows some promise in the case of the Czech police¹⁴.

It is clear that whistleblowers were generally trying to resolve the case within their organisation, showing their loyalty to it.

Whistleblowers selected the method of submitting their report very similarly. In all countries, most of them contacted their direct supervisor, a supervisory body or a supervisor's supervisor. Due to the low number of analysed cases, these data could be interpreted as basic indicators confirming that whistleblowers at first tend to try and resolve the situation internally. The data however also lead to another conclusion: the first report is rarely effective, and whistleblowers are forced to look for another method.

¹⁴ Two additional interviews were conducted in the Czech Republic that were not authorised by the whistleblowers. One of them, the story of a policeman, showed that the institution of the police ombudsman is being used and in this particular case was an efficient tool that managed to temporarily prevent retaliation. In terms of the options of reporting unethical behaviour, security forces require further analysis, as they represent a very specific group of whistleblowers who may be in possession of extremely sensitive information that often remains undisclosed in the current situation, particularly for fear of permanently losing one's job.



Source: Oživení, 2014

With a single exception, all whistleblowers responded negatively to the question of whether it was possible to ask someone within the workplace for protection in relation to the report. They were not aware of any form of protection for themselves. Only in one case from the private sector in the Czech Republic, a whistleblower said that there probably was such an option defined in the company's internal regulations, but he did not know the details or the scope of this protection. This was an internal mechanism of an international company that the whistleblower did not consider a relevant form of protection, because he did not take advantage of the option even though he knew it existed.

The lack of methods for protecting whistleblowers in the workplace seems critical, as all whistleblowers except one¹⁵ faced various forms of retaliation including psychological pressure, bullying and threats or the existential sanction of losing their job; in some cases, this also applied to their family members working in other organisations somehow related to the whistleblower's employer, for example through budgets.

For their reports, whistleblowers were facing:

- work-related retaliation - transfer to another job; wage reduction; loss of employment; work-related obstructions (e.g. making their job more difficult, information barriers, denying business trips, assigning inappropriate duties, banning entry into the workplace and ordering work from home, cancelling e-mail addresses, educational restrictions, mandated vacation, not approving contracts, etc.); forms of indirect bossing and mobbing;
- personal retaliation - slander; defamation; isolation; accusations of spreading slander; threats; aloofness; indirect allusions; making negative statements about the whistleblower; damage to property; threatening phone calls; physical assault; anonymous blackmail;
- criminal/administrative retaliation - criminal charges; disciplinary proceedings.

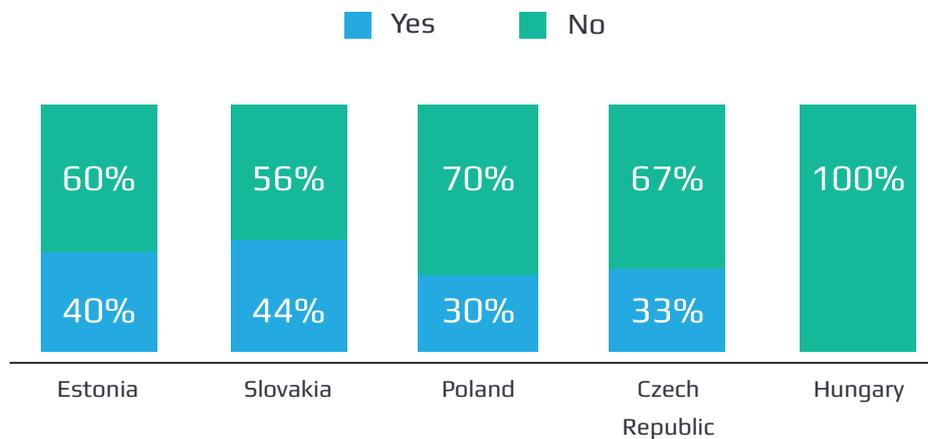
¹⁵ This whistleblower gave notice immediately after making his report. This was likely the reason why there was no retaliation, as it was simply impossible.

The number of whistleblowers who were and are facing direct existential consequences is alarming. One half of whistleblowers have lost their jobs. Many of them have also lost their career and any hope that they would find another job corresponding to their specialisation in the future. This form of retaliation was more common in the Czech Republic and Hungary, where three quarters of whistleblowers were fired; in Slovakia, it was one half, in Poland less than a third and in Estonia, one in five whistleblowers lost their job. The loss of employment is therefore one of the strongest consequences for the life of whistleblowers.

In more than one third of cases, employers justified their retaliation in the form of termination of employment or lawsuits through various legal provisions to make the action seem legitimate. Typically, this involved accusations of violating criminal or labour regulations. One of the frequently cited crimes was unauthorised handling of sensitive information. From provisions of the Labour Code, employers usually employed job termination for redundancy or violation of job duties. It needs to be said that such actions made by employers were unjustified, as proven by the verdicts from won court disputes with whistleblowers that for example rendered the termination of employment invalid.

Legislative justification of retaliation measures in individual countries

Chart 7



Source: Oživení, 2014

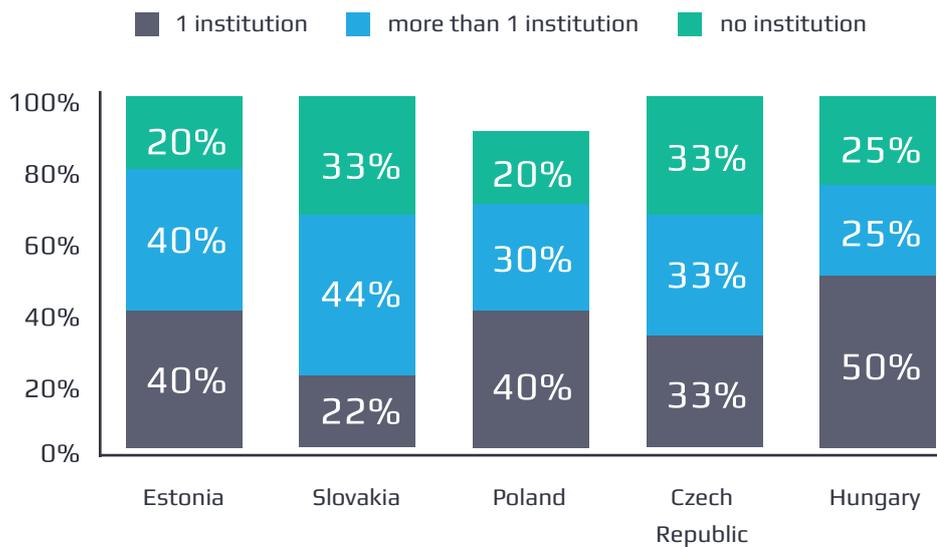
With the exception of Hungary, the law was used as a smokescreen for retaliatory measures to roughly the same extent in all countries. The employers' abuse of a general lack of legal knowledge to provide a justification for employment termination or lawsuits is an illustration of the high resistance of organisations to any changes and the attempts to sweep problems under the rug rather than try to resolve them. As a consequence, the potential of whistleblowers remains underused at the workplace.

2.3 External whistleblowing mechanisms

Three quarters of whistleblowers (29) contacted a public institution outside their workplace¹⁶. From those who took this option, roughly the same number chose to submit their report to one institution (38%) or several (37%). The results for individual countries are very similar without any significant deviations. Three whistleblowers who did not make a report internally directly contacted an external public institution.

Recipients of reports in the workplace by country

Chart 8



Source: Oživení, 2014

Whistleblowers were contacting 1 to 5 institutions; on average, each of them made a report to 2 public institutions. The high number of contacted institutions may be a consequence of the difficulties in understanding the applicable legal framework and a lack of confidence in the efficiency of making a report. Some whistleblowers were contacting the institutions in sequence, always after learning the result from the previous step. Often there was no institution competent to handle the investigation and therefore the whistleblower turned to another and another institution in a vain notion to find the right one. Others made their reports at once, wanting to utilise all available options. Whistleblowers who made their report outside their workplace usually did so in writing. A lower number visited the institution in person and three respondents did a combination of both. In two cases, the report was made anonymously. Preference of the method of reporting does not correlate with any category of institution or country, and seems to be largely based on personal choice. In addition to the listed methods, a very small number of whistleblowers used some other means, such as a phonecall, filing charges or contacting another institution. Almost two thirds of respondents, however, did not list any other option.

56% of respondents believe that there is no way to make a report anonymously or confidentially. Even though slightly less than one half of whistleblowers said they thought such an option existed, not all of them were certain and some doubted that anonymous reports are acknowledged, let alone investigated. Some said that anonymity does not give them the option of learning what was done with the report or following the progress of the investigation. More than that, the content of the report can very often identify who in an organisation has access to this particular type of information. Only one respondent said his report was confidential, because he was treated as a police informer. This means that the option to make a report while

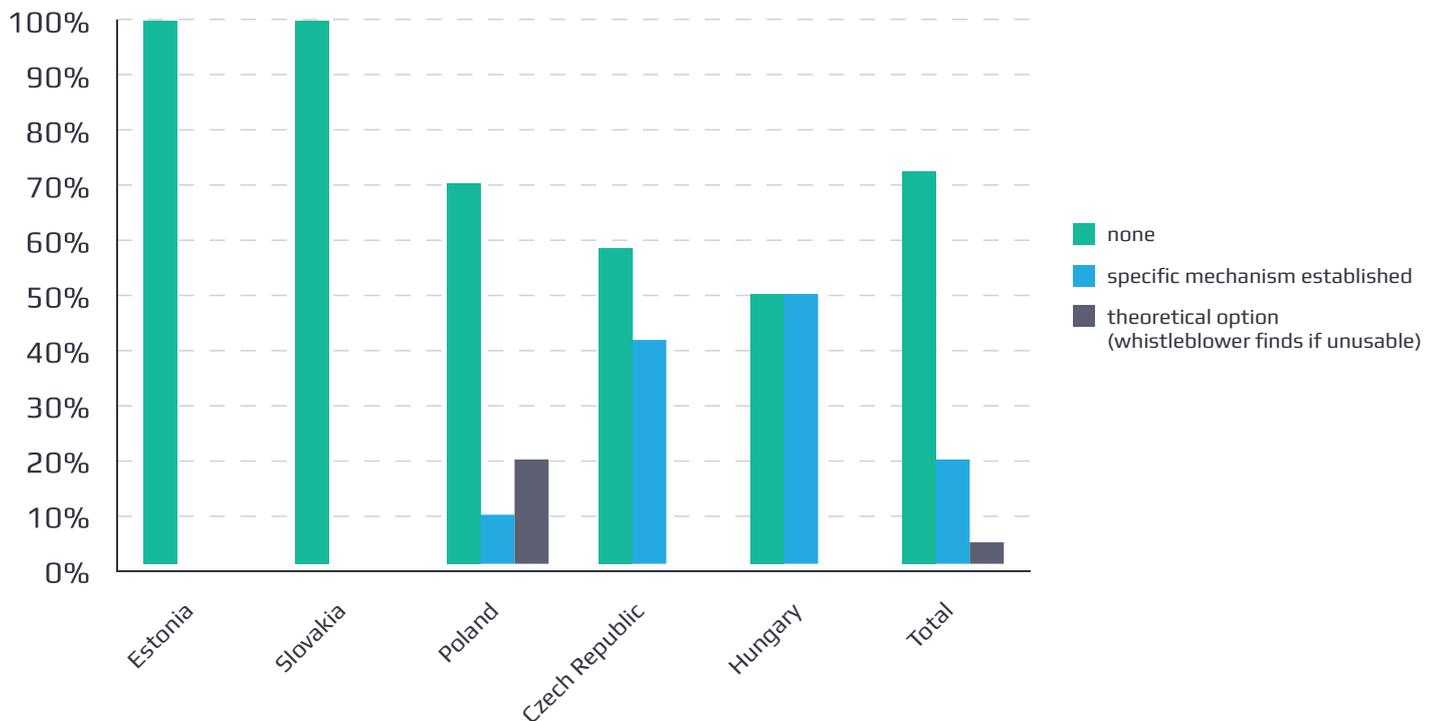
¹⁶ The share of whistleblowers who utilised both an internal and external mechanism, i.e. made a report to a public institution outside their workplace, is the same, i.e. 74%.

maintaining confidentiality of personal information essentially does not exist. To some extent, the answers reflect the respondents' general awareness rather than real knowledge, but can still serve as good indicators of the implementation and sparseness of legislative measures of whistleblower protection.

None of the analysed countries have a system of rewards for whistleblowers, for example a certain share of "saved" public money. A total of 9 whistleblowers from the Czech Republic and Slovakia received an award (of which five cases involved financial compensation) solely from non-profit organisations. For them, this award represented most importantly acknowledgement of their action and respect¹⁷. Even though a system of rewards is identified in international recommendations as one of the basic prerequisites or principles of a functional legal framework, the whistleblowers did not think that the institution of a reward was a motivational factor. It remains an open question whether such an institution could be an incentive for other potential whistleblowers, as it can be assumed that the social acceptance of a reward system would be at least as difficult as accepting the concept of whistleblowing as something to be rewarded. After all, in the current situation where whistleblowers are scorned by society and do not have any legal protection, the idea of giving them rewards may be controversial among the general public. If there is no unified legal framework for rewards and whistleblowers are selected "randomly" for the awards, the public may see them as self-appointed heroes, doubting their motivation for making their report and misinterpreting it. It needs to be said that this was in fact the exact experience of one of the whistleblowers contacted for this study. Regarding the rewards, it is important to consider also the support granted to whistleblower in relation with his/her employment opportunities, not only the financial compensation. The interest in employing whistleblowers is a desirable state. Three quarters of respondents believed they did not have any protection at all. 5% mentioned that any protection was only theoretical and about one fifth said there was a specific form of protection available. They were however generally unable to provide more details; the whistleblowers mentioned court or police protection, but did not list any particulars. Two whistleblowers refused to share any details, considering them professional secrets.

Options of whistleblower protection

Chart 9



Source: Oživení, 2014

¹⁷ In the Czech Republic, there is the Courage Award organised by Nadační fond proti korupci that has recognised the efforts of 8 whistleblowers since 2012. In Slovakia, the "Aliancia fair-play" gives the White Crow (Biela vrana) non-financial award to citizens for making a contribution to society and for bravery. Since 2008, it has awarded 19 "white crows", some of which went to activists and whistleblowers. In addition, in Slovakia there is an award Ďurka Langsfelda that involves financial compensation.

The available means of protection are rated differently in various countries. In Slovakia and Estonia, respondents thought no such measures existed, even though the Estonian legal framework is considered similarly advanced as in the Czech Republic, Hungary and Poland. Options of whistleblower protection are seen in a better light by Czech and Hungarian whistleblowers in particular, even though they are unable to describe them in more detail. The responses of whistleblowers indicate that a legal analysis is not enough to determine the real status of whistleblower protection. The shortcomings of the law have already been pointed out, but it is also true that whistleblowers do not have adequate knowledge of the currently available (albeit limited) means of protection, and only work with general assumptions; the only exception is Slovakia where the whistleblowers' opinions correspond to the lack of a legal framework.

2.4 Whistleblower protection in practice

Internal and external institutional mechanisms of whistleblower protection and their implementation have been described above. Their utilisation is largely unsatisfactory and cannot provide to whistleblowers even the slightest protection against various forms of retaliation. How did whistleblowers defend themselves? Did they do so? These questions were asked in the next part of the survey.

One half of respondents (51%) were convinced that there was no chance of doing anything to defend themselves and no one to turn to. One fourth (26%) saw their only option in a court trial and suing the employer with the help of an attorney which is a very costly and stressful process that also takes a long time. Respondents from Estonia and Hungary did not see any alternative. The others usually listed several other institutions at once (for details, see the following table). Czechs and Poles in particular mentioned the police, the public prosecutor's office or inspections; other options included profession or labour unions or the ombudsman, who was only referenced by Polish whistleblowers.

Table 2

Whom can whistleblowers ask for protection?										
	not available		court, private lawyer		police, prosecutor's office, inspection		profession/labour union		ombudsman	
	(abs.)	(rel.)	(abs.)	(rel.)	(abs.)	(rel.)	(abs.)	(rel.)	(abs.)	(rel.)
Estonia	4	20 %	1	10 %	0	0 %	0	0 %	0	0 %
Slovakia	7	35 %	1	10 %	0	0 %	1	20 %	0	0 %
Poland	1	5 %	3	30 %	6	75 %	1	20 %	5	100 %
Czech Republic	4	20 %	5	50 %	2	25 %	3	60 %	0	0 %
Hungary	4	20 %	0	0 %	0	0 %	0	0 %	0	0 %
Total	20	100 %	10	100 %	8	100 %	5	100 %	5	100 %

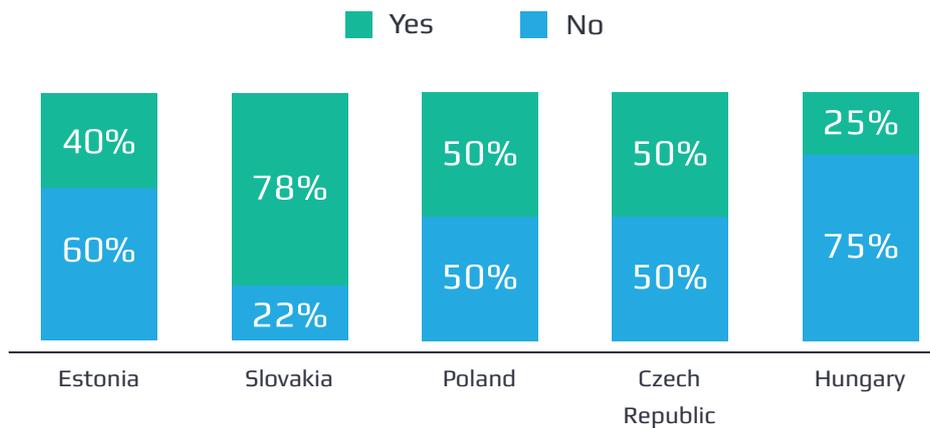
Source: Oživení, 2014

If whistleblowers want to have any protection, or more precisely wish to seek remedy or compensation, they need to start actively defending themselves¹⁸.

One half of respondents (53%) decided to actively defend themselves against unjustified termination of employment, lawsuits and other actions. This number roughly corresponds to the previous question, i.e. whether whistleblowers are aware of any means of protecting themselves. The current level of available legal means does not seem to have a significant impact on whistleblower activity (see section 1.1 Legal framework of whistleblower protection in EU member states)¹⁹; it is more likely that the social perception of whistleblowing is playing a more important role. It is however impossible to form general conclusions without further research due to the small size of our sample.

Did the whistleblower use any form of defence?

Chart 10



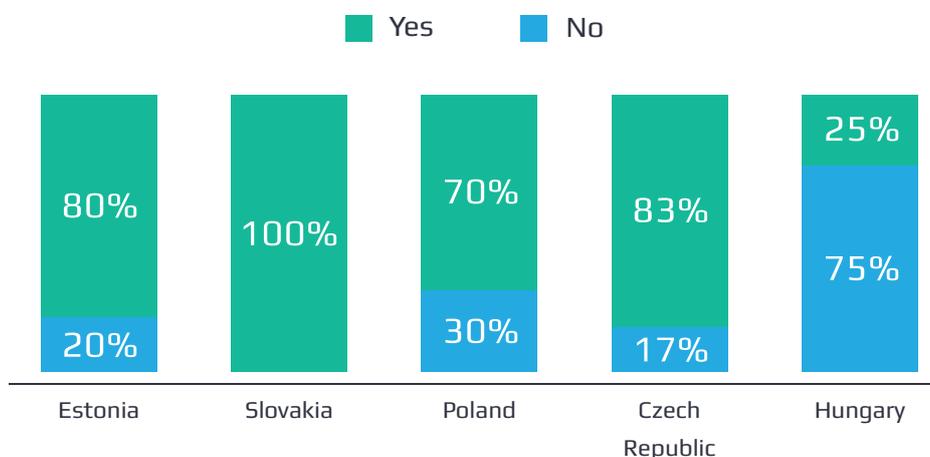
Source: Oživení, 2014

Whistleblowers who decided to defend themselves (21) usually did so through lawsuits (11) (in particular Czechs), official complaints (7) (in particular Poles), cooperation with the media (5) (Slovaks and Czechs, one of whom organised a press conference), professional and legal counselling (4) (Slovaks), filing charges (3) (Slovaks and Czechs) and other informal methods (2) (Slovaks). Czech and Slovak whistleblowers typically used a combination of these forms.

Four in five reports (31) were investigated, including all cases where whistleblowers took any steps to protect themselves. The lowest number of investigations was recorded in Hungary. Paradoxically, while Hungary is the only country in the analysis with a comprehensive legal framework, it is still waiting for the establishment of the institution that is to be responsible for the investigation of reports. Currently, it seems to be in a worse situation than the rest, because other institutions are expecting the case to be resolved by an agency that does not exist. In other countries without any similar form of centralisation, reports were investigated more often. It should be noted, however, that the presented figures may be influenced by the selection of cases and sample size.

Was the report investigated?

Chart 11



Source: Oživení, 2014

¹⁸ In this context, Estonia is an interesting example, as here whistleblowing is partially covered by the Anti-Corruption Act that applies to public officials. It assumes that information is confidential and that the burden of proof is shared. This means that any report must be actively proven by the whistleblower in collaboration with public authorities. Unfortunately, we have no information on how this mechanism works in practice. It should however be noted that it is against international recommendations for whistleblowing.

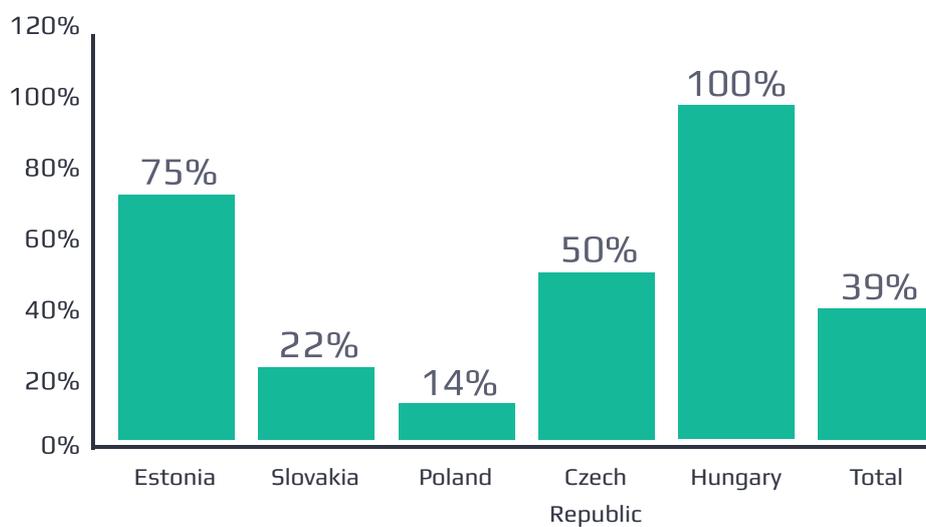
¹⁹ According to a current Eurobarometer on reporting corruption (2014), no/little protection for whistleblowers is the key issue while deciding whether to report corruption. See: http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

In one third of reports that were investigated, the whistleblower was not involved in the process at all beyond submitting the initial report. Whistleblowers who took part in the investigation rated their experience as neutral (the cooperation was objective) in 57% of cases. Most of them were therefore neutral or had slight reservations about their experience. One fourth of whistleblowers rated the experience as negative, feeling disappointed, uninformed, etc. Only four whistleblowers considered the investigation a positive experience (they felt respected and were informed about the process).

From the 31 investigated cases, 12 ended with prosecution or sanctions. From the rest, about one half are still in progress and the final result may be more positive. As of January 2014, the “success rate” of investigated reports was 39%.

Share of investigated reports that ended with prosecution or punishment

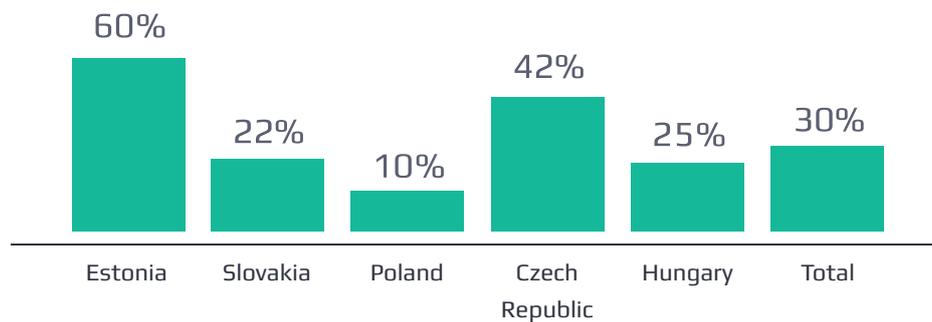
Chart 12



Source: Oživení, 2014

Most whistleblowers were not directly involved in court examinations of the case. Some were called in as witnesses, and usually found the court proceedings objective, but overly long and exhausting. Court or similar proceedings have been concluded in 7 of the reported cases. They ended with: penalties, termination of employment of the reported person, acknowledgement of guilt, suspended sentence or imprisonment for months or years, compensation of damages.

It is interesting to look at the total number of reported cases that made it to the prosecution and sanction stage, which is slightly less than one third of all reports. In specific cases, the length of the investigation may be prolonged on purpose while the credibility of the whistleblower is lowered during the proceeding. These figures do not only serve as indicators of the quality of a whistleblower’s report, the severity of the reported behaviour or the unethical or illegal action itself, but also of the efficiency of the investigating, prosecuting and adjudicating bodies, which however does not fall within the scope of this analysis.

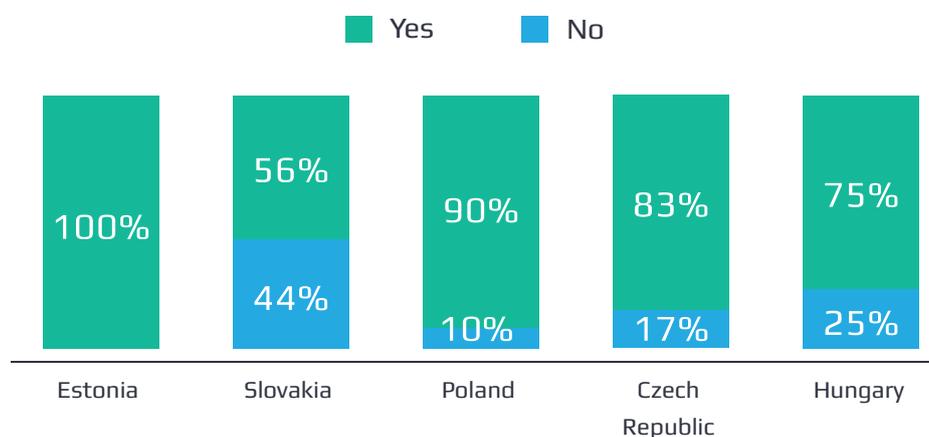


Source: Oživení, 2014

2.5 Role of the reported person

The role of the reported person has been shown to be crucial in the investigation of the case. In more than three in four cases, the reported person tried to influence the investigation. In Estonia, this was true of every single case, and in Slovakia of more than half of them.

Did the reported person try to influence the investigation?



Source: Oživení, 2014

The reports typically (in 64% of cases) focused on company management in a broad sense, meaning either top managers or persons working in a hierarchically superior body²⁰. In one fourth of cases, whistleblowers made reports about their direct superiors. In 3 other cases, it was their colleagues, one of which was acting on orders or at least with full knowledge of the management, and in the remaining 3 cases the reported person had no direct working relationship with the whistleblower. These conclusions show that it is not useful to make reports through standard internal mechanisms that respect the organisational hierarchy, as in the vast majority of cases, the reported persons are managers, which means that they should theoretically be investigating their own actions, impose sanctions on themselves or even fire themselves.

The reported persons took active steps to get rid of the report or silence the whistleblower. Deliberate in-

²⁰ Examples include deputy ministers for employees of a state-funded (dependent) organisation, regional offices for teachers (where schools are managed by regions), CEOs and directors of organizations where the whistleblower's supervisor is the manager of a department etc.

activity of the reported person who is at the same time the whistleblower's superior is a very effective stalling tactic that makes it impossible to make any report in the workplace. Specific steps these persons have taken, sorted from most frequent to least, were as follow: slander in the media; discrediting campaigns; intimidation; denial of the content of the report; termination of employment of the whistleblower; threats; filing charges (libel, disclosure of information, slander); bullying; physical assault; ordering an analysis that trivialised the issue; persuading to withdraw the report; destruction of evidence; information embargo; falsification of documents; disciplinary proceedings; reassignment of subordinates without consent of the whistleblower who was their manager. In the context of this wide range of retaliatory measures, a crucial factor in the investigation of the case is limiting the whistleblowers in their work duties, or in other words, attempts to cut them off from other relevant information related to the report or termination of their employment.

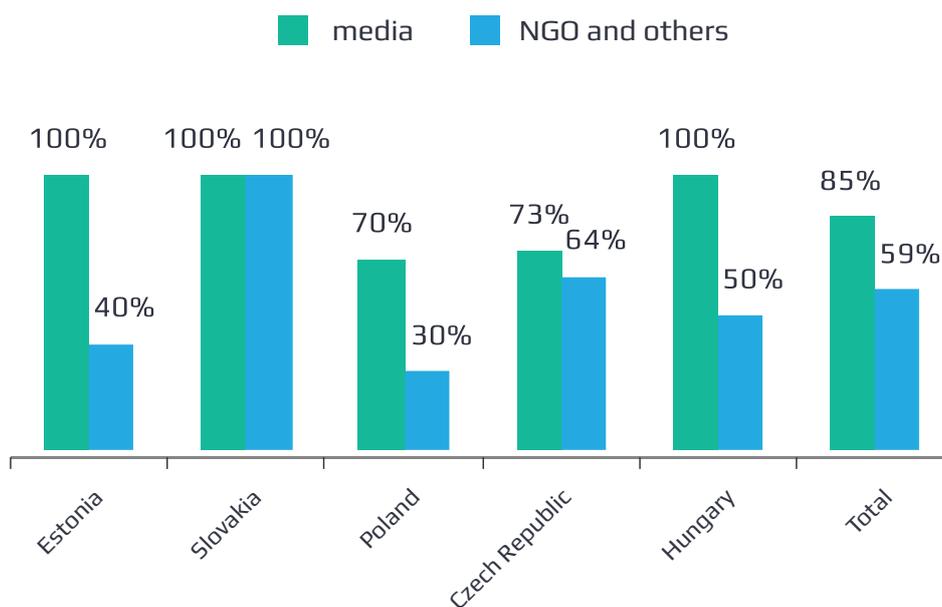
Three in four whistleblowers say that their report had a significant impact on the working environment as a whole, because the activities of the reported person were not limited to the whistleblower only. Their colleagues (entire departments) or sympathisers also lost their jobs in 5 cases (13%). Other retaliation measures included intimidation of those who expressed sympathy with the whistleblower, forcing others to stop socializing with the whistleblower and other forms of pressure. The overall atmosphere at the workplace usually grew worse. In many cases, whistleblowers were presented as the culprits behind all problems in the workplace, even in public, which resulted in a negative attitude towards them locally²¹.

2.6 Role of the media and other entities

Due to the poor level of institutional support, whistleblowers are looking for other means through which to report unethical or illegal behaviour, defend themselves, or both. Besides the support of informal institutions, that is family and friends, the media played a role in 85% of whistleblowing cases (34), and NGOs and other entities in 60% of cases (24). All cases in Slovakia involved both the media and other entities. The lowest participation rate of these stakeholders was recorded in Poland. It should be noted again, that the presented figures may be influenced by the selection of cases and sample size.

What other entities played a role in the case?

Chart 15



Source: Oživení, 2014

²¹ For example, let's say a whistleblower identifies a situation where damage has been caused and must be financially compensated by specific persons. The whistleblower then becomes "responsible" for other additional costs e.g. for the administration which then does not have enough money for other investments "because of the whistleblower". Such oversimplified conclusions may create additional psychological stress for whistleblowers.

NGOs usually provided whistleblowers with legal consultations or representation at court, other professional consultations, psychological support, help with media coverage of the case or organisation of a public debate. Some whistleblowers received a reward recognising their bravery and courage. NGOs were not always able to meet the expectations of the whistleblowers in terms of the scope of support in particular due to their lack of human and financial resources. Individual support played an important role, either from ordinary citizens who expressed their personal support to the whistleblower by e-mail or from colleagues at work. All forms of support were important to whistleblowers, and not only those expressed in public.

The role of the media was generally seen as positive, despite some reservations regarding the scope of processed and published information and its simplification. The whistleblowers appreciated the work of specific journalists who published a detailed analysis and helped make the information from their report public. 13 whistleblowers believed the media played a crucial role without which the case would not have been investigated at all. In some ways, the media were protecting whistleblowers against loss of employment; they provided support in disciplinary proceedings or uncovered new evidence through their investigation. In some cases, anonymity offered by the media was refused. A low number of whistleblowers were disappointed by the role of the media, particularly when their case was not considered interesting. At least in five cases, there were negative or discrediting media campaigns led against the whistleblower, typically in regional or local media, running alongside objective reporting in other outlets. Despite these reservations, the role of the media was seen in a very positive light due to their impact on the case, objectivity and support.

In addition to these entities, more than half of the cases (22 out of 40) also indirectly involved other persons (ordinary citizens, figures from social and cultural life, politicians). In one fourth of cases (5 of 22), the case was perceived by the public as more than just an individual failing, but rather a problem with the system that must be resolved. In one Hungarian and one Estonian case, politicians/public officials spoke out in support of independent investigation; in three Slovak cases, there was a public call pointing out potential misuse of disciplinary proceedings in the justice system²² to remove “inconvenient” judges, followed by a petition rally²³ asking for change which was signed by thousands of ordinary citizens as well as celebrities. In other cases, however, there was no such overlap and they remained personal. The reaction of the public was very mixed. One fourth of whistleblowers were seen as the guilty person behind it all – if they hadn’t said anything, everything would have been fine. Most of them, however, felt they had support.

Finally, we asked the whistleblowers what impact their report had on their personal and professional life. Even though the individual stories were very varied, the consequences can all be called dramatic. One of them said that becoming a whistleblower is a purely self-destructive act that inevitably leads to a loss of employment. This loss of employment not only limits further professional growth, but also causes financial problems, loss of colleagues and friends and trouble finding a new job. Many whistleblowers were unable to find new employment for years after reporting. The act of reporting and its consequences resulted in social deprivation (loss of profession, social status, friends or reputation), psychological stress (threats, intimidation, bullying) as well as physical complications (health issues caused by stress). The loss of employment impacted not only the whistleblowers, but also their partners. Fear and mental breakdown were suffered by whistleblowers as well as their parents, partners or children. One whistleblower left his country and two more are currently considering emigration. Despite the traumatic experiences, three respondents said that this major negative event in their life had made them stronger. Many whistleblowers mentioned the necessity of standing behind their moral principles and not giving in to intimidation or blackmail, and even though the consequences were often devastating, some said that they would do the same thing again.

²² The series of disciplinary proceedings against several judges led to the proclamation Five Sentences (Päť viet) that expressed concerns about the prosecution of judges for their opinion. The proclamation was signed by 105 judges from the whole of Slovakia.

²³ Several representatives from the forestry sector as well as public figures initiated a petition People for forests (Ludia pre lesy). Among the members of the petition committee were, for example, writers Ladislav Ťažký, Tomáš Janovic, Lubomír Feldek, painter František Guldán, actor Ladislav Chudík and the professor of forestry Milan Saniga. The petition obtained about 16,700 signatures.

MOBBING

*Overpriced tickets
for a city-owned company*

Manipulated medical equipment contract

*Licence to sell tobacco only
given to friends of politicians*

*Wasting project money
from European funds*

*Overpriced city contract
and selling city property
to selected people*

Amending the law in exchange for a bribe

MANIPULATION OF A PUBLIC CONTRACT

*Lending state-owned agricultural land
only to selected people*

3. PERSONAL STORIES OF WHISTLEBLOWERS IN FIVE EUROPEAN COUNTRIES

After making their report, most whistleblowers experienced various forms of pressure and bullying, loss of employment, enormous mental stress and related physical complications. Even after the case was over, many had trouble finding a new job or an opportunity to work in their field. This loss of employment often concerned not only them, but also their colleagues and family. Despite the negatives, they remain strong in spirit and believe in better future. Some of them are still worried about future attacks and for many of them, their report had dramatic existential consequences.

3.1 Whistleblowers in the private sector

1) Manipulation of a public contract (Czech Republic)

In 2013, Mr. Lukáš, an employee of Deloitte Czech Republic, suspected that a public contract was being manipulated. He reported his suspicion to a specific person at the company headquarters. Then he met with a company representative, but there was no response after that. Following the report, the employer took several actions – Mr. Lukáš had to work from home for some time and his e-mail address was cancelled. Eventually, his employment was terminated. For this reason, he decided to file a complaint against an unknown person at the Supreme Prosecuting Attorney's Office in Prague. The criminal proceedings are in progress and have not reached any specific conclusions so far.

2) Price cartel (Hungary)

A high-level employee of one of Hungary's leading bakery and food companies filed a report to the national antitrust agency (Bureau of Economic Competition, GVH) about the alleged price-fixing schemes of eleven of the countries' top companies involved in food and especially bakery retail. The alleged price fixing focused specifically on the market price of ordinary flour, one of the most common grocery items that is also regularly purchased by low-income households. The allegation was that the eleven corporations coordinated to sell flour at a price approximately 25 to 30 percent

higher than would have been justified by costs and normal competition. Following up on her filing of the report, the GVH launched an investigation and eventually found that the cartel of the eleven companies did in fact occur. The GVH levied a total fine of 2.3 billion HUF (cca. 9–10 million EUR at contemporary rates) on the eleven companies, which is the highest fine ever levied in Hungary. Still, the estimated profit from the cartel over four years exceeded 50 billion HUF, so the fine can be considered moderate relative to the extent of the cartel and the extent of the damage to the customers in the form of rent-seeking.

3) Overpriced tickets for a city-owned company (Czech Republic)

Mr. Adam was working in a family paper company in the fourth generation. The company needed a quick investment, provided in exchange for 50 % of stock by a new business partner. Sometime later, the partner came with a suggestion to take part in a public tender for printing tickets for the Prague Transport Company. Mr. Adam thought it was a rather bizarre idea, as the company had until then been mostly a subcontractor in similar jobs, and not a general supplier of a product as complex as a transport ticket. Nevertheless, the deal was made and in 2008, the company signed a contract with the Prague Transport Company. Mr. Adam started doubting the entire transaction, because the price agreed in the contract was not supported by any cost calculations and was considerably overestimated. He also learned that the profit from this price hike would go to an (until then) unknown third party as commission for acting as intermediary in the deal. The entire situation became even more complicated when the company started receiving invoices from the British Virgin Islands. Since autumn 2009, Mr. Adam has been collecting evidence (contracts and copies of invoices); in January 2010, he provided this evidence to the anti-corruption police. Multiple retaliatory actions followed. Mr. Adam was physically assaulted, subjected to a slanderous campaign on the internet and in the media and was sued. In October 2013, prosecution of the reported and other persons

was initiated. The criminal proceedings are still ongoing.

4) Mobbing (Poland)

A project coordinator was mobbing one of the project team members. The girl was systematically humiliated; her supervisor was regularly criticizing her in a very rude manner in front of the whole project team. One of the project team members was outraged by this situation and thus she decided to react. She went to the organisation's director and told him about this problem, hoping that he would solve it. He praised her involvement and responsibility but he redirected her to the deputy director as she was supposed to be the one in charge of human resources issues. The organisation did not take any action to stop the mobbing. The girl who was mobbed eventually got fired. After that the whistleblower became the victim of the project coordinator's mobbing herself. Immediately after the WB finished a major task she was responsible for in the project, the organisation fired her with an explanation that "although they warned her several times, they had not noticed any change in her [bad] behaviour". However, the whistleblower claims nobody had ever talked to her about her attitude or pointed out any mistakes of her, so the decision to fire her was clearly retaliatory.

5) Fictitious projects from public grants (Poland)

The case took place in one of the Polish pharmaceutical companies X. The whistleblower was an employee in charge of the clinical research process. The company asked her to falsify the documentation relating to certain medical products while the company was undergoing the process of harmonization with the EU regulations. The company was also responsible for other serious irregularities. It received a number of public grants for developing innovative medical products, but most of the projects were entirely fictitious. The whistleblower was involved in these activities, trying to rationalize her behaviour with the fact that she needed a job because her son was very ill. Her management was trying to justify the wrongdoings by saying that they are a small company who needs to build its position in the market and that all the small companies do

such things. After six years of working there the whistleblower reached her breaking point and she informed the Central Anti-Corruption Bureau about the company's irregularities. She was dismissed on disciplinary grounds. Then she faced all sorts of retaliation. The company is trying to put all the blame for the wrongdoings on the whistleblower. The company even resorted to utmost means to threaten an "inconvenient" witness: they hired gangsters with guns to blackmail him which resulted in giving police protection to the whistleblower.

6) Food chain breaching employment contracts (Poland)

Mr. AK was employed as a cashier in a local supermarket which was a part of a large international chain. He was employed for a trial period. As he reports, the cashiers were officially employed for $\frac{3}{4}$ time and in reality they had to work over full time with no additional remuneration. After he mentioned that these practices are unfair and illegal, he was repeatedly mobbed at work and he finally lost his job after the trial period.

3.2 Whistleblowers in state administration

1) Amending the law in exchange for a bribe (Slovakia)

Ms. Rudavska was contacted by a person who was supposed to mediate a bribe offer. The offer was coming from an intermediary of a group of people who were interested in changes in legislation. Ms. Rudavska reported the case only internally to her superiors who did not take any action. She did not report directly to the police because she felt that this matter should be first discussed with her superiors. Only after she was approached by the intermediary for the second time, her superiors contacted the police who started an investigation. Ms. Rudavska became an agent.

The intermediary was found guilty; the court imposed a sentence of 4 years of imprisonment unconditionally. He appealed at the Supreme Court that changed the sentence to a conditional one and later on he was granted amnesty.

Ms. Rudavska was officially removed from her position without reason, in accordance with the legislation in force. Since she was not offered an alternative position, she got sacked. During the court hearings, the media started covering the case. She was eventually relocated to a different department at the ministry; she currently works as an officer. Her salary dropped by 40%.

2) Accreditation of education programmes for sale (Czech Republic)

Mr. Pavel joined a ministry as the head of a department responsible for employee training, coordination of international cooperation in the development of human resources in public administration and management of a state-funded organisation providing education to civil servants on the local level, the Institute for Local Administration. The education of 75 thousand civil servants with a required scope of 6 days per year has a very large financial potential; another potential comes with the power to award accreditations in education that are, for example, required for participation in projects funded from the European Social Fund.

The institute developed a broad clientelist network in which civil servants work as lecturers and receive extra compensation (for activities outside their current job), resulting in a source of personal profit for very many civil servants. Mr. Pavel pointed

out that the practice was illegal to his direct supervisor, head of the respective department, in full accordance with the defined procedure, but with no result. He contacted a superior person one level higher, again without result. It is very difficult to prove this case of clientelism officially, as evidence is not public and is often missing or goes missing. Mr. Pavel left the ministry after his salary was reduced and his work was obstructed.

3) Covering tax evasion by retail chains (Hungary)

In late October, 2013, an employee of the National Tax and Customs Bureau (NAV) came forward to disclose that the NAV, with the knowledge of its highest levels of leadership, systematically fails to go after well-grounded suspicions of tax evasion by the largest national and multinational players of the country's retail sector. The allegation, which reinforces widely reported suspicions of the past several years, suggests that tax evasion is endemic especially in the various segments of the food industry, including the retail chains that sell processed food to the customers. The alleged tax evasion focuses on the value-added tax (VAT), which has a record high rate of 27% in Hungary, making certain sectors uncompetitive vis a vis foreign players. The charge is that large retailers as well as smaller players routinely evade payment of the VAT by producing fictitious purchases after which they claim a VAT rebate. The whistleblower in this case, now former tax inspector András Horváth, claims that while the NAV goes after small companies, the large ones enjoy immunity from investigation.

4) Lending state-owned agricultural land only to selected people (Hungary)

In late 2011, the government of Hungary launched a major programme to lease state-owned lands to individual entrepreneurs for private use and cultivation. The program is running several hundred thousands of acres in total. Given that the individuals receiving the leases receive EU support for the agricultural lands, getting such leases guarantees substantial income for the recipients even without making any profit on the produce. In early 2012, then-Secretary of State for Agriculture József Ángyán submit-

ted his resignation to the Prime Minister as an act of protest against what he described as a systematic abuse of the lease program, with large lands regularly awarded to networks of businesses and persons with close ties to the governing party, the Fidesz-Hungarian Civic Alliance. The former Secretary of State went on in the next several months to systematically record the practice of continually awarding lands to politically well-connected businesses. He alleged that the vast majority of lands nationally went to a few dozen “mafia families” directly linked to locally powerful but often also nationally known politicians.

5) Licence to sell tobacco only given to friends of politicians (Hungary)

In early 2013, the Parliament of Hungary adopted a law overhauling the whole market of cigarettes and tobacco. The restructuring, officially aimed at reducing tobacco use among the youth, made cigarette and tobacco sales a government license, and all owners of existing vending places were required to apply for government license if they wanted to continue with their business. Immediately after the results of the bids were made public in the spring of 2013, media reports appeared that alleged that many of the licenses were awarded to politically well-connected people, frequently close family members of local mayors and council members and even national political figures. But for a while there was no direct evidence that the licenses were awarded on a political basis. Then in April of this year, a local council member in the city of Szekszard (a medium-sized city to the South of Budapest) disclosed a secretly recorded audio-tape showing that members of the Fidesz group of the city council, led by the mayor of the city belonging to the same party, were discussing one by one the applicants and noted whether the particular applicants were close to Fidesz or contributed to its campaign in the past. As it turned out, in each case the bid went to the applicant who had been mentioned favourably on the tape. The council member who made the disclosure, Akos Hadhazy, had also been a member of the Fidesz until shortly after his revelations. Soon after, though, he left the party and continues to be a council member as an unaffiliated representative. Hadhazy claimed that he first protested to the mayor for what he had seen as an abuse, and only after his protests lead nowhere did he turn to the media.

6) Daylight robbery in state-owned companies (Poland)

Mrs. Anna was a lawyer with vast experience in legal service for public administration bodies working in a government administration institution (GAI). She was hired to work in the GAI where she was responsible for supervising state-owned companies. As Mrs. Anna went through the documents, she soon discovered there were very serious irregularities going on. For example in one of the companies undergoing bankruptcy the syndics transferred about 10 million PLN of the company assets to their private bank accounts. Mrs. Anna was determined to make things right so she was trying to exercise the supervisory powers on the subordinate entities. Mrs. Anna decided to “investigate” those cases and obtain some more information from the subordinate companies. She also informed her immediate supervisor, Mr. Boris, about these issues. Mr. Boris was very concerned about her findings, but he openly admitted that he was not going to risk his career.

Meanwhile, as Mrs. Anna was “too effective” in her work, she became an “inconvenient” person in the GAI. She experienced various kinds of retaliation. At some moment the GAI management asked her to sign some documents which, according to her, would authorize some of the wrongdoings. She refused to do so and decided to leave the institution as she realized that nothing can be done to stop the irregularities.

7) Manipulated medical equipment contract (Poland)

The case took place in the Healthcare Bureau of the Polish Prison Service central management office. Mrs. Helen was a doctor who was appointed for the post in the bureau after several years in the service. Mrs. Helen became responsible for the public procurement process and she was a member of a tender committee in charge of choosing the provider of medical equipment. She found out that the procurement was rigged from the very beginning. The purchase of the medical equipment was not a response to any actual need in the first place. Moreover, her supervisor, the Director of the Bureau, Mr. Tomas, asked her colleague to meet with a chief executive of a medical equipment producer who was supposed to give her the specification for the medical equipment

in the tender. Yet, her colleague refused to do so. As a consequence she was mobbed and her health deteriorated. After some time on sick leave, she was fired. Mrs. Helen wrote an official note and reported the situation in person to her highest supervisor, the General Director of the Prison Service, but he treated her in a very bad manner and did not take any action in response to these revelations. In such case she decided to inform the Central Anti-Corruption Bureau. The CAB controlled the tender and found irregularities.

As a consequence, Mrs. Helen faced serious retaliation from her supervisor. He mobbed her continuously, insulted her and tried to molest her sexually. The case is still pending in the court.

8) Dubious contracts at the ministry (Czech Republic)

Mr. Jakub Klouzal was appointed director of central systems and technologies at the Ministry of Foreign Affairs of the Czech Republic in 2008. While fulfilling his work duties, he started having many doubts about the system of awarding public contracts, particularly in regards to their documentation and various suspicious circumstances. He decided to share this information with senior employees of the ministry whom he trusted; according to an internal regulation, he was supposed to contact the ministry's audit or inspection department, but he did not have trust in their independence or competence. Instead of any attempts to investigate the situation, he was called paranoid and was discouraged from submitting the information to other persons. He tried informing others within the ministry of his suspicions, but without success. Since then, various retaliatory actions were taken against Mr. Klouzal. These included psychological bullying in the workplace, such as slander, lying, blaming, deliberate postponement of various deadlines, etc. He was also threatened with physical liquidation; his e-mail correspondence and his movements were monitored, and he was offered money and a better job in exchange for his silence. As pressure mounted, he understood he would soon have to leave and started collecting materials that he later decided to process together with Nadační fond proti korupci (NFPK). Not long afterwards, he was forced to resign. He was offered a position inadequate to his skills which he refused and was fired. He is still processing his materials with NFPK

in preparation for criminal proceedings.

Mr. Klouzal also decided to seek remedy against the unjustified termination of his employment through a civil law complaint.

3.3 Whistleblowers - politicians

1) Conspiracy in the funding of a political party (Estonia)

In May 2012 an Estonian politician wrote an article for the most popular Estonian newspaper "*Postimees*" about party financing. He explained that he had been a part of a financing scheme for some time and felt that he needed to confess it publicly. He had notified the head of secretary of the party but had not seen anything done to finish using the scheme. As a result of the article, a huge public debate took place, the given party damaged its reputation and the minister of justice resigned. The political party financing scheme involved donating large sums of cash, but the origin of the money was unknown. The WB acted as a front man for donations, a certain member of the same political party gave him lump sums of cash (10,000 – 20,000 EEK, cca. 620 – 1,240 EUR) and his duty was to take the cash and donate it in his name to the political party. This way, it appeared that the donation was being made by a member of the political party.

2) Unlawfully provided grant (Czech Republic)

In 2013, the town of Silůvky was selected by the Ministry of Local Development as a recipient of a grant of CZK 4,800,000. One of the conditions of the applications for this grant was to provide a certificate stating that the town's development plan had been approved, but the town could not have any such certificate because its development plan was still in draft. The discrepancy was first pointed out by Mrs. Jeglová at a meeting of town representatives; she was told that if the town did not receive the grant, it would be her fault. The Ministry approved the grant application. Mrs. Jeglová decided to contact the citizen association Oživení with a request for help. When asked by the citizen association for an explanation, the ministry admitted that a clerical error had been made, cancelled the decision and withdrew the grant to Silůvky. After learning this, the town attempted to find the "snitch". Mrs. Jeglová did

not have the strength to admit her action in public, but identified herself as the whistleblower at another meeting of town representatives.

3) Unauthorised management of city property (Czech Republic)

From 2006 – 2010, Mr. Leoš Bláha was a city representative opposed to the ruling coalition. At the time, he received initial information about serious unethical and illegal practices in the management of city property, and as the chairman of the finance committee, tried to draw attention to the situation in his reports to all other representatives. Mr. Bláha was trying to obtain key documents at meetings of city representatives without any success, and therefore decided to file charges. The situation changed after local elections in 2010 when Mr. Bláha became mayor of the city. This gave him access to evidence of widespread problems that he had long suspected and to which he was attempting to draw attention. The person identified as the culprit, the former mayor but still a city representative, responded primarily by using the local media for self-presentation and to defame Mr. Bláha and his co-workers, and also by intimidating people around him. Mr. Bláha, the deputy mayor and their families received threats from the reported person. More detailed information cannot be published, as the criminal proceedings are still ongoing.

3.4 Whistleblowers – local civil servants

1) Mayor takes money from town funds (Slovakia)

At the end of 2008, Ms. Lakatošová, administrative worker-head of the Municipal office in a town in the east of Slovakia, found out that the mayor had withdrawn significant amounts of money from the municipal accounts (approx. 13,000 EUR). Ms. Lakatošová told him that he was not supposed to do that; she also warned the municipal council. Ms. Lakatošová filed charges against the mayor at the regional prosecutor's office in August 2009. In February 2010, when the prosecutor's office started the investigation in this case, she got fired. The police started to investigate the charges filed in 2009; however, they did not draw any conclusions and therefore the Prosecutor's office

dismissed the filed charges. Subsequently Ms. Lakatošová filed charges on 4–5 further occasions at the Prosecutor's office. All of them were dismissed. In May 2010, additional elections were held, and Ms. Lakatošová was elected to the Municipal Council. After appointing her, the mayor cancelled her mandate. In November 2010, the regular municipal elections for mayor and deputies were held. When the mayor won again, Ms. Lakatošová was re-elected as well. This time the mayor refused to appoint her. She filed 3 charges against the mayor in this matter at the Prosecutor's office in cooperation with Via Iuris (NGO). She won the case, but the mayor did not respect the prosecutor's decision. She was appointed as deputy a year later.

Recently the court decided in favour of Ms. Lakatošová in the case of the reimbursement of lost wages after her illegal dismissal.

2) Overpriced city contract and selling city property to selected people (Czech Republic)

In August 2007, while performing his regular work duties, the secretary of a city of six thousand inhabitants came across a highly suspicious auction of city property from 2002. It involved 3 buildings, one of which was sold to the sole bidder, the deputy mayor at that time. The secretary drew the attention of others to the case; within a few days, the mayor sent the director of the regional office a proposal to remove the secretary from his position.

The mayor did not respond to the secretary's claims in any way; the secretary therefore filed charges. The investigation, however, was suspended. The secretary then uncovered another case of manipulating a public construction contract and overstepping authority in opening a tender procedure. The secretary took the case of termination of his employment to court and won. But he could not return to his job for a long time due to "a work obstacle on the employer's side", which was clearly a fabrication, because the position of the secretary is defined by law. In August 2013, the whistleblower returned to the position of secretary. He is still facing bullying in the workplace in the form of bossing by the leaders of the city hall, and is suing the city for another reduction of his salary.

3) Wasting project money from European funds (Czech Republic)

The regional office of the Liberec region offered to Mr. Kroutil the position of head of social prevention projects. In May 2009, Mr. Kroutil started working as project manager of a project planned for 3.5 years with a total cost of CZK 225 million, financed from European funds. Since he started, Mr. Kroutil was drawing attention to violations of project management rules – for example, controlling positions were vacant, and it was impossible to perform qualified financial and factual verification of services performed by subcontractors. His superiors, namely head of the department and head of the section, refused to investigate his claims, pointing out that the project documentation had been approved by the Regional Council. Mr. Kroutil refused to take part in the siphoning of money from the project; specifically, he did not sign a CZK 20 thousand invoice for salary costs for activities outside the scope of the project. His superiors were displeased with his lack of cooperation. Mr. Kroutil was issued two official reprimands, and his salary bonus was reduced. Relationships in the workplace suffered; he became the target of slander and defamation. In June 2010, he was fired for breaching work discipline. In 2012, he won a dispute with the office after five court sessions, concluding that the termination of his employment was invalid. In August 2012, Mr. Kroutil filed charges against a number of administrators of the region, suspecting abuse of power by public officials. The case is being investigated by the police.

4) Twenty percent for corruption (Czech Republic)

Mr. Leo Steiner became head of the department of project management in Regional Operational Programme North-West in March 2012. At that time, the office was already investigating the poor spending of European money and high fluctuation of employees. Mr. Steiner was given an excellently furnished office and a good salary with bonuses, yet the atmosphere at the workplace was grim, and his team downcast. Documentation of the distribution of European subsidies seemed good at first glance, until he started reading between the lines and took part in a meeting of the managing committee together with

the head of the office. At this meeting, members of the committee were quite openly dividing billions of CZK between themselves and saying who will receive a subsidy for what. Mr. Steiner turned to the anti-corruption police and agreed to collect relevant information for the investigation. In May 2012, he described how at a meeting of top managers, a project cycle was used to drain 20% of grants through bribery transactions. The office management tried to force Mr. Steiner to withdraw his claims and threatened to make him a scapegoat. Leo Steiner quit his job and published his findings. He was facing threats, was followed and did not leave his house for several days in fear for his life. He filed a criminal complaint of alleged manipulation in grant distribution. His testimony helped the ongoing police investigation. Members of the management committee, former deputy Kouda, all 3 former directors of the office and several employees were charged by the police for abusing their powers and damaging financial interests of the European Community. For the mishandling of projects at the office, the European Commission imposed a fine of more than CZK 2 billion on the Czech Republic.

5) Mismanagement of city property I. (Estonia)

Mr. Daniil was one of three whistleblowers who worked together to bring attention to misconduct concerning real estate and public procurements concerning real estate in the city of Narva. At first Mr. Daniil drew attention to real estate issues, and some time later, concerning another case, another whistleblower drew attention to another real estate and public procurement misconduct. Mr. Daniil acted as a support member and disclosed further information to the local government and the media concerning misconducts of real estate management and public procurement. The misconduct mainly consists of how the officials, including the whistleblowers themselves, were expected to carry out public procurements. The procurement notice and invitation to participate was to be delivered only to those companies approved and recommended by the city. Usually public procurements are open to all. The city has tried to fire Mr. Daniil repeatedly but he gained preliminary legal protection and had the right to hold on to his position. To get rid of Mr. Daniil and his colleagues, a whole department in Narva city government was disbanded.

In addition to the three whistleblowers, other officials in the department lost their jobs.

6) Mismanagement of city property II. (Estonia)

Mrs. Maria was one of three whistleblowers who worked together to bring attention to misconduct concerning real estate and public procurements concerning real estate in the city of Narva, the case a colleagues of hers, Mr. Daniil, mentioned above. Mrs. Maria notified the revision committee about the unorthodox way of carrying out public procurements and her doubts about the existence of genuine competition. The city has tried to fire Mrs. Maria repeatedly but she gained preliminary legal protection and had the right to hold on to her position. She was fired 3 times total. To get rid of Mrs. Maria and her colleagues, a whole department in Narva city government was disbanded. In addition to the three whistleblowers, other officials in the department lost their jobs.

7) Dis/advantageous leases of city property (Czech Republic)

Mrs. Jana was appointed head of the real estate department of a city council in 2007. In 2010, the city secretary gave her documents related to the lease and easement of real estate owned by the city with a total area of approx. 60 thousand m². The price of the lease was 2 CZK/m². It was clear that the deal was based on clientelist relationships and intended for already selected people. Mrs. Jana pointed out that the transaction was not beneficial to the city, and refused to sign. Some time later, when she was on vacation, she was completely unexpectedly told by the secretary that she was fired, or more specifically, “offered” that if she agreed to her resignation, she would be relocated to another department. Mrs. Jana shared her suspicions with 7 of the city councillors in person. She was relocated to the city hall archive and her salary was significantly reduced. After an unsuccessful attempt to resolve the situation in the office while she still was the head of the real estate department, she filed a complaint with the anti-corruption and financial crime police. Following her report, a campaign spreading lies and slander about her started in local media, and the secretary filed two charges against her (both suspended by the police as unjustified).

The secretary received a sentence in February 2013. Mrs. Jana sued the office for unlawful removal from her job. The new city hall offered her settlement out of court, which however did not include a restoration of her position. The reason was that after the secretary was released from custody, internal reorganisation took place that made it impossible for her to return to her job.

3.5 Whistleblowers in semi-public entities

1) Paying for fictitious medical procedures (Estonia)

In April 2013 a WB reported that in a privately funded health centre project money was being set aside. The amount of money being paid to the health centre depended on the project conditions which demanded that a certain amount of former drug addicts had to be counselled by a psychiatrist. However, a psychiatrist became aware that there was a lot more money being paid to the centre than there was actual counselling going on. The proceedings in the case were led by the donor – National Institute for Health Development. The health centre was fined 4700 Euros by the donor for not complying with the contract. The fine also included the return of funds which were not actually used to provide the services listed in the contract.

2) Falsifying accounting documents and suspicious public contracts (Slovakia)

Ms. Lubica Lapinova was the Main Auditor (the only internal auditor) of the National Forest Centre (NLC). In 2010, Ms. Lapinova was ordered to perform an audit of the accounting documents and the whole procurement process for a new webportal – Forestportal. She found severe cases of misconduct and illegal procedures in the procurement process. The conclusions of the audit were submitted to the (interim) CEO who had not managed to take any action in this case (no support from the ministry) and the audit had not been formally finished. In the meantime the CEO changed again and the head of the procurement committee in the Forestportal tender became a new CEO. Ms. Lapinova maintained her position and required the measures to be taken.

She was then let go, the official reason given was the poor financial situation of the organization. She filed a motion for external audit at the Supreme Audit Office who ordered the Ministry of Agriculture to carry it out. There was also suspicion of falsifying the accounting and other documents. To protect the important documents for an external audit, Ms. Lapinova kept some of the copies of the documents with her lawyer – willing to return them for the external audit under the condition that some external experts would be there when she handed them in. The originals remained at NLC. She was indirectly accused of stealing these documents and publicly maligned at her former work place.

3) Overpriced legal services for schools (Slovakia)

Mr. Žarnay was a high school teacher who reported on the circumstances under which the school was employing an external attorney. The high school seemed to be in financial problems, yet it could afford to pay for legal services that were more expensive than in other, even bigger schools. He also found connections between the external attorney and the Head of the County Department of Education, who recommended schools use external legal services.

Internally, Mr. Žarnay followed a standard procedure and reported to the School Council, where he was a chairman at the time.

Externally, Mr. Žarnay turned to the Teachers' Union (školské odbory) at the Košice County, then the Chief Auditor in the Košice County. Later, he informed the Labour Inspectorate, the Financial Audit Administration, the National Audit Office, the School Inspectorate, and the Ministry of Education. Most of the time, he was unsuccessful when seeking support.

The whole process has lasted 8 months, and still continues. As an outcome, schools in the Košice County ceded to use external legal services. Now, the Košice County is to employ 2 attorneys, who are to provide the necessary services to all concerned schools, significantly lowering overall costs for the state. Mr. Žarnay and his only colleague to support Mr. Žarnay were sacked, the official reason given was redundancy.

4) New ambulance vehicles for exorbitant prices (Slovakia)

Mr. Hubáček was a rescuer (paramedic) in state owned company ZZS (Záchraná zdravotná služba – National Emergency Center). In July 2012 his and his colleagues' salary decreased every month by approx. 70 EUR (from 950 EUR to 485 EUR). Many of Mr. Hubáček's colleagues who had mortgages, loans, started to work in some other places too (e.g. they were coming to work after 8 hours of unloading goods in Tesco).

After several months the only explanation the employees got from the director, Mr. Moťovský, was, that 600 000 EUR is missing in the company. Mr. Hubáček tried to inform the vice-president of the company. He was refused several times.

Mr. Hubáček decided to contact the media. Subsequently, ZSS charged him with unjustified statements and he lost his job. Mr. Hubáček has his first court hearing coming up, he has sued ZZS for unfair dismissal.

The media have reported on suspicions, that under Mr. Moťovský's leadership, ambulance vehicles for 53 emergency stations were purchased at inflated prices. At the same time, ZSS signed 9 contracts with 3 different companies that had only existed a few days. ZSS paid these companies more than 103 thousand EUR. Currently, the prosecutor's office is investigating the contracts relating to the purchase of ambulance vehicles and the contracts with the 3 suspicious companies.

5) Less equipment for more money (Czech Republic)

Mr. Zachoval worked in 2012 in the digital laboratory of the Academy of Fine Arts (AVU). With his colleagues they were supposed to prepare documentation for a grant application to the Ministry of Education and Sports (MoE) for the purchase of technical equipment for the laboratory. Therefore they wrote their requests according to the actual needs of their workplace, together with preliminary calculations of the prices of the equipment. The goods received, however, were significantly less than which was calculated. According to the agreement, Mr. Zachoval found that there had been a substantial reduction of the required goods but without reducing its price - on the contrary the price had

sharply increased. AVU had in fact received a reduced range of goods with a significantly higher price of 1,123,205 CZK which exceeded the original estimated price of the contract.

Mr. Zachoval turned with his findings to the school management but without success. Therefore, he turned to a non-profit organization Oživení, which filed a complaint to the antimonopoly office to investigate the matter. In 2013, the antimonopoly office imposed a fine. AVU appealed against the decision.

6) From whistleblower to Member of Parliament (Slovakia)

Mr. Mičovský had worked at the Directorate General of State Forests (state-owned enterprise) for 8 years and his role was to promote forestry to the public. While in his office, he observed practices that had a corruption potential, e.g. the enterprise was meant to pay an unjustifiably high price for a promotion TV series, there were suspicious contracts, purchases and sales. Moreover, the company was to be granted a loan of 2 billion SKK (almost €66.5 million) from the government, although a high-ranking official responsible for company finances unofficially disputed that a loan was unnecessary. Mr. Mičovský decided to deal with the situation internally at first; he reported to the Director General. When nothing changed, he sent an open letter to 1500 of his colleagues informing them about the practices. A wave of support from his colleagues followed. In order to achieve change, Mr. Mičovský filed charges with the state prosecution. With a group of his colleagues he also informed the Prime Minister. The Minister of Agriculture and Rural Development removed the Director General from his office, the suspicious loan was not granted. Mr. Mičovský and other members of the group were called to testify many times, however, there were no court hearings. No one has been prosecuted.

Mr. Mičovský and his colleagues faced retaliation at the workplace. His department was moved to a different office in a different city. After half a year, Mr. Mičovský publicly resigned, too. Later on, he was elected to parliament.

7) Fraud at the ministry (Czech Republic)

Mr. Jan Kratochvíl worked as head of the external relations department at a state-funded organisation providing services to the Ministry of Interior. In 2010, the deputy minister started a process of streamlining the organisation's activities, involving major organisational and system changes that could be used to siphon public property out of the ministry, abuse various mechanisms to create future obligations towards private entities and other types of fraudulent activities in leasing contracts. Mr. Kratochvíl informed his supervisor, but with no success. His department was artificially disbanded. Mr. Kratochvíl and his colleagues could choose between being fired for redundancy or taking a worse job. He was forbidden from coming to work and later fired.

Mr. Kratochvíl contacted several public institutions with no avail. A colleague brought the case public, leading to investigations and a trial. Former director Milan Kocík received four months of suspended sentence for unfavourable contracts with a total damage exceeding CZK 6 million, and had to offer more than CZK 200 thousand in compensation. Former deputy director Milan Pešek ended with two months of suspended sentence for two overpriced contracts, but was later pardoned. The deputy minister who initiated the organisational changes was "honourably discharged". After several years, Mr. Kratochvíl won a lawsuit and his termination of employment was reversed, but he sadly concluded that the content of his report was not investigated at all. Official authorities either did not do anything or very effectively prevented any solution.

8) Financial irregularities at the Municipal Cultural Centre (Poland)

The story started in 2010 when the new director of the Municipal Cultural Centre, Mrs. Katarzyna was appointed. According to the MCC's employees, she was very ill-qualified. The quality of management under her rule decreased dramatically. Mrs. Katarzyna had serious problems with performing her tasks and was also responsible for financial irregularities. Because of her confrontational nature she had severe conflicts with the staff members. The MCC's accountant, Mrs. Ania noticed the financial irregularities and alerted her supervisor, the MMC's chief accountant, but he

remained inactive on resolving the issue. On the contrary, he tried to push her away from performing more responsible accounting work. Then in September 2012, Mrs. Katarzyna tried to fire Mrs. Ania.

Mrs. Ania had the full support of the MCC's staff members who were concerned with this situation. She decided to report the irregularities to the city audit institution and together with other MCC staff members also notified other public figures and institutions. Finally she was dismissed on disciplinary grounds.

At that time her colleagues also informed the local media which played a very important role as they exerted pressure on the president of the city which finally led to the dismissal of Mrs. Katarzyna, the MCC's director. Mrs. Ania successfully appealed to the labour court and went back to work. But her victory was only partial. Her supervisor, the chief accountant, remained on his post and he no longer gives her access to any serious tasks.

9) Concealing violent crime in the emergency medical service (Poland)

The case took place in the city emergency service institution. One of its employees, a paramedic, attempted to rape a female paramedic. Mr. Chmielarz, as head of the unit's paramedic trade union committee, convinced the victim to report the attempted rape to the police (in Poland at that time rapist could be pursued by the police only in the case of the victim filing for pursuit). Mr. Chmielarz also spoke to the director of the unit to convince him that he should report the case to the law enforcement agencies, but he refused. In that case Mr. Chmielarz filed a report to the Prosecutor's Office on the director's failure to fulfil his obligations. The victim – encouraged by Mr. Chmielarz – also filed a report, thanks to which the police were able to pursue the rapist. As a result of his intervention, Mr. Chmielarz lost his job in the emergency service (when his contract expired the director did not sign the next one). Also the attempted rape victim lost her job.

10) The professor's plagiarism (Poland)

Professor Małgorzata Chomicz is a scholar in the Art Department of Warmia and Mazury University in Olsztyn. In 2013 she was given

a pile of academic papers by a retiring scholar of the same department. Among those papers she found a doctoral thesis of one of her colleagues, a former dean of the department, Dr. Piotr Obarek. After a brief inspection of the thesis, she found out that most of its content had been plagiarised. She sent copies of the pages containing alleged plagiarisms, along with the sources they were based on, to the Central Committee for Degrees and Titles. The Committee suspended the procedure of granting Dr. Obarek with professor title and asked his alma mater to provide other copies of the thesis. Yet, the Academia of Fine Arts in Warsaw, where dr. Obarek defended his thesis, reported its copies missing. Meanwhile the identity of Prof. Chomicz was accidentally revealed by one of the professors she asked advice from, and it became known to Dr. Obarek. He sued her for libel. He also started a blog in which he tried to insult Prof. Chomicz and everyone who supported her. After Prof. Chomicz responded to the lawsuit and – as evidence – she presented the copy of a thesis being in her possession, Dr. Obarek claimed that he found his copy (he previously claimed he had lost it). That copy had all the dubious parts corrected. The case is pending.

11) Unnecessary surgeries for insurance money (Poland)

The case took place in a Medical University in Wrocław. The head of the university hospital gynaecological department, Mr. Z., asked the doctors to carry out invasive hysteroscopies (a procedure of taking a sample of uterine tissue) even when they were not justified, just to get additional financing from the National Health Fund (NFZ) since the procedure was well funded by the NFZ. There were some other irregularities in the hospital. When Mr. Z. wrote an article to a university newspaper in which he proclaimed various successes of the gynaecological department, a group of professors was outraged with the "pack of lies" it contained. Prof. Heimrath together with his two colleagues decided to write a letter to the newspaper disclosing the irregularities going on in the hospital. The publication of the letter was blocked, but the whole case leaked to the press.

Prof. Heimrath was interrogated by the Disciplinary Commissioner of the Medical Council, as well as two disciplinary investigators appointed by

the University Chancellor. All of them found at least part of the accusations true. The irregularities were confirmed by the Supreme Chamber of Control and the National Health Fund which imposed a maximum financial penalty on the hospital. At the same time two internal committees were appointed. The first consisted of employees of the gynaecological department of the hospital, who were Mr. Z.'s subordinates. The second consisted of medics of all specializations. The first committee found no irregularities, while the second one found quite a lot. On the other hand, Mr. Z.'s case was examined by two specialists appointed by the Ministry of Health. They found no irregularities.

3.6 Whistleblowers in security forces and judiciary

1) Wrongdoings in the Navy (Estonia)

In 2011 a member of the Estonian Navy reported internal wrongdoings to his superiors. He first just spoke to his direct superior and a month later decided to leave the Navy. Before leaving he filled out the form of resignation. He added 14 pages of comments, using a rather vulgar vocabulary, and thereby reported the wrongdoings. The form began to circulate among Estonian Military and became public about 6 months after being issued. The reported wrongdoings included mainly misconduct (abuse of alcohol while on post), but also hiring underqualified and incompetent officers, sexual harassment, and corruption (in particular bribery cases).

2) Reported fuel consumption (Slovakia)

Mr. Žaťko was employed at the Office for Protection of Constitutional Officials and Diplomatic Missions, Ministry of Interior for approximately 20 years. In 2010 he was appointed to the chauffeurs to the department of personal protection. Some irregularities appeared in driving logbooks, while Mr. Žaťko worked at the department. He documented what he could prove (logbooks) and sent the information to inspection. However, instead of an investigation of his report, Mr. Žaťko himself was investigated. He had to face retaliation (change of the job title, reduction of his

salary, prohibition to leave his office, etc.) He was accused by the Minister of Defence at that time of being a liar. Disciplinary proceedings were started against him.

After the Government changed, he got back his original job, his salary was raised, there were made several changes in the office and some serious savings were made, however it's needed to say that no concrete person was held responsible for the previous misuse of the gas supplies.

He was offered the position of inspector, which he would accept if he were allowed to investigate the problems he had reported. He was denied, after this he quit his job. He is unemployed.

3) Judges order disciplinary proceedings for criticism (Slovakia)

Mr. Gavalec is a judge at the Supreme Court. Since 2009, he has made a number of complaints against indecent practices in the judiciary system, both as an individual and as a member of a group of judges. His criticism concerned issues such as abolition of the Special Court, inappropriate ways of selecting people for positions at the Supreme Court, or work conditions at the Supreme Court. He was also one of the people who publicly criticized candidates for the Chairperson of the Supreme Court; the winner, Mr. Harabin, then became his superior.

Mr. Gavalec used internal mechanisms several times. Externally, Mr. Gavalec complained about the work conditions to the Public Health Authority of the Slovak Republic (Úrad verejného zdravotníctva SR) and the Health Care Surveillance Authority (Úrad pre dohľad nad zdravotnou starostlivosťou). His complaints were not successful; they even turned against him. When one of the offices replied that Mr. Gavalec's complaint was not within its mandate, Mr. Harabin accused Mr. Gavalec of being not educated appropriately.

Due to his criticism, Mr. Gavalec has been retaliated against in several ways. His selection as a Chairperson of the Senate had been prolonged. He was relocated to different professional agenda, doubling his workload. He has been subjected to a number of disciplinary actions. He was accused of being insufficiently educated and of denouncing the judiciary. There has been no outcome of the whole procedure yet; the disciplinary proceedings have been going on for four years.

4) Expensive conspiracy flats purchased by private entities (Slovakia)

Mr. Suchodolinský was promoted to a new position at the Military Intelligence (Vojenská spravodajská služba, VSS) in August 2010. He found out that the year's budget for his section had already been used, and there were no funds left that would cover the expenses for the rest of the year. He found out that money had been used for the purchase of "conspiracy flats" and other assets that were later transferred to a partner military intelligence organization, Military Defence Intelligence (Vojenské obranné spravodajstvo, VOS). Formally the assets were meant to be used by VOS, but they never were. The whole process was covered up by the fact that the relevant documents were sent to VOS where, according to Mr. Suchodolinský, most of them were shredded. According to Mr. Suchodolinský this was a regular theft (tunelovanie). While some assets were illegally transferred to a different organization, others were transferred from state ownership entirely. Upon internally reporting to the head of VSS and the Minister of Defence, Mr. Suchodolinský continued the investigation. The investigation was terminated when both the Minister and the director were let go.

Both Mr. Suchodolinský and his superior were subsequently persecuted. The new Minister of Defence, Mr. Glváč, denied every allegation that arose out of the investigation.

5) Regional police director bullies his subordinates (Poland)

Mr. Zbigniew Żwawa was a policeman and the head of a criminal division in a county's police station. His supervisor, a county police commander, used intensified mobbing towards his subordinates. The particular victim of his harassment was Mr. Żwawa's colleague, Mr. Semik. The continuous stress led him to serious health issues. The commander also misused his position, using the subordinate policemen for private purposes. Mr. Semik filed a report about the supervisor's mobbing activity, using the internal reporting mechanism. As a result, an explanatory proceeding was initiated, but it was not conducted in line with the procedures (e.g. the identity of the informer was revealed to the supervisor). In order to support Mr. Semik's claims, Mr. Żwawa also filed a

report covering some other irregularities related to the commander's activity and sent it to the police regional authorities. This was interpreted as an act of disobedience and internal disciplinary proceedings against Mr. Żwawa commenced. The ethics commissioner in charge of the proceeding informed Mr. Żwawa in an informal manner that he was pressured by the supervisors to adjudicate a punishment in his case although he was convinced that Mr. Żwawa did not violate any internal rules. Later on, as a result of stress, Mr. Żwawa's health deteriorated and he had to take a year-long sick leave to get psychiatric help. After that he retired. All the charges against the commander were dismissed but the whistleblowers appealed. The case is still pending.

4. MAIN FINDINGS

It is difficult to obtain data on whistleblowers among politicians, security forces and members of the justice system. Their cases are often impossible to identify, and when they are found, the whistleblowers usually refuse to share their experience out of fear of losing their job. Information on whistleblowers in organisations standing in between the private and public sector, on the other hand, is for the most part easily available. In forming any conclusions, it is necessary to refer to national specifics of each country, including their size.

The reported actions were usually serious and, according to the whistleblowers' convictions, illegal. Only rarely did whistleblowers report behaviour that was unethical or immoral. In many cases, breaking the law was the turning point in the decision whether to report the action. For whistleblowers, the act of reporting was often borne out of an extreme situation or necessity, as they usually realised that they were becoming personally involved in the crime.

The fact that the average duration of a whistleblowing case is in the range of dozens of months shows that the available institutional mechanisms are inefficient. In a situation where half of whistleblowers lose their jobs after making a report, timely investigation is crucial. Lengthy investigations also reduce trustworthiness of the whistleblower and his or her activities in the eyes of his or her social circle and the general public. Satisfaction often comes only after many years. In cases where the report is picked up by the media, there is usually significantly lower media coverage of the conclusion of the case than of its opening. If a case is not properly resolved and gradually loses traction, the media lose any interest in it, which may also influence the perception of whistleblowers. It needs to be said that in many cases, the investigations take longer due to the influence of the reported person who will often try to stall any progress.

Whistleblowers use most of the methods and tools that are at their disposal, either all at once or in sequence. Those who chose an internal mechanism (36) also contacted external institutions (74%) and involved the media (74%) and/or non-governmental organisations (49%). The vast majority of whistleblowers who contacted external public institutions (29) also reported to the media and NGOs or other entities (93%). All whistleblowers who did not use the option of reporting internally, either because it did not exist or was not trustworthy, contacted the media and/or other entities. Reports in the workplace often followed internal regulations, typically leading to the direct supervisor. In many cases, however, this supervisor was the person the report was made against, becoming paradoxically an obstacle in the investigation. The first report was usually inefficient, which is why whistleblowers looked for other ways and contacted public institutions after internal mechanisms fail.

In all countries, most internal mechanisms involve contacting a direct supervisor, a supervisory body or a supervisor's supervisor. In less than one in ten cases, reports were made to a specialised body in the workplace. With one exception, the whistleblowers did not know of any option to ask for protection within the workplace.

The current internal mechanisms for reporting seem inefficient; there typically is no alternate line of contact bypassing the reported person that would prevent obstructions in the investigation or retaliatory measures. It can be concluded that the current system of internal mechanisms more often than not serves as a trap for whistleblowers.

Regarding external mechanisms, whistleblowers are clearly determined to try all imaginable institutions. This means that their report is often being resolved (or not being resolved) at several places at once, which may be inefficient if the individual entities do not cooperate.

With one exception, all whistleblowers were facing various forms of retaliation. This is probably the most alarming conclusion. One half of whistleblowers were facing existential consequences when they

lost their jobs, and in some situations the same was true for their colleagues or sympathisers. The scope of potential retaliatory measures is a very important point in making the decision of whether to report or not. Understandably, some whistleblowers do not want to involve anyone else in “their problems”. It turns out that reports almost always cause a negative reaction that the whistleblower needs to deal with on his or her own. In more than one third of cases, there were attempts to find justification for the retaliation. This was true for cases where whistleblowers were sued or fired for violating criminal or labour regulations.

It is quite common that in parallel to the investigation of the reported case, there are other ongoing proceedings in which the whistleblower is defending against retaliation and/or proceedings led against the whistleblower. Many retaliatory measures are not only stressful, but also expensive.

It is important to take note of the intensity of retaliation measures and their types, and specifically the occurrence of those that threaten the physical integrity of the whistleblower. The occurrence of physical assaults is striking, but the sample size is too small to reach any conclusions.

Whistleblower protection seems inadequate both in terms of applicable legislation and practical utilisation of their current options. In three fourths of all cases, whistleblowers were provided no protection at all through external mechanisms. One half of them said there was no one to turn to, and less than a half decided to actively defend themselves against retaliation.

No country has a system for rewarding whistleblowers. The whistleblowers themselves did not say that the institution of a reward could be a motivational factor. It is however possible that such a mechanism could serve as an incentive for other potential whistleblowers.

Most reports were investigated, but only less than a third ended with prosecution or sanctions. This result may indicate that the reporting mechanisms used are inefficient, but in many cases also illustrates how actively the reported person tried to thwart the investigation, which happened in the vast majority of cases. Reported persons were either active, attempting various retaliatory measures against the whistleblowers or trying to obstruct the process, or passive, in which case it was the person’s position within the organisation that led to the case being swept under the rug. Most reports were made against people on the management level.

The media played a fairly significant role in most cases. One third of whistleblowers considered the role of the media crucial and believe that the case would not have been investigated without them. More than one half of whistleblowers cooperated with non-profit organisations and other entities. It seems that the media and non-profits partially substitute for ineffectual mechanisms in the workplace and outside, but their means of supporting either the investigation or the whistleblower are limited. The media were not always able to comprehensively report the case and non-profit organisations only have the capacity to help selected individuals who, in some cases, received a reward for their actions and courage.

Whistleblowers were facing discrediting campaigns, but also support of dozens and even thousands of individuals. Whistleblowing deeply affects us all. Each of us may find ourselves in a situation where we witness dishonest actions and have to decide what to do about it. We have been looking at the stories of individuals whose decision to report unethical or illegal behaviour brought them nothing but trouble, even though the society, unknowingly, benefits from their actions.

5. PROPOSED RECOMMENDATIONS

Whistleblowing is an early warning system that plays a key part in the fight against corruption, wasting of public money and other unethical or illegal behaviour of people who have a certain degree of power. Because the presented data show that as a functional system of whistleblower protection, the current state is completely inadequate, we wish to list some basic prerequisites and recommendations which we think should serve as a foundation for any proposed legislation or discussion about the topic.

– The legal framework of whistleblower protection should first of all define the terms “whistleblowing” and “whistleblower”. It should apply to people in both the public and private sector, and not be limited only to employees.

Whistleblowing should be defined broadly to cover the widest possible spectrum of activities, ranging from crimes and transgressions to unlawful or unethical behaviour threatening life, health, freedom, security and other legitimate interests of citizens as the subjects of public administration or taxpayers, employees, shareholders or customers of private companies.

The term “whistleblower” should be defined in law, ideally in a way without any negative connotations (snitch, informant, etc.) that are still strong in many European countries²⁴ and do not support the understanding of whistleblowers as people acting in the public interest. These stereotypes discourage whistleblowers from reporting unethical or illegal behaviour and strengthen negative attitudes in the public. On the other hand, the lack of a suitable translation for “whistleblower” should not be a permanent obstacle or a reason to not start working on legislation.

Laws protecting whistleblowers should apply both to the public and private sector. Both of them are conducive to unethical or illegal behaviour and threats to public interest such as safety or health. The presented stories of whistleblowers show that both sectors are in fact very closely interlinked in various ways, and there is no meaningful reason to run a dividing line between them. It is also necessary to consider people other than regular employees, such as consultants, temporary workers, volunteers of former employees. Legal protection should also not forget members of security forces or professional soldiers who have a special legal status in many countries.

Serious legislative work should begin²⁵ as soon as possible. Investment in the implementation of any structures will undoubtedly be recovered through protection of the public interest and funds.

– Effective internal and external mechanisms should be introduced. The method for submitting reports should have a clear functional definition that also guarantees objective and independent investigation. There should be a guarantee of suitable conditions for maintaining and protecting confidentiality of a source, i.e. a whistleblower, among journalists.

Internal mechanisms should include an option to submit a report outside the current hierarchical structure in the workplace. Whistleblowers should have the option to bypass their superiors, as they are often involved in the behaviour in question and the report directly concerns them. One option is to appoint an internal ombudsman who is operating outside the traditional hierarchy structure but has enough power and capability to independently and objectively investigate the report.

For the persons receiving the reports, the internal mechanism should define a duty to ensure that the whistleblower’s identity remains confidential and the option to make a report anonymously. It is necessary to set up clear rules, procedures and methods for making reports that are easy to understand and available to all potential whistleblowers. It should at the same time be required to set a deadline in which responsible persons must investigate the claim or, in severe cases, submit it to the police and other authorities. A sanction mechanism should be introduced to enforce such duties. This type of measure can be adopted without any direct links to an applicable law. The benefits of a functional internal mechanism include preventing further unethical or illegal behaviour, saving costs and preventing damage to the organisation’s reputation if the case goes public or is reported in the media.

²⁴ An overview of translations of the term “whistleblower” in 27 member countries of the European Union can be found in the report: WORTH, Mark: *Whistleblowing in Europe: Legal protection for the whistleblowers in the EU*. Transparency International, 2013, in a chapter fittingly titled “Lost in Translation”.

²⁵ Or, in the case of Hungary, implementation of the current law should be finished.

The option to contact external entities should be kept even when internal mechanisms are used. As with internal mechanisms, it is absolutely vital to define clear and understandable rules for making reports and submitting them available to anyone who decides to do so. Whistleblowers must know exactly where, how and under what conditions they can make their report. The current state is confusing and it is not uncommon that the same case is investigated by multiple institutions in an uncoordinated fashion and in parallel, which is very inefficient; it seems prudent to establish an institution that would be responsible for investigating such cases or at least act as coordinator of the work of various institutions and cooperate with the whistleblower during the investigation. It is not necessary to create a new institution for this purpose, but instead for example extend the current powers and capacities of the ombudsman role²⁶. Whistleblowers should be always informed about the investigation and its results, including whistleblowers who choose to remain anonymous²⁷.

– Due to the important role of the media and other entities, particularly NGOs, rules for maintaining confidentiality and source protection should be supported and extended, at least for journalists in printed and electronic media.

In many ways, the media play a crucial role in the initiation of an investigation by responsible authorities. Because vulnerability of whistleblowers has already been conclusively proven, protecting them as sources is essential²⁸.

– Whistleblower protection should be extensive, address various retaliatory measures and include a compensation system.

All whistleblowers (with one exception) faced some form of retaliation.

In addition to the option of making reports confidentially, it is necessary to explicitly forbid retaliation against whistleblowers in relation to their report, and if this is not respected, introduce a mechanism of sanctions and the right to seek remedy for material and immaterial damage to the whistleblower. This right is also to be given to whistleblowers who choose to remain anonymous but whose identity is eventually revealed. All whistleblowers should have a legal guarantee that if they decide to act in public interest and publicly inform about unethical or illegal behaviour, they will receive effective and easily available protection. Because a very common form of retaliation involves the termination of employment or relocation to another position, it may be necessary to adopt a measure prohibiting any personnel changes in the workplace until the investigation ends or introduce a duty to provide suitable justification for any such actions taken against the whistleblower.

It is impossible to maintain the current system without considerable changes²⁹, as many whistleblowers currently find themselves without work after making their report and have to wait for years until courts decide that the termination of their employment was unjustified and is therefore invalid.

Such protection however should address not only possible legal steps (e.g. termination of employment, removal from a job position), but also informal actions such as bullying in the workplace (mobbing and bossing), assigning non-standard work tasks, etc.

Whistleblowers should have an institutionally recognised right to make their report anonymously or confidentially. If they have trust in the legal guarantee of protection of their identity, the number of anonymous reports can be expected to decrease.

Reports made in good faith should be exempt from any sanctions even if their content is not proven. In cases where reports were knowingly false, however, the “whistleblower” should be facing all measures and sanctions made available by the legislation, because the reported person’s rights need to be protected as well.

– A public awareness campaign should promote whistleblowing as something that protects public interest or money and promotes participation in public affairs.

²⁶ This recommendation must necessarily correspond to the status of such institutions in individual countries.

²⁷ For example with a mechanism similar to the special electronic system of the State Office of Criminal Investigation Lower Saxony for reporting corruption and economic crime which can be used by whistleblowers to make reports, communicate with investigators and be informed about the status (e.g. the date of the main court trial) and results.

²⁸ The existing provisions should be revised regarding to whistleblower’s protection, strengthening the protection and its functional enforcement.

²⁹ Such changes may involve the introduction of a reverse onus clause which provides considerable support to whistleblower protection. In Estonia, shared burden of proof is defined in the Anti-Corruption Act.

To achieve change in the currently not wholly positive perception of whistleblowers, the process of drafting legislation should run in parallel with an information campaign informing the public about the issue. A suitable form would be to involve the wider professional public in the formulation of the intent of the new legislation.

We believe it is important not to exclusively present whistleblowers as heroes, as that inevitably leads people to see them as a handful of chosen, exceptional individuals with enormous moral integrity. Even though this may be the case for many of them, and even though the courage to not stay silent is admirable in the current situation, the public must know that they are also regular citizens who had various motives for raising their voice, and were not doing it out of sheer heroism.

In other words, reporting unethical or illegal behaviour should be considered the norm and a motivational example for us all. It is essential to emphasise the importance of whistleblowers for the protection of public interest and money. The concept of whistleblowing is closely related to the support of citizen participation in public affairs, a goal that is undeniably desirable in particular due to the crisis of democracy and democratic institutions that European countries have been experiencing in recent decades.

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Act I of 1977 on public interest reporting, proposals and complaints

Poland:

Labour Code general provisions against unlawful dismissal.

Citizen's and legal obligation to disclose irregularities: art. 304 par. 1 of Criminal Procedure Code, art. 231 of Criminal Code in relation with art. 304 par. 2 Criminal Procedure Code, art. 240 of Criminal Code, art. 100 par 2 point 4 of Labor Code.

The protection of identity: Law on Protection of Personal Data, Crown Witness Act, art. 184 of Criminal Procedure Code (a so-called incognito witness), art. 23 point 2 of State Labor Inspection.

Slovakia:

Act no. 400/2009 Coll., Civil Service Act as amended.

Act no. 552/2003 Coll., Law on work in public interest as amended.

Act no. 311/2001 Coll., Labour code as amended.

Act no. 9/2010 Coll., Law on Complaints as amended.

Act no. 300/2005 Coll., Criminal code as amended.

Act no. 167/2008 Coll., on Periodical Press and intelligence agencies as amended.

