

Introduction

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The contributions in this monograph are the result of research completed within the Visegrad Grant (No. 21930021) “Workplace Whistleblower Protection in the V4 Countries, France and Slovenia” – WhistlePro (2020–2021) financed from the International Visegrad Fund.² The project aims to contribute to the improvement of the legal framework in the V4 countries concerning the protection of workplace whistleblowers and indirectly to the change of workers’ attitude towards whistleblowing.

The research within this project consisted in the comparative analysis of national legislations, caselaw and practice in the countries of organisations participating in the project, namely Visegrad Group countries (Czechia, Hungary, Slovakia, Poland), France and Slovenia concerning the protection of workplace whistleblowers, detection of legislative shortcomings and loopholes in each of the countries and – in the final step – preparation of proposals for the improvement of the legislation in the Visegrad countries and possibly also in France and Slovenia, taking into consideration European and international law.³

The chance to contribute to the amelioration of the legislation concerning whistleblower protection appeared as all the EU Member States became obliged to implement the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law by 17 December 2021 (EU Whistleblower Protection Directive).⁴

The idea to consolidate the efforts of researchers from the V4 countries in the area of workplace whistleblower protection was bound with the historical and present situation of the region. All the Visegrad countries have experienced loss of national sovereignty to foreign powers in different periods of time as well as totalitarian

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2 The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from the International Visegrad Fund. The mission of the Fund is to advance ideas for sustainable regional cooperation in Central Europe. For more details about the WhistlePro project see <https://www.wpia.uni.lodz.pl/en/research/whistlepro>, accessed 01/09/2021.

3 This publication reflects the law as at 1 September 2021 (unless otherwise indicated by Authors).

4 With transitional period guaranteed for medium-sized enterprises (50–249 workers). In this regard, Member States shall bring into force laws, regulations and administrative provisions necessary to comply with the obligation to establish internal reporting channels under Article 8(3) of the EU Whistleblower Protection Directive by 17 December 2023.

dictatorships and despised informant systems.⁵ These facts of the history left a trace in society, namely a certain reluctance towards denunciators, “snitches” or collaborators. The Corruption Perception Index is still less favourable for these countries in comparison with the most developed countries.⁶ The legal researchers’ cooperation and benchmarking practices in the region have a long-lasting tradition. Therefore, a research project was launched to elaborate common proposals for legislative changes concerning workplace whistleblower protection in the V4 countries.

Contributions from France and Slovenia are particularly precious for the WhistlePro Grant goals. Being a Central-European country with similar post-communist roots, Slovenia achieved an advanced level of legislation in the field of combatting corruption, namely it adopted the Integrity and Prevention of Corruption Act in 2010 (ZIntPK). France adopted a legal act concerning the transparency and prevention of corruption⁷ (Loi Sapin II), a part of which is dedicated to the guarantee of measures for the protection of whistleblowers. Moreover, the system of guidance of persons disclosing irregularities in France is guaranteed by the Defender of Rights.

The monograph begins with Marcin Górski’s contribution referring to Article 10 (Freedom of Expression) of the European Convention of Human Rights, which lies at the very heart of every act of whistleblowing. The author analyses the caselaw of the European Court of Human Rights concerning complaints related to breach of the freedom of expression by the Member States in cases of whistleblowing and draws conclusions with regard to the conditions to obtain protection based on Article 10 against any acts of retaliation. In the second part of his analysis, the author makes an interesting comparison between the ECoHR’s test for the legality of public whistleblowing and the requirements laid down in Article 15 of the EU Whistleblower Protection Directive.

Zbigniew Hajn in his chapter analyses the personal scope of the EU Whistleblower Protection Directive, trying to answer not an easy question, namely who is protected against acts of reprisals and who should bear responsibility for them. The author draws attention to the fact that the EU Whistleblower Directive uses not the term of “whistleblower”, but of “reporting person”. The author presents the personal scope of protection against retaliation, which covers not only reporting persons who fulfil the conditions to be found in various provisions of the Directive, but also other persons who are vulnerable to retaliation because of their relationship with the whistleblower. The notion of “work-related context” is explained. In addition, the chapter discusses controversial issues, namely the appropriateness of providing protection measures to legal persons, anonymous reporting persons and persons who intended or attempted to make a whistleblowing report or even who

5 See also A. Kun in this monograph.

6 Compare Corruption Perception Index for 2020, <https://www.transparency.org/en/cpi/2020/index/>, accessed 01/09/2021.

7 La loi No. 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et la modernisation de la vie économique.

are believed or suspected to be whistleblowers. In the final part of the text, the list of entities obliged to perform the protection duty under the Directive is analysed.

The publication follows with the chapter of Gwenola Bargain. The author examines the legal situation of whistleblowers in France under Loi Sapin 2 and other legal acts concerning whistleblowers. The assessment of the effectiveness of the French instruments by the author is not idolatrous. Shortcomings such as especially too restrictive conditions for the whistleblower status to be granted to a given person (seriousness of the disclosed breach of law, disinterested character of the disclosure) are detected. Moreover, the author argues that the protection or even the status of a whistleblower should be granted not only to natural persons, but also to legal persons, which would result in protecting the individual against retaliation. The author also explains the competencies of the French Defender of Rights, expressing a view that the assistance given so far by this institution to whistleblowers has not been fully effective and that there is a need for a specialized inspectorate concerning whistleblowers which could be included in the structure of the Defender of Rights.

Darja Senčur-Peček presents in her chapter an in-depth analysis of the Slovenian legislation guaranteeing instruments of whistleblower protection in the light of international and EU law. Anti-corruption legislation, labour law instruments and anti-discrimination law are discussed in this contribution. Even though the Slovenian legal framework concerning whistleblowing is internationally perceived as advanced, there is still much room for improvement, especially in the sphere of whistleblower protection against retaliations.

As the analysis showed, the protection of whistleblowers is insufficient in all V4 countries. In the Czech Republic and in Poland, workplace whistleblowers may seek protection on the basis of various different legal acts, but despite legislative proposals put forward by both the government and non-governmental organizations, there is no legal act which would regulate the protection of whistleblowers in a complex, comprehensive way. The protection is granted in an insufficient way on the basis of different dispersed legal acts. In Slovakia and Hungary, separate legal acts concerning the protection of whistleblowers are in force, but their effectiveness is criticized.

The chapter by Jakub Morávek and Jan Pichrt presents legislative efforts made so far in the Czech Republic to regulate whistleblower protection in one single act and indicates possible reasons for the failures to achieve this aim. Then, the authors undertake a critical assessment of the Czech bill aiming at the transposition of the EU Whistleblower Directive. Particular criticism concerns the wide scope of disclosures giving rise to protection, covering also insignificant irregularities as well as imposing high administrative and financial burdens on companies. Furthermore, the chapter covers proposals for such incentives as private action in public interest. As it concerns protection of whistleblowers, interestingly enough, the authors break up with the traditional approach, according to which the continuity of the whistleblower's employment seems to be the highest value for the employer. They propose to guarantee the right of the workplace whistleblower to terminate the employment contract with the right to compensation.

The contribution of Attila Kun focuses on the whistleblowing system guaranteed on the basis of Act CLXV of 2013 on Complaints and Public Interest Disclosures. The author shows the strong sides of this system (electronic reporting channel monitored by the Hungarian Commissioner for Fundamental Rights, personal data protection mechanisms) as well as its weaknesses, namely the narrow personal scope or the insufficient system of the protection of whistleblowers under labour law provisions. The chapter culminates with proposals for changes of the Hungarian legislation on the occasion of the transposition of the EU Whistleblower Protection Directive.

Dagmara Skupień in her chapter concerning Poland writes about various dispersed sources of law under which the whistleblower may seek protection, namely general principles of labour law and the caselaw of the Supreme Court in labour disputes as well as numerous sectoral acts. The main disadvantage of the legal situation of whistleblowers in Poland is that they usually have to defend themselves in the course of labour disputes in cases concerning dismissal, but neither protection nor measures of support are granted *ex ante*. Moreover, atypical workers or civil law workers are not protected effectively against retaliations.

Protection of personal data is crucial for the safety of the whistleblower. Possible ways to improve the situation in this realm are analysed by Edyta Bielak-Jomaa. The author examines both internal (in the private and the public sector) and external channels, seeking solutions that would reinforce the guarantee of confidentiality of the whistleblower's personal data as well as the data of the alleged wrongdoer. The importance of creating an appropriate structure of internal channels taking into consideration different factors, such as the employer's size, organizational structure, industry or sector of operation, available financial resources or the level of risk of potential fraud, is underlined. Proposals *de lege ferenda* are put forward, especially for the Polish legislature, but they have a more universal character.

Peter Varga and Veronika Zoričakova in their chapter take into close scrutiny the Slovak legislation concerning the protection of persons who disclose anti-social activities. They present essential elements of whistleblower protection guaranteed by this law. Moreover, they draw attention to the measures of protection granted on the basis of anti-discrimination law. The Slovak legal framework, even though seemingly advanced, leaves much room for improvement, which may be carried out on the occasion of the transposition of the EU Whistleblower Protection Directive. Especially, the authors underline the main disadvantage of the present system, namely different levels of protection granted to persons disclosing irregularities depending on the qualification of these irregularities as anti-social activities or not. It seems that much hope is pinned on making the new Whistleblower Protection Office fully operational.

In the closing chapter, Zbigniew Hajn and Dagmara Skupień present the summary of the proposals for changes in the legislative framework of the V4 countries and possibly also France and Slovenia as well as other EU Member States. The authors cover such issues as the method of transposition of the EU Whistleblower Protection Act into national laws, relationship of general acts with sectoral provisions, material

scope of whistleblowing acts, personal scope of whistleblowers and duty-bearers, the appropriate construction of internal and external reporting channels, problems related to anonymity and confidentiality, protection against retaliations, measures of support, financial incentives, as well as sanctions for preventing or deterring whistleblowing or for the misuse of the right to blow the whistle.

In conclusion, this monograph was prepared with the expectation that it would put forward useful solutions which could be employed in the complicated task of implementing the EU Whistleblower Protection Directive in the Visegrad countries as well as France and Slovenia. A clear legal framework of protection consolidated in one single act of general application (with references to sectoral provisions) would certainly provide more legal certainty and encourage persons who consider reporting breaches of law noticed in their work environment. It would contribute to the improvement of the public perception of whistleblowing and as a consequence to the reduction of the occurrence of such harmful phenomena as corruption, illegal environmental pollution and waste, economic crimes or breaches of labour law. On the other hand, the future legislation should not protect false denunciators whose intention is to take revenge on their employers or simply cause harm to the organization due to private reasons or in the interest of competitors.