

Measuring Up How Well are Western Balkan Countries Protecting Whistleblowers?



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LIST OF ACRONYMS

AHC	Albanian Helsinki Committee
ACQJ	Albanian Center for Quality Journalism
APIK	Agency for Prevention of Corruption and Coordination of the Fight against Corruption
APC	Agency for Prevention of Corruption
BiH	Bosnia and Herzegovina
CSDG	Center for the Study of Democracy and Governance
IECD	Institutions for the Execution of Criminal Decisions
HIDAACI	High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest
KLI	Kosovo Law Institute
SCPC	State Commission for Prevention of Corruption
QSUT	University Hospital Center
UCCK	University Clinical Center of Kosovo

INTRODUCTION AND CONTEXT

Mark Worth

Whistleblower protection in Western Balkans

The role of whistleblowers is more important today than ever, as the public's expectations that politicians and companies will behave honestly and accountably continue to rise. With these growing expectations, whistleblowing has become a powerful and increasingly mainstream tool for citizens to expose corruption that harms the public interest.

As more people come forward to report misconduct, they need greater protection from dismissal, lawsuits, prosecution and harassment. Responding to this need, all Western Balkan countries now have laws and systems intended to shield citizen corruption-fighters from reprisals. This makes Southeast Europe the global leader in this field. The challenge now is ensuring these systems work effectively and promptly in real-life cases – for the benefit of whistleblowers and anti-corruption officials alike.

In this study, we present the first-ever review of how well these systems are functioning in six Western Balkan countries. The outcomes of retaliation complaints are analyzed to evaluate the performance of whistleblower caseworkers and identify strengths and weaknesses in protection systems. Specifically, we look at how many people applied for protection, how many people received it, and how many people were denied. Where possible, we identify the reasons people were denied protection.

This report is part of the project “Fulfilling the Promise of Whistleblowing: Defending Citizens’ Rights and Curbing Corruption.” The project, overseen by the Southeast Europe Coalition on Whistleblower Protection (the Coalition), is supported by the Balkan Trust for Democracy of the German Marshall Fund of the United States. The project works to align policies in the region’s six EU candidate and potential candidate countries with EU rules on whistleblower protection.

Founded in 2015, the Coalition is the leading advocate, advisor and researcher for whistleblower protection policies and systems in Southeast and Eastern Europe. This analysis was conducted by Coalition members:

- **Center for the Study of Democracy and Governance** (Albania)
- **Infohouse** (Bosnia and Herzegovina)
- **Kosovo Law Institute** (Kosovo)
- **Center for Development of Non-Governmental Organizations** (Montenegro)
- **Transparency International Macedonia** (North Macedonia)
- **Belgrade Center for Security Policy** (Serbia)

Key findings: Regional results

Our review finds that 40 percent of people who applied for retaliation protection from public institutions had their requests approved. This is based on cases in five countries where whistleblower systems are overseen by administrative institutions: Albania, Bosnia and Herzegovina, Kosovo, Montenegro and North Macedonia (see Table 1).

The success rate in these five countries is nearly twice as high as the international average. Only 21 percent of people in 37 countries won their retaliation cases, according to a study by the International Bar Association and Government Accountability Project.¹ This indicates that the training, capacity-building and awareness-raising activities undertaken over the past six years by the Southeast Europe Coalition on Whistleblower Protection have been successful.

In Serbia, courts hear and decide upon retaliation cases. Here, 18 out of 300 people (6 percent) who filed lawsuits in courts have won their cases (see Table 2).

	# requests for retaliation protection	# protection requests granted	% protection requests granted	# protection requests denied	% protection requests denied
Albania	9	2	22	7	78
Bosnia and Herzegovina	39	20	51	13	33
Kosovo ²	2	0	0	2	100
Montenegro	36	12	33	17	47
North Macedonia ³	2	1	50	1	50
Totals	88	35	40	40	45

Table 1. Outcomes of whistleblower retaliation cases – countries with administrative remedies⁴

	# retaliation cases filed	# retaliation cases won	% retaliation cases won	# retaliation cases denied or dismissed	% retaliation cases denied or dismissed
Serbia	300	18	6	126	42

Table 2. Outcomes of whistleblower retaliation cases – countries with court-based remedies

¹ Feinstein, Samantha and Devine, Tom, “Are Whistleblower Laws Working?: A Global Study of Whistleblower Protection Litigation,” Government Accountability Project and International Bar Association, 2021; <https://www.ibanet.org/MediaHandler?id=49c9b08d-4328-4797-a2f7-1e0a71d0da55>

² Information from public institutions is incomplete

³ Information from public institutions is incomplete

⁴ Totals may not add up, as some cases are still pending

Information gap: Further improvements needed

Though the success rate in retaliation cases in most countries is encouraging, public officials in all six countries have not released sufficient details about the type of protections whistleblowers have received. In the five countries where administrative institutions oversee the systems, officials only have the authority to recommend that employers not retaliate against an employee, or reinstate an employee if he/she already has been fired, suspended or demoted. Similarly, in Serbia, it is not known whether the people who won their retaliation cases actually were protected or reinstated.

Though there are media reports of some whistleblowers being protected or reinstated, officials have released very little information about the impact of their approvals of protection requests. So, even though at least 54 people in the six countries have “won” their cases, it is not known where they actually were protected from being fired or reinstated after being dismissed. This is a significant information gap that must be closed.

Further, officials did not release details information on why people were denied protection. Evidence suggests most people did not meet the requirements under the law. For example, they were not employees, they did not report evidence of crime or corruption, or they did not suffer retaliation at work. Certainly, many people did not receive protection because they legitimately did not qualify for it. However, it is not known whether some people have been denied protection unfairly – that caseworkers did not properly interpret and enforce the whistleblower law. If some people have been denied protections to which they legally are entitled, these decisions must be reversed, and the people compensated for any losses.

These significant shortcomings must be addressed to ensure people are receiving the protections to which they are legally entitled, and to assure the public that the whistleblower system is functioning properly.

Still, our assessment finds public institutions in all six countries are doing an adequate job recording and tracking retaliation complaints and outcomes. And, they are being moderately transparent in sharing this information and data with the public. Collecting this information and making it available to the public are two of the major steps in establishing a successful whistleblower protection program.

The last step for institutions is to collect and publicly share information on their efforts to protect and reinstate whistleblowers, and to be fully transparent about their decisions to approve or deny protection requests.

Country	Institution
Albania	High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest
Bosnia and Herzegovina⁵	<ul style="list-style-type: none"> - State level: Agency for Prevention of Corruption and Coordination of the Fight against Corruption - Canton of Sarajevo: Office for Prevention and Suppression of Corruption - Brčko District: Office for Assigning Whistleblower Status
Kosovo	Agency for Prevention of Corruption
Montenegro	Agency for Prevention of Corruption
North Macedonia	State Commission for Prevention of Corruption; Ministry of Internal Affairs, The Ombudsman Office, Public Prosecution and the Inspection Council
Serbia	Civil courts receive and decide on retaliation claims

Table 3: Whistleblower Protection Institutions in Western Balkans

⁵ In Republika Srpska, the Commission for the Implementation of the Strategy for the Fight against Corruption only tracks cases. It does not handle retaliation cases.

Key findings per country



Nine people applied for retaliation protection to the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) in 2017-22. Two requests were granted; seven were denied because HIDAACI found the retaliation complaint to be unfounded. In a 2020 case, HIDAACI said it requested that the employer “cease retaliatory actions against the whistleblower.” The agency did not release any additional information about this case or information about the other case in which it granted protection.

Overall, HIDAACI did not release sufficient information on how it examined and decided upon retaliation cases, making it difficult to assess how it reached these decisions. And it released no information on whether the two whistleblowers who received protection were reinstated or received financial compensation for damages. Forty percent of public institutions and private companies have not set up a required whistleblower channel. Likewise, at the ministerial level, employees lack sufficient information about the whistleblowing system.



Over the past 10 years, 24 people have applied for retaliation protection from the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK). This agency oversees whistleblower protection for Bosnia’s state-level employees and is the only public institution in Southeast Europe with the authority to order an employee to be protected or reinstated. APIK granted 11 of these 24 requests, which means APIK issued orders to public institutions to protect or reinstate whistleblowers. Due to confidentiality, the outcomes of these cases are not publicly known.

Republika Srpska has a whistleblower law but no administrative mechanism for protection. Two people have filed lawsuits seeking protection; the outcomes of these cases are not known. In Brčko District, the Office for Assigning Whistleblower Status has approved all four requests for protection it has received. In Sarajevo Canton, the Office for Prevention and Suppression of Corruption has approved 5 of 11 requests. Six cases were ongoing as of this writing.



The Agency for Prevention of Corruption (APC) said it has received two requests for retaliation protection, one each in 2020 and 2021. In both cases, the APC said it could not establish that actions taken against the whistleblowers resulted from them having reported misconduct. However, under Kosovo's Law on Protection of Whistleblowers, the burden is not on the whistleblower to link negative consequences to their report of misconduct. The employer must prove any actions taken against an employee were not linked to them making a report. Therefore, it is not clear whether the two people were improperly and unfairly denied protection.

The APC's annual reports lack information about the outcome of retaliation cases, which is contrary to the whistleblower law, which requires the public release of data on the number of cases and their outcomes. As of 2022, 51 public institutions out of 180 did not submit required reports on whistleblower cases to the APC. The low level of information made available to institutions and the general public has been highlighted as an obstacle to the system's efficient functioning.



Of 36 requests for protection handled by the Agency for Prevention of Corruption (APC) since 2016, 12 were granted and 17 were not approved. Six cases were ongoing as of this writing, and one case was stopped because it did not include a report of misconduct. In the 12 approved cases, the APC sent recommendations to employers to cease retaliation. The APC did not grant protection to people who did not qualify under the law. Additionally, two cases were forwarded to the police because whistleblowers requested physical protection.

The full picture of the result of the APC's recommendations is not known. Among recent cases, one each in 2020 and 2022, institutions did not comply with the APC's recommendations. This led the APC to alert supervisory authorities, recommending that they intervene on the whistleblower's behalf. In at least one case in 2023, an employer complied with the APC's recommendation to stop retaliation. According to media reports, several employees have been reinstated – including one who was promoted – after the APC granted them protection.

In addition to handling retaliation cases, the APC imposed fines totaling €1,250 for violations of the whistleblower provisions in the Law on Prevention of Corruption.



The State Commission for Prevention of Corruption (SCPC) said it has received three requests for retaliation protection, two of which came from the same person. This number very likely is higher, based on media reports and research by the Southeast Europe Coalition on Whistleblower Protection. The actual number is not known.

In the case of the person who submitted two requests, the SCPC said it sent a notice to the person's employer and to the inspection authorities. The employer ignored the notice and transferred the person to a workplace 50 kilometers from Skopje. Inspection authorities intervened and the employer reversed the transfer. The person filed a second protection request after the employer threatened disciplinary measures toward dismissal. The SCPC and inspection authorities again intervened, but the employer dismissed the whistleblower. The whistleblower won a two-year-long case and was reinstated. The SCPC began a criminal prosecution against the person responsible for the retaliation, who later passed away.

In the other case, SCPC sent a notice to the employer, who explained the whistleblower had been transferred horizontally to another position due to changes in workload, and the person's salary did not change. Inspection authorities determined the transfer was not retaliatory, and the SCPC dropped the case. The whistleblower filed a court case, which was dismissed as unfounded. Despite this case outcome, the SCPC said it has not rejected any requests for protection.



In Serbia, employees who believe they have been retaliated against because they reported crime or corruption must file lawsuits if they wish to be protected, reinstated or compensated. Out of 300 cases filed over a nine-year period, 18 were fully or partially won. The other cases were dismissed, denied, withdrawn or finalized by other means, or are still pending, according to court officials. Compensation for material and non-material damage is minimal and rare. In 6 of the 18 cases whistleblowers each received between €500 and €1,000.

Courts heard 26 proceedings for violations of the whistleblower law. In four cases, companies received court warnings, and in one convicted no penalty was ordered. Judicial officials who were interviewed said some judges do not have sufficient knowledge to hear whistleblower cases, even though the whistleblower law requires training.

Takeaways and Observations

Every year, hundreds – perhaps thousands – of people in the Western Balkans report evidence of political corruption, financial fraud, abuse of power, public health dangers and environment crimes. This confirms many long-held assertions in the region: corruption and misconduct are real problems, citizens care about these problems, public authorities need citizens' assistance to root out corruption, and many people are willing to report violations regardless of the risks. From this perspective, these countries have taken the difficult first steps to engage their own citizens in anti-corruption efforts.

Whistleblower protection may have started in Southeast Europe a decade ago as an experiment. But today, due to productive partnerships between public officials and civil society, it is improving. Compared to most other regions in the world, Southeast Europe is well advanced in this process. There is progress with regard to activating specific institutions responsible for handling whistleblower cases, with countries resolving cases administratively and in court.

Despite the presence of whistleblower laws and systems, challenges remain in protecting people from dismissal, harassment, threats, lawsuits and prosecution. Countries generally do not provide sufficient data and information to the public on the reasons that protection requests have been granted or denied.



ALBANIA

Introduction

Albania has had a law on whistleblowing since 2016. The law was enacted to address suspected acts or practices of corruption within public and private organizations. It protects individuals who report such activities, commonly known as whistleblowers. Before the implementation of this law, whistleblowers often faced retaliation and lacked proper channels for reporting corruption. The law establishes procedures for reporting complaints, protecting whistleblowers' confidentiality, and ensuring their safety from reprisals. It also mandates investigations into reported allegations and imposes penalties for any retaliation against whistleblowers.

This legislation reflects Albania's commitment to combating corruption and promoting transparency and accountability in its public and private sectors. It aligns with international best practices for whistleblower protection and contributes to Albania's efforts to strengthen governance and the rule of law. Notably, it is closely linked to Albania's EU membership path and Albania's commitment to upholding EU standards in the fight against corruption. While positive advancements in the fight against corruption form a prerequisite for the country's future EU membership, the efficacy of the Whistleblower Law in Albania becomes particularly relevant following the unified legislation at the EU level (the 2019 EU Whistleblower Directive). This is because candidate countries for EU membership have an obligation to transpose the *acquis* into their national legislation.

This chapter aims to assess the law's efficacy since it was passed. The data was gathered from online sources, typically reports by relevant state institutions, monitoring reports conducted throughout the past years by various organizations, and media sources, as well as through a focus group discussion. By analyzing and comparing them over time while including new insights from the focus group, this study seeks to identify whether there have been any improvements or if there are persistent shortcomings in the application of the law. The former help identify best practices, while the latter help inform policy recommendations. A solution-oriented approach to whistleblower protection is at the core of this study's concept.

Overview of data

According to the Albanian Helsinki Committee (AHC) report, in 2017, only one request for protection from retaliation in the eleven Albania's line ministries was recorded (at the Ministry of Justice) but was handled by the external channel of the High Inspectorate of Declaration and Audit of Assets and Conflicts on Interests (HIDAACI).⁶ In 2018, three such requests were handled, originating from the public sector. Meanwhile, for January-November 2019, only one request for protection from retaliation is recorded. Requests for protection from retaliation are submitted when whistleblowers face disciplinary measures such as 'dismissal from work.'

Table 1. Whistleblower cases handled by HIDAACI, 2017-2022

Year	Number of reports	Type of case or Institution	Measures on a given year
2017	4	breach of legal obligations regarding conflict of interest	140 penalty cases to authorities that have not established and reported responsible units within legal deadlines, 3 additional penalty cases, and resolution of conflict-of-interest cases by the dismissal of the respective officials (number unknown)
	3	a breach of law in tender procedures	
	1	a breach of court decisions and falsification of documentation in judicial processes	
	1	request for protection against retaliation	
2018	6	a breach in the exercise of the functional duties of specialists in public authorities	1 penalty case and 2 conflict of interest cases resolved by the dismissal of respective officials
	2	a breach of law in procurement procedures	

⁶ Albanian Helsinki Committee, [Sinjalizimi i Korrupsionit në Shqipëri: Sfidat e Zbatimit të Kuadrit të Ri Ligjor](#), 2020.

	6	a breach of court decisions and falsification of documentation in judicial processes	
	2	conflict of interest	
	224	private sector	discarded as not in accordance with the provisions of the law
	3	request for protection against retaliation	refused, retaliation concern deemed unfounded
2019	14	duty abuse	11 penalty cases and resignation of officials who have been in conflict-of-interest conditions
	1	request for protection against retaliation	refused, retaliation concern deemed unfounded
	1	a breach of law in procurement	2 disciplinary measures, 2 discarded, 1 penalty, 1 conflict of interest case resolved
	1	corruption affairs	
	1	Employment Agency (Ministry of Finance)	
	2	Internal Affairs Service (Ministry of Interior)	
	1	duty abuse	
	2	private sector	
	1	public sector (unknown)	
	2020	1	request for protection against retaliation
6		Municipality of Tirana	In overall, 48 penalty cases, 2 referrals for penal prosecution, conflict of interest cases resolved (number unknown), dismissal of civil servants (number unknown)
2		duty abuse	

	2	unknown from the public sector	
	1	private sector (unknown)	
	321	private sector	discarded as not in accordance with the law
2021	1	request for protection against retaliation	accepted, referral for protection measures
	3	National Radio Television	penalty for 20 organizations for noncompliance 2 discarded (no investigation), 1 recommendation for improvement,
	1	State Supreme Audit	discarded, no investigation
	2	Agency for Agriculture and Rural Development	discarded, no investigation
	6	public sector (unknown)	
	1	private sector (unknown)	
2022	2	request for protection against retaliation	refused, retaliation concern deemed unfounded

Source: Author's compilation of HIDAACI data (annual reports).⁷

The data indicates that there has not been a consistent rise in whistleblower cases managed by HIDAACI. The number of reports increased only relatively significantly in 2018, two years after the law entered into force. The number declined until 2022, when it increased again and reached the same level as 2019. There is a lack of data regarding the examination of cases that were dismissed or denied protection from retaliation, making it difficult to understand how authorities reached these decisions. Additionally, there is no information about the specific protection measures implemented, such as whether the whistleblower was reinstated in their workplace. An observation made by journalist Artan Rama in 2023 showed that the dedicated annual reports of public institutions obligated to report to HIDAACI do not contain more than 200 to 300 words and almost no data on whistleblowing.⁸

For this report, we requested information from HIDAACI to gain insights into the individual cases where protection from retaliation was denied. We inquired about the nature of the reports and detailed information on the investigations. However, the

⁷ See High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest, [Raporte Vjetore](#).

⁸ Center for the Study of Democracy and Governance in Albania, June 28, 2023, „[Whistles that aren't blowing loudly](#).”

response we received merely reiterated the language of the reports, referencing the law and the definition of retaliation and stating that no retaliation attempts had been found according to the law. Specifically, when we asked about the one case in 2020 where HIDAACI claimed to have provided protection, we sought details on the protective measures, e.g., reinstatement to the workplace. The formal response stated, “The measures foreseen in Article 18 of Law No. 60/2016, as amended, have been taken, requesting the organization to cease retaliatory actions against the whistleblower.”

Regarding the other case for the year 2021, the formal response stated that “there is no record of a request for protection against retaliation where retaliatory actions have been found in the sense of the law.” This runs counter to the 2021 report published by HIDAACI where on page 13, paragraph 1 is stated: (...) during the reporting year, in the exercise of its legal competencies as an external reporting mechanism for whistleblowing and requests for protection from retaliation, the High Inspectorate has registered and handled a total of 11 whistleblowing cases and one request for protection from retaliation, all coming from the public sector. Analyzing the presented cases, it turns out that ten external whistleblowing cases came from the public sector, and one case belonged to the private sector.

Table 2. Total whistleblower cases handled annually by HIDAACI, 2017-2022

Year	Number of reports
2017	8
2018	19
2019	15
2020	10
2021	12
2022	15

Source: HIDAACI annual reports.

In a previous response to a request for information on January 31, 2020, HIDAACI indicated that during 2017-2019, they registered and handled 38 whistleblower requests and five protection cases from retaliation in several public institutions. However, the administrative investigation concluded that none of the cases had resulted in direct or indirect retaliation.⁹ As of 2020, HIDAACI referred some cases requiring investigation to the designated institutions. While the Prosecution decided not to initiate procedures for the two cases referred from the Inspectorate, the State Supreme Audit Institution evaluated seven cases referred by HIDAACI as complaints of an administrative nature and as evidence for verification during the next audit in the respective institutions. Out of these seven cases, only one was followed up by an administrative investigation. In 2020 and 2021, HIDAACI referred two cases for

⁹ Fakteje.al, April 21, 2020, „[‘Sinjalizuesit’ e munguar.](#)“

protection against retaliation, but there is no data on the kind of measures that were taken.

As of 2022, in a formal response to a request for information, the Ministry of Justice confirms the referral of 16 criminal complaints and three additional criminal complaints to the Prosecutor's Office involving 37 individuals (employees/workers) and other unidentified individuals.¹⁰ On the other hand, according to written communication, all criminal complaints submitted to competent prosecutors have been processed by registering them and are undergoing investigation of the reported issues/cases.¹¹

The AHC has previously raised other issues concerning HIDAACI. Following their monitoring report published in 2020, the AHC assessed that the anonymity mechanism provided for by the law, which considers the need for the non-disclosure of the whistleblower's identity, will encourage public servants/employees to report suspected acts or practices of corruption in their workplace. A different interpretation of the provisions for anonymous reporting could discourage potential whistleblowers.

The 2020 report by the AHC also found that the level of information about the legislation for whistleblowers and the awareness of the employees of the Ministries monitored for this law was very low.¹² This is also true for municipalities, some of which, as of the AHC 2021 monitoring report, had not taken part in any informative sessions/trainings, except for those conducted by the High State Inspectorate.¹³ The number of periodic training /informative sessions and a narrower time frame between them are necessary.

Table 3. Whistleblowing training sessions by HIDAACI, 2017-2022

2017	2018	2019	2020	2021	2022
Training for 32 units	12 training sessions for 226 units in the private sector (in collaboration with the OSCE)	14 training sessions for 217 members of responsible units (with the Albanian School of Public Administration)	10 online sessions for 163 civil servants in municipalities	7 training sessions for the private sector for 220 members of responsible units	1 representation in the 8 th meeting of the European Commission on the use of whistleblower electronic platforms
2 seminars for 28 inspectors	3 meetings/focus group activities (with the CSDG)	8 training sessions for 95 members of responsible units (with OSCE)		1 training session (Regional Anti-corruption Initiative)	1 training session (Regional Anti-corruption Initiative)

¹⁰ Faktoje.al, July 15, 2022, „[Dështojë strukturat e denoncimit të korrupsionit, numër i ulët i referimeve dhe hetimeve nga drejtësia.](#)“

¹¹ Ibid.

¹² Albanian Helsinki Committee, Raport Monitorimi, 2020, p. 11.

¹³ Albanian Helsinki Committee, [Sinjalizimi i Korrupsionit në Bashki: Sfidat dhe Vështirësitë e Zbatimit të Legjislacionit në 10 Bashkitë e Vëndit](#), 2021.

1 study visit in the Netherlands for 8 inspectors		Informative sessions for 213 civil servants in 10 ministries			
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Source: HIDACCI (annual reports) and CSDG (report).

The CSDG also conducted a meeting with the responsible employees of the whistleblowing reporting unit at Internal Affairs Service and Complaints in 2018. In 2019, CSDG organized one meeting at the General Directorate of Police and one focus group at the General Directorate of Prisons. In the same year, 12 round tables and focus groups took place at the Local Police Directorates/Regional Border and Migration Directorate in the cities of Durrës, Gjirokastër, Kukës, Vlorë, Korçë, Shkodër, and Institutions for the Execution of Criminal Decisions (IECD) in the cities of Tiranë, Peqin, Korçë, Fier, Shkodër, and Lezhë. The total number of participants in these activities was 121 employees from six Local Police Directorates, including employees from the Regional Border and Migration Directorates and 104 from six Institutions for the Execution of Criminal Decisions. Two concluding meetings were organized in 2019 at the General Directorate of Prisons and the Security Academy to present the main findings from the project's overall implementation and discuss challenges and possible recommendations regarding the successful implementation of the law in security institutions.

Such training sessions are necessary to equip employees with the tools and knowledge to handle whistleblower cases, and civil society can play an essential role in sharing expertise. Notably, HIDAACI's annual reports show that most training sessions took place in the first years after the passing of the law and have declined, indicating the need for more engagement with relevant stakeholders in this field. According to Alkida Llakaj (Parliament of Albania), HIDAACI needs additional resources to carry out the work, especially in building capacities.¹⁴

According to an interview in 2023, Llakaj stated that 40 percent of public and private institutions do not comply with the obligation to set up a whistleblower channel. Likewise, at the ministerial level, employees lack sufficient and necessary information regarding whistleblowing. For instance, as of 2023, two out of three employees of the Ministry of Tourism and Environment have not trained accordingly. The Ministry of Infrastructure and Energy lacked internal mechanisms for reporting. As of 2023, another agency, the National Agency for the Preservation of Protected Areas (a public authority with over 300 employees), had not established internal reporting channels.

When setting up compliance units for whistleblower protection, there has been a gradual rise in both the public and private sectors until 2021. However, while the private sector has seen a continued increase in 2022, there has been a notable decline in the public sector.

¹⁴ See documentary „Whistles that aren't blowing loudly.“

Table 4. Establishment of compliance units, 2017-2022

Year	Public sector	Private sector
2017	163	446
2018	166	446
2019	168	444
2020	168	440
2021	362	527
2022	199	565

Source: HIDAACI (annual reports).

In our request for information to HIDAACI, we also inquired about the decrease in the number of responsible units in the public sector. The explanation given was that this decline was due to the implementation of the Decision of the Council of Ministers No. 816, dated 16.11.2016, which specified in point 6: “Public authorities that have territorial branches in the Republic of Albania create the responsible unit only within their central structure.” Consequently, the decrease occurred because responsible units had previously existed in the regional structures of public authorities, whereas, according to the provision, these units should have been established only at the central level.

The private sector

As of July 1, 2017, the law applies also to the private sector (businesses with over 100 employees). While the compliance units have increased over the years, very few valid reports are coming from the private sector. Furthermore, the annual reports of HIDAACI show that most of the referrals have been dismissed as not in accordance with the law, which may indicate the lack of knowledge of compliance officers in the private sector as to what constitutes a whistleblowing act. As of 2021, out of 527 private companies obliged to whistleblowing reporting channels, only half of them had submitted reports on whistleblowing to HIDAACI.

Municipalities

According to the 2021 report by AHC concerning whistleblowing in ten municipalities, these institutions face challenges similar to those of central governance bodies.¹⁵ There have been significant delays in implementing the law, such as establishing responsible units and approving procedural rules, particularly those protecting against retaliation. Moreover, compliance officers lack training and financial incentives, often juggling multiple duties. Additionally, there is low awareness among civil servants about whistleblowing practices.

¹⁵ Albanian Helsinki Committee, *Sinjalizimi i Korrupsionit në Bashki*, 2021.

Five municipalities submitted their annual reports to HIDAACI past the legal deadline, causing delays.¹⁶ The report also highlighted that some municipalities' compliance officers had never participated in HIDAACI training sessions. Furthermore, compliance officers in five municipalities expressed a need for colleagues with legal backgrounds.

The AHC found only one municipality that had published compliance officers' names and contact information on its website. AHC urged other municipalities to follow this example. Including a special section on the website dedicated to whistleblowing and reporting guidelines would also be beneficial while ensuring the confidentiality and protection of personal data in any online contact forms. However, only nine out of 60 municipalities has set up a dedicated section for whistleblowing on their websites, including full contact information (namely, Tirana, Devoll, Himara, Lushnje, Mirdita, Prrenjas Rrogozhinë, Shijak, Shkodër). The Municipality of Konispol and Municipality of Kukës give the name of the compliance officer but no other contact details. The rest have attached the legislation or other whistleblowing regulations but no contact information. Ten municipalities give absolutely no information about whistleblowing.¹⁷

Until now, there has been only one whistleblower case recorded in the Municipality of Tirana. This case was dismissed after the whistleblower failed to provide sufficient evidence. However, an investigation by the responsible unit also found no proof of corruption in the related institution.

Media

Several organizations, including the CSDG and the AHC, have recommended avoiding using terms with negative connotations for whistleblowers in the media, as these terms convey incorrect ideas to the public regarding the role and importance of whistleblowers. During meetings with employees of the ministries and responsible units, it has been noted that the use of 'negative' terms in the media sometimes demotivates whistleblowers from reporting. Nonetheless, these negative connotations persist to some extent, as indicated by recent examples below:

- "The Whistleblower Law will also change; businesses with 50 employees will have 'spies'"¹⁸
- "Taxes for businesses are increasing; they will also pay for 'spies'"¹⁹
- "764 'whistleblowers' were paid in 2022 to spy on only 6 corruption cases!"²⁰

While the actual content may be somewhat informative of the law and the term 'whistleblower' a) had been clarified (see the first set of footnotes) or b) sometimes the articles may even lack any substantial information (see last footnote), the negative

¹⁶ Ibid.

¹⁷ Most recent date of website access: September 12, 2024.

¹⁸ 2023: Monitor, November 30, 2023, „[Ligji për sinjalizuesit do ndryshojë edhe bizneset me 50 të punësuar do të kenë .spiunë](#)“; Shqiptarja.com, December 1, 2023, „[Ligji për sinjalizuesit do ndryshojë edhe bizneset me 50 të punësuar do të kenë .spiunë](#)“

¹⁹ 2023: Gazeta Telegraf, December 1, 2023, „[Shtohen taksat për bizneset, do paguajnë edhe .spiunët](#)“

²⁰ 2022: Gazeta Dita, 1 June 2023, „[764 bilbilfryrës u paguan më 2022, për të spiunuar vetëm 6 raste korrupsioni](#)“

portrayal of whistleblowers in the headlines appears to serve the increase of traffic in their online websites or social media. While acknowledging that the usage of words, such as 'spies,' may attract attention to the articles, the media should refrain from this choice of wording as it goes against good journalism standards and ethics.

On the other hand, there are other media, such as the Albanian Center for Quality Journalism (ACQJ), part of the Southeast Europe Coalition of Whistleblower Protection, that offer their own reporting tool '[Sinjalizo/Blow the Whistle](#)' and follow up on the cases via their investigative journalism team. One such instance was an extensive investigative article in 2022 based on information from a whistleblower regarding a hidden case of bird flu involving public institutions. Ariel Vasili, a university specialist in Clinic, Management, and Breeding of Wild and Exotic Animals, contacted the Center, provided evidence, and discussed the case with the ACQJ team. Vasili emphasized, "They [the authorities] have not done anything to prevent this." Competent in such matters, Vasili openly discussed the bird flu, highlighting the state's (ir)responsibility and its consequences. "Management became disastrous the moment they tried to conceal it. It was absurd. When we began refuting media rumors about the severity of the flu, we were wasting time. We were already too late. With a viral disease like this, every hour is crucial; after 12 hours, we lost 30% of our chances to intervene," Vasili stated.²¹

However, most whistleblowers prefer to remain anonymous. When contacted for insights on why whistleblowers often approach the media and whether they know the Whistleblower Law, the ACQJ shared their observations from working directly with anonymous whistleblowers. According to the ACQJ, many online whistleblowers fear being identified, losing their jobs, and being unable to provide for their families. While the ACQJ informs them about the law and protection mechanisms, these whistleblowers remain uncertain about protection from retaliation. The ACQJ recommends that authorities intensify efforts to provide detailed guidance on whistleblowing and promote public information on how to file reports, emphasizing the need for better public outreach. Additionally, incidents like leaking personal and confidential information from the government portal E-Albania have heightened concerns about protecting privacy and confidentiality.

On a personal level, the ACQJ notes that whistleblowers trust journalists and feel safe reporting to them, believing their anonymity will be protected since journalists do not reveal sources without prior consent. However, some whistleblowers had initially used internal institutional channels, only to encounter dead ends and unfulfilled promises of protection. In some cases, they had faced reprisals, such as dismissal, after their reports and saw no action being taken to investigate their reports. At least 153 investigations or denunciations have been published by ACQJ from 2020 to 2023 as a result of 'online whistleblowers.' Below is the list of reports received by ACQJ through their reporting channels.

²¹ Albanian Center for Quality Journalism, March 29, 2022, „[Gripi i shpendëve, ekspertët: Institucionet e fshehën të vërtetën. Pasojat ranë direkt mbi kompanitë dhe konsumatorin.](#)“

Table 5: Data from the media whistleblowing portal ‘Sinjalizo’

INSTANCES OF COMMUNICATION OF WHISTLEBLOWERS WITH THE ACQJ								
Year	Comment	Means of Communication						
		SecureDrop Platform	Instances when relevant information used	WhatsApp	Email	Direct Contact with Journalists	Signal and Telegram	Mail in Post
2020	For Email, Telegram and Signal, for the first trimester of the project. Communication channels under construction and whistleblower program kickoff in January 2021.	0 instances	Platform under construction until January 2021	2 instances	0 instances	3 instances	0 instances	0
2021	Until end of project date (by 09.30.2021)	16 instances	9	8 instances	3 instances	12 instances	2 instances	0
2021	With the beginning of the new project (from 10.01.2021)	3 instances	0	5 instances	3 instances	7 instances	0 instances	0
2022		23 instances	14	17 instances	4 instances	45 instances	3 instances	0
2023	Until 07.31.2023	17 instances	9	24 instances	2 instances	26 instances	1 instance	0

Source: ACQJ.

Public whistleblowers

Throughout this timeframe, Albania witnessed three instances of public whistleblowing, one of them in 2014, prior to the law, when police inspector Dritan Zagani highlighted that the cousins of the (then) Minister of Internal Affairs, Saimir Tahiri, were involved in drug trafficking.²² The prosecutor paid no attention to his report and took no action to clarify the case. Police inspector Zagani was arrested as an act of intimidation. Immediately after his release, Zagani left for Switzerland and sought political asylum there.

Another notable case was Dr. Ilir Allkja, an emergency room physician at the University Hospital Center (QSUT), who raised issues regarding COVID-19, particularly the inadequate provision of protective gear for hospital staff. On December 30, 2020, the QSUT Director terminated Dr. Allkja’s employment, alleging he had breached ethical standards by disseminating false information. In response, Dr. Allkja released a proactive and constructive video message, calling for improved management of the situation and safeguarding lives. However, this initiative was met with a smear campaign. Before going public, Dr. Allkja exhausted all internal channels for raising his concerns, including written requests. Ultimately, he brought his case to court and the Administrative Court deemed his dismissal illegal.²³

Another case involves Ardian Koçi, the director of the Fier Administration for Protected Areas, who was relieved of his duties in 2023 due to ongoing conflicts with the Ministry of Tourism and Environment.²⁴ These conflicts stemmed from Koçi’s and his office’s

²² See article by SCOOP Macedonia, February 10, 2022 „[Shqipëria akoma nuk ka një rast të rëndësishëm të fituar nga një sinjalizues.](#)“

²³ See article by Ben Andoni/Southeast Europe Coalition on Whistleblower Protection, May 20, 2021, „[Chronicle of a dismissal foretold, or how much the truth costs in Albania.](#)“

²⁴ As portrayed in the documentary „[Whistles that aren’t blowing loudly.](#)“

social media posts, advocating for his unit's work and highlighting problems concerning protected areas. While monitoring visitor numbers at the Divjakë-Karavasta National Park, Koçi identified discrepancies between visitor numbers and reported revenues, raising concerns of misuse. Despite pressure to remain silent and obtain approval for all social media posts from his institution prior to publication, Koçi persisted. Eventually, he was coerced into resigning due to his media communications and social media activity. Koçi also alleges attempted blackmail, with threats of evidence of misconduct on his part, prompting him to challenge his superiors and the Ministry to involve the Prosecutor's office. Subsequently, he faced disciplinary action for a previous interview with Voice of America, despite it being supportive of and promoting the Ministry's work. Koçi's case gained widespread attention due to public outcry from civil society and environmental organizations. In response to public pressure, the Ministry reinstated him, albeit Koçi reports that the behavior toward him remains antagonistic, and his supervisors have even reduced necessary resources for him to carry out his duty.

While public cases often receive widespread attention and civil society has been an important actor advocating for public whistleblowers, these cases should not be left to the power of pressure coming from below but should be protected already by existing laws. However, the law does not offer protection to whistleblowers once they go public, which is another reason that makes public whistleblowing challenging. While the EU Whistleblower Directive sets up minimum required protection measures, whistleblower protection mechanisms could also include public whistleblowing cases of high public interest. The Directive stipulates that individuals who make an anonymous disclosure through internal, external, or public channels will enjoy the same protection as other whistleblowers if they are ever identified, and retaliatory measures are taken against them.²⁵ Moreover, proposals to improve the legal framework also include broadening protection to the whistleblower's immediate family members, who may likewise face retaliation.

Focus group discussion

On September 11, 2024, CSDG held a focus group with participants from the Ministry of Anti-Public Administration and Anti-Corruption, Ministry of Justice, HIDAACI, responsible unit in the Municipality of Tirana, Chamber of Commerce and Industry in Tirana, legal experts, and civil society. The participants were informed about the project's background, objectives, and expected outcomes. Subsequently, the group discussed the legal and institutional framework, the annual data from HIDAACI, the communication with institutions, the perceptions of the public administration, and the societal factors impacting whistleblowing. They identified a set of problems, legal gaps, and measures that could be taken to improve whistleblower protection systems.

Bridging confidentiality and transparency requirements of HIDAACI

Participants encouraged HIDAACI to involve more qualitative indicators in their annual reports, ensuring the public is informed about the protection measures. While HIDAACI

²⁵ EQS Integrity Line, „[EU Whistleblowing Directive: All you need to know right now.](#)“

refrains from providing detailed data on the cases to protect the identity of whistleblowers, the participants considered that the institution has an obligation to transparency vis-à-vis citizens as well. Moreover, bridging these requirements would benefit HIDAACI as it would highlight their work and any positive results from whistleblowing cases.

Improving the legal framework via new measures and an intersectional approach

The participants agreed that the legislation should clarify protection measures and retaliation responses better. This is highly relevant given that the law is expected to change in the following months to align with the EU Whistleblower Directive. The Ministry of Public Administration and Anti-Corruption confirmed that an intersectional approach is incorporated in the anti-corruption strategy where whistleblowing has a dedicated section. Other proposed measures included financial compensation in line with international best practices. Although this was discarded previously due to concerns over unwanted effects, such as reporting fictional corruption cases, participants thought this measure would have to be included eventually, provided that the responsible institutions can control and mitigate this risk.

Towards independent compliance units

The participants discussed the challenges observed by compliance units within institutions that are obligated to establish internal reporting channels. Participants consider that these units stand in direct conflict of interest since they form part of the institution's hierarchy and are, therefore, dependent on the head of the institution. Following standard procedure, compliance units need the signature and stamp of the head of the institution to approve the opening of potential whistleblowing investigation cases. Some participants suggested that the request to open the investigation could be forwarded for approval without giving details about the case. However, other participants were worried about potential scenarios where higher-ups or the head of the institution could be involved in such cases and jeopardize the autonomy of the compliance unit and the impartiality of the investigation. Examples were provided, such as (1) the Public Administration and Anti-Corruption Ministry creating this unit to handle cases across all institutions or (2) creating completely external independent units.

Closing the feedback loop

The discussions also raised the problem of closing the feedback loop once a whistleblower officer refers to a case for further investigation. The discussions evidenced the lack of communication between institutions regarding the case outcome.

An improved communication strategy to raise awareness and train public servants

Participants noted that compliance officers often change in responsible units. One suggestion was to monitor these changes to ensure that any new staff is adequately

trained. Hence, a communication strategy is needed to outline the number of training sessions and the target groups in a more informed manner. The second question is whether HIDAACI's capacities are adequate to investigate an increased number of cases in the future due to potentially better-trained units that will be referring more cases to HIDAACI.

Indicators to encourage whistleblowing

Participants were concerned that political pressures create a public administration environment that is hostile to whistleblowers. Several cases were brought to the discussion by a civil society representative in which the NGO had reported corruption and no institutional action had been taken. The lack of institutional response sends a negative signal to individuals within institutions that they, alone, are powerless in front of corruption affairs. The participants agreed that an indicator of the effectiveness of the law and the seriousness of institutions is the punishment of corruption cases, especially among medium to high ranks.

For instance, participants emphasized the lack of corruption reports from the public administration according to 2023 official data, except for the State Supreme Audit Institution. Therefore, the lack of successful high-level whistleblower cases is considered an indicator of ineffectiveness.

Other participants shared their personal experience on training junior staff on topics, such as work ethics and managing corruption risks. They noticed that, in many cases, the mindset toward obeying the direct orders of the supervisor prevailed over ethical concerns. Hence, they concluded that integrity education was a critical component in creating a safe environment for whistleblowers. An increased practical focus on integrity would indicate commitment to fostering anti-corruption reports.

An important indicator of political will, which would encourage whistleblowing, is to have a public administration free of political pressures. According to the participants, especially from civil society, it is very difficult to encourage whistleblowing under the current state of public administration with political pressures and retaliation attempts. Specific cases were laid out as examples of such pressures. Civil society considers that rebuilding the public administration should precede legal changes.

Finally, an indicator of hostility toward whistleblowers is the perception of them as spies. Unfortunately, according to the participants' experiences, these perceptions persist in society and within public servants, emphasizing the need for a wide range of actions to counter negative stereotypes about whistleblowing.

Out-of-the-box thinking – Engaging the private sector

Participants suggested that innovative solutions are needed to protect whistleblowers and encourage whistleblowing. To this end, they considered informative leaflets insufficient and that awareness-raising campaigns should take a more practical approach to whistleblowing. Engaging the private sector was considered crucial, especially since some of the bigger companies have well-established whistleblowing channels. The Ministry of Public Administration and Anti-Corruption has included the private sector in the anti-corruption strategy by holding periodical meetings and discussions to inform businesses of their obligations and their potential positive impact in curbing corruption.

Recommendations

HIDAACI

- **Bridging confidentiality and transparency requirements:** HIDAACI should invest in systematic data collection on whistleblower cases, including why they may have been discarded or not offered protection, and, in case of protection, specify the protective measures. Do not include whistleblowing only as a section of the annual report; provide a separate report concerning whistleblower cases in a more detailed manner while protecting the whistleblower's confidentiality.
- **Establish a communication strategy to ensure adequate information exchange and training opportunities:** Evaluate the efficacy of the informative channels within institutions to ensure employees know the protection mechanisms. Create a database of private sector reporting channels and evaluate the current whistleblowing infrastructure in the private sector. The monitoring should include changes in personnel to effectively plan targeted training to ensure that new compliance officers are equipped with the knowledge and skills to handle whistleblower cases.
- **Identify best practices through international cooperation:** Intensify exchange programs and workshops with professionals in countries with robust whistleblower protection systems. Learn from international best practices and incorporate them into domestic systems.
- **Capacity-building:** Considering HIDAACI's various responsibilities, they should evaluate the necessary supplementary resources to raise awareness of whistleblowing in the public and private sectors and undertake activities accordingly.
- **Introduce whistleblower satisfaction surveys:** Create feedback mechanisms through anonymous surveys to assess how whistleblowers feel about the protection they received.

Legislators

- **Clarify and strengthen the possibility of anonymous reporting:** Amend the Law as needed to protect public cases of whistleblowing. Follow best practices from other countries that provide whistleblower protection reported publicly under the justification of issues of wide public interest.
- **Clarify and diversify the protection measures:** The law amendment should consider clarifying specific measures that are currently not included in it, such as the possibility of financial compensation or establishing additional support services for whistleblowers, such as through a dedicated unit in HIDAACI for legal advice.
- **Ensure post-disclosure protection:** Amend the law to ensure that whistleblowers are protected during the reporting process and after the case has been closed, particularly if they face reprisals or workplace challenges after their disclosure.

National and local governments

- **Raise institutional awareness on whistleblowing:** Municipalities should include information on whistleblowing and compliance units on their websites. They should also be more proactive in ensuring that the staff receives adequate training on how to blow the whistle and how to respond to whistleblower cases.
- **Increase integrity programs to fight negative perceptions of whistleblowing:** Intensify systematic awareness campaigns for both public and private sectors rather than sporadic campaigns. Collaborate with international partners to provide guidance and support in innovative public trust-building integrity programs to combat negative perceptions. Engage with educational institutions to pilot integrity initiatives. Target the educational staff in integrity programs.
- **Conduct in-depth studies to understand causes of under-reporting:** Create an intra-institutional annual forum to evaluate the causes of low reporting cases and discuss solutions. Engage academic institutions and scholars to initiate systematic analyses to identify causes of low reporting. The Ministry of Public Administration and Anti-Corruption could lead this initiative, providing resources and fostering partnerships to conduct in-depth studies of the complex causes of under-reporting.
- **Foster multi-sectoral collaboration to enhance whistleblower protection:** Decision-makers should collaborate with civil society, the private sector, and other relevant stakeholders to (i) provide accurate and timely information to assess the efficacy of the law and (ii) encourage working groups to provide industry-specific guidelines and address unique challenges across industries.
- **Invest in tech-based solutions to safe whistleblowing:** Secure and anonymous digital platforms can facilitate the easy reporting of whistleblower complaints. These platforms should be user-friendly and accessible across different sectors and industries.

Media

- **Raise awareness on whistleblowing following good journalism standards:** Considering the disinformation on whistleblowing in various media outlets, professional media could counter these perceptions both in written and audio-visual content.
- **Establish whistleblower media partnerships:** Encourage partnerships between media outlets and whistleblower protection organizations to minimize the risk of sensationalism or disinformation. Consider collaborating with civil society and public institutions to ensure accurate and ethical reporting on whistleblowing.
- **Collaborate with journalism schools to develop curricula on investigative journalism and whistleblowing:** Partner with journalism schools to incorporate modules on ethical reporting, whistleblower protection, and the role of investigative journalism in uncovering corruption.
- **Counter disinformation according to the fake news legal framework:** The Audio-Visual Media Authority should apply legal sanctions to media portals that disinform on whistleblowing.

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BOSNIA AND HERZEGOVINA

Bosnia and Herzegovina

Senka Kurt

Introduction

An unsafe system, inadequate laws, insufficient protection of previously protected whistleblowers and barriers to retaliation, denial of economic security, and even security in general, have led to the fact that only a few in Bosnia and Herzegovina have become protected whistleblowers.

Corrupt activity in public opinion is perceived as normal, and the experiences of rare whistleblowers boil down to the statement: “I would never go through the same ordeal again” are the words of one of the whistleblowers.

The key problem and challenge is that competent institutions first decide on the intention, and then on the reported content. This already puts candidates at a disadvantage. When it comes to the whistleblower protection law, it needs to be supplemented with a definition of “good faith.” The signing of the agreement also requires the cooperation of the Agency for the Fight Against Corruption and Coordination of the Fight against Corruption (APIK).

A special problem in Bosnia and Herzegovina is its administrative and political division. There are four laws in Bosnia and Herzegovina that enable the protection of corruption whistleblowers, a The Law on the Protection of Persons who Report Corruption in BiH Institutions applies exclusively to civil servants and employees at the state level and does not include other levels.

In the Bosnia and Herzegovina entity Republika Srpska, the law does not recognize the procedure for granting the status of a protected whistleblower. In 2018, a draft law on the protection of whistleblowers was proposed in the Federation of Bosnia and Herzegovina, which is expected to be presented to Parliament by the end of 2024.

There are more two laws in Bosnia and Herzegovina that enable the protection of corruption whistleblowers: at Brčko District and Sarajevo Canton. The Law for Republika Srpska provides that anyone who has direct knowledge of committed corruption can file a corruption report. Corruption is reported to the head of the institution, and then to the court. The Law on the Protection of Whistleblowers does not provide for any specific protection other than a temporary measure imposed by the court.

The law of the Brčko District provides for reports on “violations of the law, other regulations, as well as irregularities in work and fraud that indicate the existence of corruption.” The Law in Sarajevo Canton stipulates that the Office for the Fight against Corruption grants whistleblower status, but the whistleblowers, if they suffer harmful activities, must go to court.

Institutional reporting on the protection of corruption whistleblowers is inadequate. First of all, the reporting is almost nonexistent. If a report appears, it is chronologically far ahead of the moment at which it is published, it is a very scanty material, without much information, explanations, dates, names of institutions. There is also no

information on possible findings of violations of the law on the protection of whistleblowers.

No one in BiH works to popularize or promote corruption whistleblowers, and that is one of the reasons that there are very few of them, and journalists and the media do not do this because they have no data.

Certain civil society organizations monitor the application of the law, and some of them, such as Transparency International in BiH, also provide legal assistance.

Number of requests for protection against retaliation submitted to public institutions

According to data from December 2023, the Agency for Prevention and Fight against Corruption in BiH (APIK) received two requests for the status of protected corruption informant from August 1, 2022, until June 30, 2023.²⁶

In the same period, APIK received 91 reports of suspected corruption. (Nota bene, in order to receive the status of a protected corruption whistleblower at the state level, the whistleblower must be employed in an institution, have evidence of reporting corruption, and prove that he/she reported corruption in “good faith”).

Since the beginning of the application of the law in 2014, a total of 24 people have applied to APIK.

Institution	Period of Time	
Agency for Prevention and Fight against Corruption in BiH (APIK)	2014-23	2023
Number of requests for granting the status of protected corruption informant	24 (11 request granted)	2 (1 request granted)
Number of applications report of suspected corruption	33	91

The law in the RS does not recognize the procedure for granting the status of a protected whistleblower. Since the beginning of the application of the Law, only two requests for judicial protection of whistleblowers have been submitted.

In the territory of Brčko District, since the Law entered into force, four persons have requested (and received) protection as corruption informants.

²⁶ <http://apik.ba/izvjestaji/izvjestaji-agencije/default.aspx?id=2941&langTag=bs-BA>

Eleven requests were submitted in Sarajevo Canton (The Law on Prevention and Suppression of Corruption in the Sarajevo Canton has been in effect since January 2023, and in the first 100 days of its application, the Office for Prevention and Suppression of Corruption in the Canton received 189 reports of corruption.)

For comparison, just in 2021, 19 persons reported corruption in the public sector to the Transparency International office in BiH.²⁷ In the RS, two requests for judicial protection of whistleblowers were submitted in the five years of application of this law.

Number of requests for protection from retaliation approved and the outcomes of each case

Jurisdiction	Number of approved protection requests
APIK (state level)	1
Republika Srpska	The RS law does not include a procedure for granting the status of a protected whistleblower
District Brčko	4
Canton Sarajevo	5 approved, six on hold

The Agency for Prevention and Fight against Corruption in BiH (APIK) has, in the period from August 1, 2022 until June 30, 2023 approved the status of a protected whistleblower of corruption in the institutions of Bosnia and Herzegovina for one person. Since the beginning of the application of the law, 11 persons have been granted protection.

The law in the RS does not recognize the procedure for granting the status of a protected whistleblower. In 2023, the Office for Assigning Whistleblower Status in Brčko District approved four requests for protection against retaliation. Sarajevo Canton, as of April 2023, had approved five requests, with six requests on hold.

Number of rejections for protection from retaliation and the reasons for each rejection

At the BiH level, one request was rejected because it “did not meet the necessary conditions for granting status.”

The law in the RS does not recognize the procedure for granting the status of a protected whistleblower. In Brčko District, there is no data on rejected requests for protection. In Sarajevo Canton, there is no data on rejected requests for protection.

²⁷ <https://ti-bih.org/wp-content/uploads/2024/04/TIBIH-NIS-2023-BHS-Web-FIN3.pdf>

Length of time needed for each decision

Existing laws provide that the decisions on the protection of corruption whistleblowers be made within 30 days of the report, with the fact that certain laws measure the time from the beginning of harmful actions for the whistleblower, regardless of whether harmful actions (measures) have occurred or whether it is only suspected that they could happen.

If the protected person is not satisfied with the behavior of the representative of the institution in which he/she reported corruption or suffers harmful actions - he/she can apply to the court within 30 days of finding out (according to the jurisdiction in accordance with the place of residence) and this claim must be resolved within a year.

Violations of the law on whistleblowers, and imposed penalties or sanctions

In Bosnia and Herzegovina, there is no information on violations of the Law on Whistleblowers, imposed penalties or sanctions.

Supervision over the implementation of laws at the BiH level is carried out by the Administrative Inspection (for the BiH level) and APIK.

Every year, the Agency must publish a list of institutions and legal entities where corruption has been reported, indicating the type of harmful actions taken against whistleblowers and information on the corrective measures taken, but it does not do so.

In Republika Srpska, supervision is carried out by the RS Administration for Inspection Affairs upon application or official duty authorized inspectors initiate misdemeanor proceedings. In the RS, responsible persons and competent courts are obliged to submit a report to the Ministry of Justice by the end of January of the current year on the number and outcome of received reports and procedures for the protection of persons who report corruption, which are conducted, and which were completed in the past business year. But they don't do that. The Ministry of Justice should then publish this information on its website and submit it to the Commission for the Implementation of the Strategy for the Fight against Corruption of Republika Srpska. That commission submits a report to the National Assembly and the Government of Republika Srpska. They don't do that either.

Public Institutions vs. Whistleblowers: Responsibility and Roles

In BiH, there is no possibility for a whistleblower to appeal before the court for protection, because the institutions that grant whistleblower status do not have executive powers. However, those who believe that they deserve whistleblower status could, in accordance with the law, complain about each level to other institutions.

At the level of Bosnia and Herzegovina, complaints by whistleblowers are answered by the Administrative Inspection at the Ministry of Justice.

In Republika Srpska, the deadline for filing a lawsuit is 30 days from the day of acknowledgement of the harmful consequence, and no later than one year from the day of the harmful consequence. When the whistleblower previously used internal protection, then the whistleblower has a deadline of 30 days after the decision or the expiration of the deadline for the responsible person's actions to turn to the court.

In Brčko District, there is an Office for granting whistleblower status. In that part of BiH, all persons over the age of 18 can report suspected corruption in administrative bodies, public enterprises, public institutions, funds and other legal entities of the District, but also corruption in the case of any other legal entity or entrepreneur, but only as a "violation law, other regulations, as well as irregularities in work and fraud that indicate the existence of corruption."

Supervision over the implementation of this Law is carried out by the Administrative Inspection of the District Government in public administration bodies and competent inspections in District institutions, public companies, institutions and other legal entities established by the District, the legal entities and entrepreneurs. (2) Exceptionally, in judicial institutions, supervision over the implementation of this law is carried out by the Judicial Commission of Brčko District of Bosnia and Herzegovina (hereinafter: Judicial Commission).

In Sarajevo Canton, it is the Ministry of Justice and Administration of Sarajevo Canton.

Processes and mechanisms for the protection of whistleblowers

At the BiH level, first is an investigation based on a report, then an instruction and then a corrective measure. In the RS, the court can impose protective measures to save the applicant from further harmful actions. In Brčko District, the Office issues recommendations and instructions, and in Sarajevo Canton, recommendations.

In addition, at all levels of government, court action of the complainant is foreseen if the employer or management body in the organization in which the corruption was reported took harmful actions.

Changes or improvements to laws or systems

Amendments to the law at the BiH level are being prepared, several meetings have been held, but it is still unclear in what direction.

Civil society organizations have been advocating for years the adoption of a law on the protection of whistleblowers in the FBiH, and one text has been circulating "in the procedures" between institutions for several years

The Law on the Protection of Whistleblowers of the Federation of Bosnia and Herzegovina was established in 2018, and was later referred to the parliamentary procedures, and at the time of the creation of this report (mid-2024) is still pending.

The Law on the Protection of Whistleblowers of the Federation of Bosnia and Herzegovina was adopted in 2018, and later it was referred to the parliamentary procedure, and at the time of writing this report it was announced that it will be before the Parliament at the end of October this year. The draft law regulates the protection of whistleblowers in the FBiH, the procedures for reporting irregularities, the scope of protection, the procedures for the protection of rights, the obligations of the entities to which this law applies, as well as other issues of importance for the protection of whistleblowers. This law, as stated in Article 2 of the Draft, partially takes over the Directive of the European Parliament and the Council of Europe of March 11, 2024 on the protection of persons who report violations of the rights of the European Union.

The law states that "every person has the right to report any form of violation of laws or regulations in the public or private sector that he learns about directly or indirectly" and defines in which cases the whistleblower has the right to protection. Among other things, persons who internally or externally report irregularities or publicly disclose information about irregularities, anonymous whistleblowers, as well as persons wrongly labeled as whistleblowers or wrongly labeled as persons related to the whistleblower have the right to protection. This law, as stated in Article 2 of the draft, partially adopts over the Directive of the European Parliament and the Council of Europe of March 11, 2024 on the protection of persons who report violations of the rights of the European Union.

The law states that "every person has the right to report any form of violation of laws or regulations in the public or private sector that he learns about directly or indirectly" and defines in which cases the whistleblower has the right to protection. Among other things, persons who internally or externally report irregularities or publicly disclose information about irregularities, anonymous whistleblowers, as well as persons wrongly labeled as whistleblowers or wrongly labeled as persons related to the whistleblower have the right to protection.

Reporting irregularities is defined by the law, which includes an article on the protection of personal data of those who report irregularities. Penal provisions are prescribed for legal and natural persons, as well as for natural persons who report or publicly disclose false information.

Findings from the focus groups

The subject focus groups were conducted as part of this project. The goals of conducting focus groups as a qualitative form of research were to find out opinions, views and, most of all, to collect experiences of different groups - media, activists, non-governmental and civil sector, university professors and competent insistence.

As part of the project, three focus groups were held with a total of 25 respondents. The media group had 10 (M - marked from 1 to 10), the group of activists, non-governmental

and civil sector had eight (C - marked from 1 to 8), and the group of competent institutions had seven respondents (I - marked from 1 to 7).

Before the actual research, this report was presented to all focus groups. All groups were recorded in video and audio format, and notes were taken during the focus groups, and the striking answers of the participants to some questions are listed below.

Challenges and opportunities in the whistleblower protection process

The participants of all three focus groups are unanimous in their opinion that the administrative division in Bosnia and Herzegovina and the diversity of laws at different levels of government represent one of the main challenges in the process of protecting whistleblowers.

The fact that there are four different ones in Bosnia and Herzegovina, and that the one at the state level applies only to civil servants and employees is already an obstacle at the beginning for those who would decide to report corruption.

We are talking about a system that is designed not to protect applicants, about undefined laws, about the unwillingness of institutions to talk concretely about what they are doing.

“Instead of actions, they only offer us numbers, which mean nothing to anyone. Unfortunately, almost no one except the media and certain non-governmental organizations and activists works on the promotion of corruption whistleblowers” - this is the opinion of M2 participants.

It was pointed out that in the last two years, the State Agency for the Prevention of Corruption (APIK) approved only two requests for protected corruption whistleblowers.

“If I may be rude, it's actually just a blurring of reality. You give someone a status and nothing! You don't live on status, you don't live on the fact that I have status if I'm not a protected person” - stated the interlocutor from focus group C3.

Under challenges, everyone from the focus groups agreed that only 24 people reported to APIK in a country where corruption is at a very high level.

For the participant from focus group C, it is particularly important that the law of Republika Srpska does not know the procedure for obtaining the status of a protected whistleblower.

“In the Brčko district, four people sought and received that status, but I have no information on how they used it or whether they are afraid of the government, the party or the institution today.” - states C-2.

Participants from all groups are unanimous in their opinion that citizens have a hard time deciding to report corruption because they feel that they do not have the protection of competent institutions. They get discouraged and at the start they are told that they should give up.

“As a lawyer and as someone who has been involved in the protection of corruption whistleblowers for 16 years, I would not advise anyone to report, because the retaliation that these people suffer is difficult to express” - says interviewee C1.

“We have raised numerous considerable applications, so far in the financial sense, perhaps around 600 million marks. We have whistleblowers, but we keep them and hide them, but we do not expose them in any way, neither in public, nor in our actions, because we believe that this is the best for them because they are not protected. On the contrary, we think they would be exposed to retaliation.” - C3 states.

The participant from M group believes that the key problem and challenge when it comes to the protection of whistleblowers is that competent institutions first decide on the intention, and then on the reported content. This already puts applicants at a disadvantage. And that's wrong. This makes the path of corruption whistleblowers more difficult instead of easier.

The participant from focus group C pointed to corruption, which is almost never talked about, and it is about sexual extortion, which is quite present in society, but is not recognized in the laws of Bosnia and Herzegovina.

“When a woman dares to report something like that, it will never be qualified as corruption, although it is in its essence.” - he stated.

Political, social, cultural and other barriers for the effective protection of whistleblowers

In two cantons in the FBiH, new offices for the fight against corruption (Tuzla and Unsko sanski) were established, but they have not yet defined what corruption is, how it is reported, in what way persons who report corruption will be protected.

What are the reasons that stop whistleblower protection?

The participants agree that the fact that the competent institutions study the motive of the corruption informant, check the allegations of the report rather than the corruption itself is meaningless. Corruption whistleblowers do not have any support in their actions, they pay for experts themselves and obtain documentation themselves.

“On the other hand, if they return to work, their colleagues are hostile towards them. I have information that as many as 52 percent of employees in state institutions would anonymously report corruption, but they give up.” - says the interlocutor.

There is a unanimous opinion that the fact that more potential corruption whistleblowers report to non-governmental organizations than to competent institutions says a lot.

It is a special problem in smaller communities, where condemnation and the environment are greater, given that people are more tightly bound by interest, party, business, and even family ties.

“It is also a problem when women are whistleblowers (Banja Luka) because the institutions try to divert her problem with corruption to her personal life. Her marriages, her relationships were counted, and her private life was talked about.” - a participant of focus group M draws attention to the problem.

Group M states that the implementation of the Whistleblower Protection Act should not depend on anyone. The law must be much stricter, APIK must work responsibly, make

decisions on protection very quickly, and only then check the facts. They have to "blow cold".

When a greater number of whistleblowers are protected, then all the obstacles we are talking about will be much easier and less.

Recommendations for further action

The unanimous opinion of all participants is that the system in Bosnia and Herzegovina is inherently insecure, and that is precisely why it happens that after filing a report, retaliation against those who report corruption begins.

It is necessary to do as soon as possible and as much as possible to restore citizens' trust in the work of the judiciary. This implies rigorous protection measures for those reporting corruption.

When it comes to the whistleblower protection law, it needs to be supplemented with the definition "in good faith". The cooperation of APIK and civil organizations is also needed by signing an agreement.

Each application should be approached in detail, our goal is to protect the applicant. But we really need to ask for the amendment of the provision concerning the granting of protection status. When they receive the status, in case of any reprisals, the manager receives a mandatory instruction and a personal fine. It is a form of protection of the applicant and it should be applied to the entire territory of Bosnia and Herzegovina. We should not deal with motives as much as verifying allegations.

It is necessary to work on the promotion of reporting corruption, to explain the entire procedure. On the other hand, corrupt activity is no longer perceived in public opinion as something illegal, immoral, and illegal.

In several cantons in the Federation (Tuzlan and Unsko - sanski) there are offices for the fight against corruption, but there is no legislative framework and rules for action in specific cases. The law has been waiting for a long time in those cantons, but there are no indications that it will be passed soon either in the cantons or at the level of the Federation.

Is it necessary to improve the work in the prosecutor's offices, to check who supervises the enforcement of the law? Why does APIK not publish a list of institutions and legal entities in which corruption has been reported every year? Why does the Republican Administration of Republika Srpska, that is, the Ministry of Justice of Republika Srpska not provide data?

It is necessary to change the law in the part where there is no possibility of a whistleblower's appeal before judicial protection, because the institutions that grant whistleblower status do not have the authority.

Conclusion

An unsafe system, inadequate laws, insufficient protection of previously protected whistleblowers and barriers regarding retaliation, deprivation of economic security, and even security in general have led to the fact that only a few in Bosnia and Herzegovina decide to be protected whistleblowers and corruption.

Corrupt activity in public opinion is perceived as normal, and the experiences of rare whistleblowers boil down to the statement: "I would never go through the same calvary again."

A key problem and challenge is that competent institutions first decide on the intention, and then on the reported content. This already puts applicants at a disadvantage.

When it comes to the whistleblower protection law, it needs to be supplemented with the definition "in good faith." The cooperation of APIK and civil organizations is also needed by signing an agreement.

Each application should be approached in detail, the goal is to protect the applicant. The provision of the Law concerning the granting of protection status should be changed. When they receive the status, in case of any reprisals, the manager receives a mandatory instruction and a personal fine. It is a form of protection of the applicant and it should be applied to the entire territory of Bosnia and Herzegovina. The judicial system should be strengthened and confidence in the judiciary should be restored.

Annex

Questions discussed in the focus group

- What challenges and opportunities are there in the whistleblower protection process, and also for whistleblowers themselves?
- What political, social, cultural and other barriers are there for the effective protection of whistleblowers in Bosnia and Herzegovina?
- Do you have recommendations for further action?
- What is your position on the protection of corruption whistleblowers in Bosnia and Herzegovina? Do you agree with the findings presented or do you have other insights?
- How involved are you personally (or through an institution/media/organization) in the protection process corruption whistleblower and what are your experiences?
- If you are personally involved in communication with corruption whistleblowers, could you, with the protection of privacy, of course, illustrate that communication to us: what are their most common questions, dilemmas and fears?

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KOSOVO

Summary

Law No. 06 /L-085 on the Protection of Whistleblowers came into force in January 2019. A year later, this law also became applicable to the private sector. Despite being praised as a law that aligns with the best international practices, there has not yet been a major successful case resulting from whistleblowing while there have been concerning reports of retaliation against whistleblowers.

This Law provides three kinds of whistleblowing: internally (to their employer), externally (to a relevant authority), or publicly (through media, NGOs, online platforms, meetings, etc.) Although statistics show that the number of external and internal whistleblowing reports continues to increase year by year, it cannot be concluded that there is a sufficient number of whistleblowing cases. According to data analyzed from APC's annual reports, from 2020 to 2023, there have been 54 external whistleblowing reports and 304 internal whistleblowing reports. Among these, 136 reports were registered at UCKK within one year (2020), but for this institution, no whistleblowing cases have been recorded after that year.

Although this Law provides protection for whistleblowers, many challenges still remain in its implementation. From discussions held in the focus group organized on these issues,²⁸ it was learned that the new Law on APC, limits the agency's actions in cases of external whistleblowing. It was emphasized that APC no longer has the authority to conduct preliminary investigations into cases reported to them, except in matters related to asset declarations, gifts, and conflicts of interest.

Other challenges affecting the low number of whistleblowing cases include issues related to the selection of officials responsible for receiving and handling whistleblowing cases within public institutions. Specifically, it appears that some institutions do not fully understand the importance of appointing these officials, leading to time gaps between the dismissal of the previous official and the appointment of the new one. Additionally, the issue of preserving whistleblowing case files during the period between the dismissal of one official and the selection of their successor was also highlighted.

The lack of understanding of the importance of this procedure causes institutions to neglect informing their staff about the whistleblowing procedure and who they should report these cases to. In some cases, staff are not even informed about the change of the official responsible for receiving and handling these cases. This can lead to situations where reports are made to individuals who are not competent.

One of the most problematic issues is the fear of retaliation from employers, as seen in one major case where Prime Minister Kurti himself was involved. In this case, the

²⁸ Focus group, held on 13 August 2024

whistleblower was suspended, sending a rather threatening message to potential whistleblowers.

All of this makes it difficult to eliminate the uncertainty and fear of retaliation among whistleblowers.

Introduction

In societies led by the principles of the rule of law and good governance, whistleblowers in the public sector are seen as a valuable asset for the protection of public interest. Public sector whistleblowers who report and expose key violations and issues within institutions, can be considered heroes among public officials with integrity, aiming to safeguard the public interest and uphold the values guaranteed by applicable laws.

Kosovo had a legal framework on protection of whistleblowers since 2011 with the Law on Protection of Informants²⁹. This law did not provide appropriate protection for whistleblowers, nor did it provide an accurate reporting system. Following this, in 2019 Kosovo adopted a new law, namely the Law on Protection of Whistleblowers³⁰, which addresses several unregulated situations related to the protection of whistleblowers.

The current law provides rights and protection of whistleblowers, types of whistleblowing, the judicial protection, misdemeanor provisions and annual reporting. Furthermore, the law has regulated the necessity of confidentiality, as well as the procedure, as well as competent authorities. The law also has specific provisions directed for the private sector.

Additionally, there is also a bylaw, namely the Regulation on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing,³¹ that provides the rules and procedures on handling a whistleblowing case, as well as the responsibilities of the responsible officer.

Despite the legal framework and additional bylaws, in Kosovo the biggest challenge remains their implementation in practice. Five years and nine months after the entry into force of this law in the public sector, there has still not been a single reported major successful case of whistleblowing that has promoted the rule of law, good governance, or the safeguarding of the state budget.. Furthermore, considering the very fact that for the time period between the years 2020 – 2023, the number of cases reported is not quite large, it can be concluded that there is insufficient awareness of this law, or that public officials do not have enough trust in the relevant institutions to report potential legal violations.

In order to reflect an accurate overview of the situation of whistleblowing in the country, Kosovo Law Institute (KLI) in this report has used qualitative analysis of data,

²⁹ Law No. 04/L-043 on Protection of Informants (2011).

³⁰ Law No. 06/L-085 on Protection of Whistleblowers (2018).

³¹ Regulation (GRK) - No.03/ 2021 On Determining the Procedure for Receiving and Handling the Cases of Whistleblowing (2021).

combining a review of the legal framework, reports of the state institutions, as well as insights from CSO publications. Also, KLI has used the quantitative method using statistical data gathered from the reports. Additionally, KLI organized a focus group with key stakeholders involved in whistleblowing and the protection of whistleblowers. This focus group included representatives and officials responsible for whistleblowing from public institutions, representatives from the local level, lawyers, and representatives from NGOs and the media. All of this aimed to provide the most accurate reflection of the actual situation regarding whistleblowing and the protection of whistleblowers in Kosovo.

The whistleblower protection law and responsible public institution

Through the legal framework that is into force, Kosovo has managed to build a system to report or blow the whistle on certain violations in public and private sector. The Law on Protection of Whistleblowers outlines the rules for reporting wrongdoing, including the process, protection for whistleblowers, and the responsibilities of competent institutions.³² Under the Law on Protection of Whistleblowers, individuals are empowered to report on offenses that have been committed, are currently ongoing, or are reasonably likely to occur in the future.³³

The whistleblower law provides three options for reporting wrongdoing: internally (to their employer), externally (to a relevant authority), or publicly (through media, NGOs, online platforms, meetings, etc.).³⁴

Each method has its own procedure, but all require clear and comprehensive information, including specific details and data. Whistleblowers can report in writing, by mail or email, or even verbally.

Regarding internal whistleblowing, it is necessary to know that the law provides the principles on which the responsible officer must be appointed within the public or private institution. The law provides that a public institution that has more than 15 employees or a private one that has more than 50 employees is obliged to appoint a responsible officer, in order to handle whistleblowing cases internally. Meanwhile, the Regulation for Whistleblowing Procedures defines a transparent framework for receiving, investigating, and addressing reports of wrongdoing. Additionally, it safeguards whistleblowers and specifies the duties of the responsible officer.³⁵

The law provides legal deadlines for cases of whistleblowing. For instance, in cases where we are dealing with internal whistleblowing, the employer is obliged to notify the whistleblower within 15 days whether his/her reporting was accepted or rejected, while the investigation procedure after receiving the whistleblowing report cannot last

³² Article 2 of the Law on Protection of Whistleblowers.

³³ Article 5 (1.1) of the Law on Protection of Whistleblowers.

³⁴ Article 13 of the Law on Protection of Whistleblowers.

³⁵ Article 1 (1) of the Regulation on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing.

more than 45 days - except when circumstances of the case require an extension of the deadline, which cannot exceed 45 days.³⁶

One has to know that internal whistleblowing is always an option. Whereas the external whistleblowing is for situations where one has tried internal reporting but is unsatisfied with the response, or if one feels uncomfortable reporting internally (e.g., fear of retaliation). In Kosovo, the Agency for Prevention of Corruption (APC) is the competent authority to handle external whistleblowing reports within the public institutions.

In Kosovo, the APC is responsible for the implementation of the Law on Protection of Whistleblowers. In the area of whistleblower protection, APC is also the institution that handles cases of external whistleblowing. In addition to this field, APC is responsible for enforcing the Law on Prevention of Conflict of Interest in Discharge of a Public Function and the Law on Declaration, Origin, and Control of Assets and Gifts. Furthermore, APC is also responsible for undertaking actions related to the monitoring of the action plan for the national anti-corruption strategy, anti-corruption assessments of legal acts, corruption risk assessments, and integrity plans³⁷.

According to the Law, the APC is responsible to follow the procedures for external whistleblowing, whereas in cases where the APC finds that it is not competent to handle the case, then swiftly forwards it to the competent body and according to the law, ensures to protect the identity of the whistleblower, seeking approval from the same if they want to forward the information with full identity to the competent authority or not.³⁸

On the other hand, employees of private entities should direct external whistleblowing reports to the Labor Inspectorate, the authorized body for handling such cases.

Besides the administrative procedure, the law has provided also judicial protection for whistleblowers. In such cases, the law stipulates that if someone blows the whistle on wrongdoing and experiences retaliation, they (and anyone close to them who's also been harmed) have the right to go directly to court for protection. They don't need to go through all the steps of internal legal remedies in the administrative procedure. The lawsuit against the detrimental act shall be filed with the court within six (6) months from the day when the whistleblower has been notified but not later than three (3) years when the detrimental act has been taken.³⁹

Overview of the data on implementation of the law on protection of whistleblowers

The annual report of the Agency for Prevention of Corruption reveals that since 2019 the APC has handled a total of 54 cases of external whistleblowing. However, the data shows that the number of cases has grown each year.

³⁶ Article 16 of the Law on Protection of Whistleblowers.

³⁷ Article 5 of the Law Nr. 08/L-017 on the Agency for Prevention of Corruption.

³⁸ Article 11 and 18 of the Law on Protection of Whistleblowers.

³⁹ Article 24 of the Law on Protection of Whistleblowers.

Meanwhile, regarding the internal whistleblowing, based on the APC's annual reports, it is noted that there are 304 cases reported in total. The highest number of internal whistleblowing cases was recorded in 2020, with a total of 146 cases. However, in this case, the statistics do not provide a comprehensive reflection, as 93 percent of those whistleblowing cases, or 136, were made within a single institution, the UCCK. Thus, all other institutions, apart from the UCCK, have submitted only 10 internal reports. Furthermore, despite the high number of whistleblowing cases in the UCCK during 2020, no whistleblowing cases have been found in the subsequent years.

In 2021, there was an increase in the number of internal whistleblowing cases (excluding situation with UCCK in 2020), with 38 cases reported for that year.

For the first half of 2022⁴⁰, 36 cases were active, and in 2023, the total number of internal whistleblowing cases was 84.

External whistleblowing

In this regard, according to this APC, in 2019, information was received for 3 cases of external whistleblowing, all of which were rejected.⁴¹ According to the explanations given in the report, the first case is said to have been rejected because since the information was handled as internal whistleblowing, and the consumption of criminal offenses was ascertained, then the institution that forwarded the information had to inform the competent body and not send the information further to the ACA.⁴²

For the second case, according to the APC's data and the assessment given, the information does not constitute a report of a threat or violation of the public interest.⁴³ While the third case was rejected, because according to the assessment of APC, it should initially be handled within the institution through internal whistleblowing, and it was also assessed that it does not constitute a report of a threat or violation of public interest.⁴⁴

Regarding the cases of 2020, the APC has received information for 5 cases of external whistleblowing. Of these, four were rejected and one was closed.⁴⁵ The first case was rejected for several reasons, where it is initially stated that the whistleblower was notified about the result of the investigation for one case, while for the other it was notified that it's still in the administrative investigation procedure. Among other things, this case also involved claims of harmful actions taken against the whistleblower as a result of their whistleblowing. Specifically, regarding this claim, the APC in the report

⁴⁰ Note: The second half of 2022 is not included in this summary since it is not presented in the APC's annual report for that year. Meanwhile, the data presented in the APC's annual report for 2022 and 2023 does not provide detailed information about the internal whistleblowing cases of these years.

⁴¹ Anti-Corruption Agency, "Annual Work Report 2019", p. 16.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid, p. 16-17.

also states that they have concluded that the measures taken against the whistleblower are a result of his whistleblowers.⁴⁶

Three other cases were rejected on the grounds that the information should initially be handled within the institution, through internal whistleblowing, or directly to the APC. Whereas a case has been closed because, as stated in the APC's report, it does not meet the requirements that a whistleblowing must contain.⁴⁷

Regarding the year 2021, the has received information for 9 cases of external whistleblowing. Of these, two were rejected, three were closed and one was dismissed, whereas the APC for three others stated that are in process.⁴⁸ The first case was rejected on the grounds that the agency previously received information about the subject regarding the abuse of official position and that the same information was previously handled by the agency within the legal terms and powers for the preliminary investigation procedure.⁴⁹ For three other cases the APC notified that they were closed by the agency on the grounds that there was insufficient evidence to support reasonable suspicion of alleged legal violations.⁵⁰

Another case involved claims of retaliatory actions against the whistleblower due to the whistleblowing they had made. This case was rejected on the grounds that the agency didn't manage to prove that the measures taken by the institution were not in fact retaliation, or measures related to the case that the subject reported.⁵¹ One case was dismissed on the grounds that the information provided by a whistleblower is being handled internally by the responsible institution and that it is in the process of investigation there.⁵² Three other cases were reported to be ongoing during that time.⁵³

In 2022 the APC reported to have handled a total of 14 new cases, and 3 others were transferred from the previous year. Of these, one case, following the procedure of external reporting within the APC, was forwarded as information to the Prosecutor's Office. One case has been forwarded as a request for further proceedings by the competent authority. One case was forwarded as a request for the initiation of misdemeanor proceedings to the Basic Court in Prishtina – Division for Misdemeanor, since it was assessed that there is sufficient evidence to support the reasonable doubt of failing to comply with the obligations deriving from the provisions of the Law on Protection of Whistleblowers and thus committing a specific misdemeanor. One case was forwarded as a request for further proceedings by the competent authority.⁵⁴

⁴⁶ Ibid.

⁴⁷ Ibid, p. 17.

⁴⁸ Anti-Corruption Agency, "Annual Work Report 2021", p. 21. ([https://www.akk-ks.org/assets/cms/uploads/files/Publikimet/RAPOTI%20VJETOR%20I%20PUNES-AKK-2021%20\(1\)](https://www.akk-ks.org/assets/cms/uploads/files/Publikimet/RAPOTI%20VJETOR%20I%20PUNES-AKK-2021%20(1))).

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid, page 22.

⁵⁴ Agency for Prevention of Corruption, "Annual Work Report 2022", p. 46 (<https://www.akk-ks.org/assets/cms/uploads/files/2023/RAPOTI%20VJETOR-2022-SHOIP.pdf>)

Four cases were rejected, because the APC considered that the subject of whistleblowing failed to comply with the procedure – where in one case it is said that the subject blew the whistle publicly, without following the internal or external whistleblowing first. Regarding these rejected cases, one case, the APC considered that the case should have been handled first within the institution, through internal whistleblowing. In two other cases, the APC considered that the reporting should have been addressed first as an internal whistleblowing. Another one was rejected because the APC assessed that the information does not constitute a report, which is protected in terms as provided by the Law on Protection of Whistleblowers.⁵⁵

Furthermore, two other cases were rejected because the APC found that it is not competent to act upon.⁵⁶

Based on the report of the APC, it is stated that there are also seven cases that have been closed. Three of them were closed, because the APC found that the reporting issue does not constitute a violation under the law. In one other case, the APC found that there are no concrete claims, based on which the case is enabled to be handled as an external whistleblowing. Furthermore, two cases have been closed, because the APC was not able to confirm all the necessary information/data that is expected to be filled in by the whistleblower.⁵⁷

During 2023 the APC handled a total of 20 cases, of which 18 have been finalized, whereas two were reported ongoing. Of these, two cases have been forwarded as information to the Prosecutor's Office. Then two other cases have been forwarded as a request for further proceedings by the competent authority.⁵⁸

Meanwhile, 14 other cases have been rejected. In one case, the APC considered that the reporting does not concern public interest. In another case the APC considered that the reporting should have been addressed first as an internal whistleblowing. One case has been rejected because the APC considered that reporting can be handled by the relevant departments within the Agency, following specific proceedings. Seven of these cases have been rejected because the APC was not able to confirm all the necessary information/ data that are expected to be filled in by the whistleblower. Three cases have been rejected after the APC assessed that the reporting does not constitute a violation as provided by the law. Also one case has been rejected by the agency on the grounds that the information of the case exceeds the agency's legal powers to handle the case and that the case is already being investigated by the State Prosecutor's Office.⁵⁹

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid, page 47.

⁵⁸ Agency for Prevention of Corruption, "Annual Work Report 2022", p. 42-43 (https://apk-rks.net/wp-content/uploads/2024/05/Raporti-Vjetor-2023-Agjencia-per-Parandalimin-e-Korrupsionit_compressed.pdf).

⁵⁹ Ibid, page 43.



Graph 1. The number of external whistleblowing cases during the years 2020-2023.

Furthermore, KLI finds that the number of external whistleblowing cases has continued to increase this year as well. Based on focus group discussions, it turns out the number of external whistleblowing cases in just the first half of this year (2024) appears to be higher than the total number of cases from the previous year (2023). Therefore, the number of external whistleblowing cases continues to rise year after year.

However, from the discussions held in the focus group organized on these issues, it was revealed that the new Law on the APC limits the agency's actions in cases of external whistleblowing. It was emphasized that the APC no longer has the authority to conduct preliminary investigations into reported cases, except for matters related to asset declarations, gifts, and conflicts of interest.

However, KLI finds that there does not appear to be a legal obstacle preventing the APC from conducting administrative investigations in cases of external whistleblowing. Article 17.1 of the Law on APC states that "The Agency conducts administrative investigation procedures in cases that fall under its mandate." Furthermore, according to Article 5.1, point 1.1 of this Law, the Agency is responsible for, among other things, the implementation of the Law on the Protection of Whistleblowers. Oversight and taking necessary measures for the protection of whistleblowers is one of the APC's competencies. Of course, in cases where the reported issues do not fall under the APC's mandate, the competent institutions are notified.

Internal whistleblowing

Within its report, the APC also presents the data for the internal whistleblowing. This comes as request from the Law on the Protection of Whistleblowers, that provides the obligation of the responsible officers, namely the institutions are obliged to report to the APC on the number of cases they received for the previous year.

In this regard, for the year 2019 the APC notified that there were only two cases reported, and presented in the table below:⁶⁰

⁶⁰ Anti-Corruption Agency, "Annual Work Report 2019", p. 17.

	Institution	Number of cases	Actions
1	Ministry of Environment and Spatial Planning	2	Case I – the competent authority has been informed; Case II – is in the stage of administrative investigation and therefore within the legal deadline.

Table 1: Internal whistleblowing cases for 2019 in public institutions.

In 2020 the APC notified that there were 146 cases reported as internal whistleblowing within institutions, and presented in the table below.⁶¹

	Institution	Number of cases	Actions
1	University Clinical Centre of Kosovo	136	We do not have any clarifying information regarding the actions taken by UCCK regarding these cases, even though clarification has been requested.
2	University “Ukshin Hoti”, Prizren	2	Case I is closed due to lack of evidence; Case II is under investigation procedure.
3	Ministry of Culture, Youth and Sport	1	After conducting administrative investigations, a report was drawn up, which was forwarded to the Secretary of MCYS for further action.
4	Ministry of Internal Affairs	1	It has been submitted with a report to the employer with the recommendations that must be implemented.
5	Agency for Medical Products and Devices	1	The case is under investigation procedure.
6	Municipality of Gjakova	1	The case is concluded, the competent body has been notified.
7	Transmission, System and Market Operator of Kosovo	1	The case has been forwarded to the employer and the APC.

⁶¹Anti-Corruption Agency, “Annual Work Report 2020”, p. 21. (https://www.akk-ks.org/assets/cms/uploads/files/Publikimet/Raporte/3.%20Raporti_Vjetor_AKK_2020_Shqip.pdf)

8	Kosovo Landfill Management Company	1	A Disciplinary Violation Report has been submitted.
9	Ministry of Environment and Spatial Planning	2	Case I was completed within the legal deadline; Case II was brought to the attention of the competent authority.

Table 2: Internal whistleblowing cases for 2020 in public institutions.

According to the annual work report of the APC for the year 2020, it is revealed that, from the reports of the public institutions received by the APC for that year, a total of 146 internal whistleblowing cases were handled. Of these cases, public institutions closed one case, had two cases under investigative procedures, referred three cases to the ACC while other actions were taken for the remaining 140 cases.

Cases in total	Rejected /Closed	Under Investigation	Referred to the ACC	Other actions taken
146	1	2	3	140

Table 3. Resolution of Internal Whistleblowing Cases in 2020.

Meanwhile during 2021 the APC notified that there were 38 cases reported as internal whistleblowing within institutions and presented in the table below.⁶²

	Institution	Number of cases	Actions
1	Office of the Prime minister of the Republic of Kosovo	3	Case I was handled in cooperation with the responsible officer for the protection of whistleblowers within the Secretariat of the Kosovo Security Council – Situation Centre, it was closed, all the documentation was submitted to the office of the Secretary of the SKSC – SC for further processing. Case II was admitted to be handled, but despite the persistence through letters for a meeting and handling of the case, there was no response from the submitting party to continue further with the procedures, thus the case remained incomplete. Case III is under administrative

⁶² Anti-Corruption Agency, “Annual Work Report 2021”, p. 21. ([https://www.akk-ks.org/assets/cms/uploads/files/Publikimet/RAPOTI%20VJETOR%20I%20PUNES-AKK-2021%20\(1\)](https://www.akk-ks.org/assets/cms/uploads/files/Publikimet/RAPOTI%20VJETOR%20I%20PUNES-AKK-2021%20(1)))

			investigation procedure.
2	Secretariat of the Kosovo Security Council	1	It was handled within the legal time limits.
3	University "Ukshin Hoti" Prizren	1	Case is closed, recommendation given.
4	Ministry of Agriculture, Forestry and Rural Development	4	None of the requests were accepted, as they were supposed to be directed to other institutions, while the whistleblower was advised to address the request to the officer responsible of his institution.
5	Ministry of Justice	7	<p>Three cases were rejected due to lack of competence and law referral of the LPW; Two cases were admitted as reports in the public interest, but during the administrative investigation it was assessed that they do not meet the legal criteria to be handled based on the LPW;</p> <p>One case has been investigated and concluded, and it has been established that it has to do with the violation of public interest. The whistleblower, the employer and the component body have been informed about this;</p> <p>One case has been partially accepted and is in the stage of administrative investigation.</p>
6	Ministry of Internal Affairs	2	<p>Case I has been handled;</p> <p>Case II is under investigation procedure.</p>
7	Ministry of Health	2	<p>Both cases of whistleblowing were found grounded.</p> <p>The office has undertaken the necessary measures in accordance with the LPW, taking immediate measures to prevent the continuation of any harmful action from the practices used.</p>

8	Ministry of Industry, Entrepreneurship and Trade	3	Not competent to handle.
9	Kosovo Council for Cultural Heritage	1	The case has been transferred to the competent authority.
10	Kosovo Privatization Agency	1	The whistleblowing was found grounded. The allegations of the whistleblower have been verified, KPA has taken preventive measures regarding the addressed violations.
11	Secretariat of the Prosecutorial Council of Kosovo	1	Additional information was requested from the whistleblower regarding his claim, in order to proceed with the treatment of the case, however, no response regarding this matter was received from him.
12	Kosovo Energy Corporation	9	<p>Nine cases of whistleblowing were handled, for which nine reports were prepared by the responsible officer for whistleblowing.</p> <p>In these reports, recommendations have been given to improve the work process, to initiate disciplinary measures, also some of these cases are under review, as they should be evaluated if there are elements of a criminal offense, to proceed further to competent authorities.</p>
13	Transmission, System and Market Operator of Kosovo	3	<p>Case I has been concluded, the final report has also been sent to APC;</p> <p>Case II, the former responsible officer for whistleblowing has asked the Chief Executive Officer to order a professional inspection so that the case in question can be examined and accurate conclusions can be drawn;</p> <p>Case III the former responsible officer for whistleblowing forwarded it to the competent persons to whom the letter was addressed, but for this case there is still no feedback.</p>

Table 4: Internal whistleblowing cases for 2021 in public institutions.

In the annual report of the APC for 2021, it is stated that institutions reported a total of 38 internal whistleblowing cases. Of these cases, 13 were rejected/closed, three were under investigative procedures, four were referred to the ACC, and other actions were taken in 18 cases.

Cases in total	Rejected/Closed	Under investigations	Referred to the ACC	Other actions taken
38	13	3	4	18

Table 5: Resolution of Internal Whistleblowing Cases in 2021.

On the other hand, such a detailed overview of whistleblowing cases was not provided in the APC's reports for 2022 and 2023. Unlike in previous years, the reports for 2022-2023 only indicate the gender of the whistleblowers. Furthermore, in the APC's 2022 work report, data is provided only for the first half of that year.

The APC's 2022 report notes that during the first half of 2022, 36 cases were handled under internal whistleblowing, with 21 of the reporters being men and 10 women. Meanwhile, for 2023, it is stated that 84 cases were handled by public institutions, with 51 whistleblowers identified as men, 22 as women, and 11 others were anonymous whistleblowers. The report highlights that out of 180 public institutions for which the Agency has information about the designated responsible whistleblowing officer, 51 public institutions did not submit the whistleblowing report for the first half of the year to the APC, while 129 institutions did.



Graph 2. The number of internal whistleblowing cases during the years 2020-2023.

Given the continued increase in internal whistleblowing cases, the focus group discussion also touched on factors that could positively influence this aspect. From this discussion, one of the key factors identified was the adequate information provided to staff by the responsible whistleblowing officer on where and how to report. Another factor was the whistleblowing officer's carefulness in maintaining the confidentiality of the whistleblower, thereby increasing the level of trust among staff. Additionally, the officer's stance against threats, pressures, or other attempts to interfere in the handling of whistleblowing cases was also identified as a critically important factor.

Challenges in implementing the Law on the Protection of Whistleblowers

A special point of discussion in the focus group was the challenges in implementing the Law on the Protection of Whistleblowers. One of these challenges, which hinders the enforcement of this law, was said to be the new Law on the Agency for Prevention of Corruption (APC). It was highlighted that the issue lies in the fact that the Law on the Protection of Whistleblowers only states that the APC conducts investigations based on its competencies, which are limited by the new Law on the APC. As a result, the APC can now only conduct preliminary investigations if the whistleblowing pertains to conflicts of interest or issues related to asset and gift declarations.

However, KLI finds that there does not appear to be a legal obstacle preventing the APC from conducting administrative investigations in cases of external whistleblowing. Article 17.1 of the Law on APC states that "The Agency conducts administrative investigation procedures in cases that fall under its mandate." Furthermore, according to Article 5.1, point 1.1 of this Law, the Agency is responsible for, among other things, the implementation of the Law on the Protection of Whistleblowers. Oversight and taking necessary measures for the protection of whistleblowers is one of the APC's competencies. Of course, in cases where the reported issues do not fall under the APC's mandate, the competent institutions are notified. Additionally, another potential challenge mentioned was the number of APC officials handling whistleblowing cases.

Another challenge mentioned was that the protection is provided through the courts, and the duration of judicial procedures is prolonged. During discussions in this focus group, concerns were also raised about the appointment of officials responsible for whistleblowing in public institutions. These concerns were raised from different perspectives, one of which was the level of trust that staff has in the appointed official.

A significant issue is the appointment of whistleblowing officials, with examples cited where individuals from various professions, are assigned this role, potentially compromising the whistleblowing process, due to their lack of knowledge in this regard. As a result of a lack of trust in the officials who receive and handle whistleblowing cases, it was highlighted that more confidential information for whistleblowing is reported to NGOs and the media rather than within the institutions themselves. This implies that abuses continue to occur, but the lack of trust in the relevant institutions persists.

Further concerns were expressed regarding the safekeeping of files by the whistleblowing official after they are relieved of their duties until someone else is appointed. Considering the importance of maintaining the confidentiality of whistleblowers, it was emphasized that there is a risk that this data could fall into unsafe hands and be misused, especially in institutions where the appointment of the official is politically influenced. In this regard, the potential risk posed by changes of political staff in certain institutions was discussed, whereby confidential data could be misused for political grudges.

The focus group also mentioned instances where institutions delay the appointment of a whistleblowing official or fail to inform the staff when the official is removed from their duties or when a new official is appointed. This creates a situation where cases might mistakenly be reported to officials who are no longer responsible for whistleblowing.

The lack of information for the public or staff about the whistleblowing procedure or how whistleblowers are protected under this law was highlighted as another obstacle to its implementation. Therefore, it was proposed that the APK should also prepare short informational promos about whistleblowing, which could then be disseminated through television and official public institution websites.

Another concern raised was that the KJC does not have any whistleblowing cases, especially considering that numerous cases related to the courts are reported to NGOs and the media. This concern arises from the fact that, based on this, it is implied that there may be misconduct within the judiciary as well, but it is not being reported within the institution.

As observed, most of these challenges reflect the fear of retaliation from the employer. Speaking of retaliation, another whistleblowing case was mentioned, which involves Prime Minister Albin Kurti. This case pertains to a public official who was dismissed for reporting his suspicions of irregularities in the MIET concerning the procedures for purchasing state reserves.⁶³

These examples were cited to illustrate how retaliation can send a threatening message to whistleblowers and discourage them from reporting abuses. Furthermore, this situation indicates that the implementation of the Law on the Protection of Whistleblowers primarily requires political will.

Key findings and conclusions

During this research through quantitative analysis of the data gathered from the annual reports of the APC, KLI has identified a year-on-year rise in external whistleblowing cases. However, internal whistleblowing paints a different picture. Annual reports show a decrease in reported cases from 2020 to 2021. However, we cannot say that the high number of whistleblowing cases in 2020 (146 cases) reflects a positive trend of whistleblowing across all institutions. This is because approximately 93 percent of these cases, or 136 cases, were whistleblowing reports within a single institution (UCCK), whereas in the following years, no whistleblowing cases have been reported from this institution. Meanwhile, data for 2022 and 2023 on internal whistleblowing shows that the number of whistleblowing cases has started to increase.

Furthermore, KLI also finds that there have been violations of the Law on Protection of Whistleblowers. Especially regarding the obligations that are defined for public institutions, private entities as well as regulators according to the field where whistleblowing is made. Based on the Law, these institutions shall prepare an annual report on whistleblowing for the previous year and submit this report to the APC, which then prepares and publishes an annual report.⁶⁴ But based on the research and focus group discussion turns out that this requirement does not happen, as stipulated by the

⁶³ Betimi për Drejtësi, “Sinjalizuesi i MINT i shkarkuar, thotë se kjo është hak për çështjen e rezervave shtetërore”, (<https://betimiperdrejtesi.com/largohet-nga-puna-sinjalizuesi-i-mint-it-thote-se-kjo-eshte-hak-per-ceshtjen-e-rezervave-shteterore/>)

⁶⁴ Article 24 of the Law on Protection of Whistleblowers.

law. The annual report of the APC for 2022, highlights that out of 180 public institutions for which the Agency has information about the designated responsible whistleblowing officer, 51 public institutions did not submit the whistleblowing report for the first half of the year to the APC, while 129 institutions did.

In addition, there is lack of necessary information on the outcome of the cases in the report that APC publishes annually. The Regulation on the Procedure for Receiving and Handling Whistleblowing Cases clearly stipulates that reports must include the number of disclosures in the public interest, as well as the actions taken in response to those reports or disclosures. However, when reviewing the reports for the years 2022–2023, a lack of proper reporting on the actions taken by the authorities is noted.

The report of the APC does not provide proper information regarding the timeframe of handling the cases. Therefore, it is impossible to identify if there have been any delays, or any requests to extend the deadline of handling the administrative investigation of whistleblowing. KLI has managed to get an official response by the APC, stating that according to Law No. 06 /L-085 on Protection of Whistleblowers and Regulation (QRK) on determining the procedure for receiving and handling the cases of whistleblowing, the procedure of the administrative investigation of whistleblowing is completed within the period of 90 days, including the issuance of the decision on the case within this deadline.⁶⁵

The APC's annual reports show a concerning trend, where several whistleblowing cases are referred back to the institutions they originated from for internal handling. This suggests a need for stronger internal reporting mechanisms within these institutions. By promoting the importance of internal whistleblowing channels, these institutions can create a safe space for employees to raise concerns internally, potentially preventing the need for further external steps.

Moreover, in some cases, based on the annual reports of APC, it has been observed that the cases submitted for reporting were not complete or were unclear, indicating a lack of awareness and necessary information among whistleblowers. Additionally, the annual reports of APC reveal a gap in reporting from local institutions. All reported cases involve central institutions. This suggests a lack of a comprehensive campaign to encourage whistleblowing from local authorities.

In general, public institutions do not give proper importance to whistleblowing. There have been instances where it is unclear who the designated official is for receiving and handling whistleblowing reports, and even cases where employees within a specific institution are unaware of who the designated whistleblowing officer is. Meanwhile, it was noted that there are institutions that do give due importance to whistleblowing, receive more whistleblowing reports, and within those institutions, retaliatory actions against whistleblowers are not taken.

⁶⁵ Answers to the request for information of KLI directed to APC, 14 June, 2024.

Recommendations

- APC should respect the law for the protection of whistleblowers in relation to its obligations for reporting the handling of whistleblowing cases, or supervision and requesting the reports for internal whistleblowing from other institutions.
- APC to improve the reporting form of the handling of whistleblowing cases, in order to ensure a comprehensive picture of each year's data.
- APC to increase transparency by providing complete and accurate data in terms of actions taken for each case.
- APC should also include in the report the precise timeframe of handling the cases.
- To strengthen internal whistleblowing as a first step for whistleblowers and avoiding the possibility of avoiding the regular procedure.
- Raise awareness regarding the importance and possibilities of whistleblowing, especially in local institutions.
- The summary of a detailed analysis regarding the APC's possibilities for investigating whistleblowing cases, indicates that either a determination should be made that the APC has the authority in these cases, or the APC should address the Ministry of Justice with a request to amend the law.
- Institutions to notify the APC of any dismissal/appointment of the responsible official for whistleblowing.
- The public interest should take precedence over the formalities of the case procedure.
- Depending on the number of staff and the number of cases received, the engagement of responsible officials in handling whistleblowing cases should be reflected in a reduction of their basic job duties related to the processing of whistleblowing cases.
- There should be more advanced and frequent training for officials who receive and handle whistleblowing cases.
- There should be increased inspections regarding the legal obligation to appoint a responsible official for whistleblowing.
- Creation of a working group to undertake whistleblowing activities in local institutions.

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- Law No. 04/L-043 on Protection of Informants (2011)
- Law No. 06/L-085 on Protection of Whistleblowers (2018)
- Regulation (GRK) - No.03/ 2021 On Determining the Procedure for Receiving and Handling the Cases of Whistleblowing (2021)



MONTENEGRO

Introduction

Montenegro does not have a standalone whistleblower protection law. The concept of whistleblower protection was first introduced into the Montenegrin legal system with the Law on the Prevention of Corruption, which was passed in 2014 and came into force in 2016. The law integrated provisions regulating the prevention of the conflict of interest and limitations in performing official duties, protection of persons reporting jeopardizing of the public interest – whistleblowers, as well as control of financing political parties and election campaigns, in line with special laws.

The Law defined the obligation of the Agency for Prevention of Corruption (APC) to administer the procedure upon reporting the jeopardizing of the public interest, which might indicate the existence of corruption, the manner of deciding upon it, but also to provide adequate protection to a whistleblower.

The results achieved by the 44th Government and Parliament have revitalized the EU integration process and presented a new opportunity to accelerate the accession process. In order to receive a positive Interim Benchmark Assessment Report for the Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom, and Security) in the previous period, a number of activities were carried out aimed at the adoption of laws that were a prerequisite for obtaining IBAR. Therefore, in a very short period, the Government approved a set of laws and reform strategies. A total of 12 laws were adopted by the Government which are the basis for obtaining IBAR and which relate to the fight against organized crime and corruption, the improvement of the judiciary and media regulation.

One of the laws that was adopted under the rapid procedure is the Law on Prevention of Corruption. The process of adopting the law in 2024 was notably swift. The rapid adoption of the law was driven by Montenegro's commitment to meeting EU accession benchmarks and addressing long-standing corruption issues. This resulted in the absence of comprehensive dialogue with major stakeholders and civil society during the preparation of the law which had an impact on the quality of the adopted solutions, which will be discussed further below.

This analysis aims to assess the efficacy of the legal provisions regarding whistleblower protection in the law that was in force until June 2024. The data is gathered from online sources, typically reports by relevant state institutions, monitoring reports conducted throughout the past years by various organizations, and media sources. By analysing and comparing the data over time, this study will identify whether there have been any improvements in the implementation and what were the shortcomings in the law itself as well as its implementation. Bearing in mind that during the period of the assessments, a new Law on the Prevention of Corruption⁶⁶ entered into force the findings may help to identify possible shortcomings of the new legal solution.

⁶⁶ <https://me.propisi.net/zakon-o-sprecavanju-korupcije/>

The position of whistleblowers in Montenegro regulated in Chapter III of the law prescribed the procedure for submitting a whistleblower report, the method of resolving the report, as well as the procedure for submitting a request for whistleblower protection.

Concepts

The Law stipulates a whistleblower can be any natural or legal person who submits a report on endangering the public interest that indicates the existence corruption. Article 44 of the Law defined that endangering the public interest means a violation of regulations, ethical rules or the possibility of such a violation that has caused, causes or threatens to endanger the life, health and safety of people and the environment, violation human rights or material and non-material damages to the state or legal and physical persons, as well as actions aimed at preventing such violations.

Procedures

The law stipulated that the application can be submitted in writing, orally by giving a statement, electronically, by mail and the possibility of anonymous reporting directly to the agency but also by internal reporting since every legal person was obligated to designate a person responsible for receiving and acting on whistleblower reports. Data on a whistleblower who wishes to stay anonymous, as well as the data from the application which are labeled as confidential, are all treated in accordance with the law regulating the confidentiality of data. In addition, the possibility was prescribed for the application to be publicly available if the whistleblower explicitly requests that the data be made available to the public.

Mechanisms and scope of protection

The law prescribed provisions on the right of whistleblowers to protection. Thus, Articles 59-68 prescribed that a whistleblower has the right to protection from all forms of discrimination and limitation of the rights.

In accordance with Article 59, the Agency may provide protection to a whistleblower if he has been harmed, i.e. there is a possibility of damage due to the fact that he has filed a report on endangering the public interest which indicates the existence of corruption. It was prescribed that protection can be given to a whistleblower who submits a request for protection to the Agency within 60 days from the date of incurred damage, i.e. from the knowledge that there is a possibility for a damage to be inflicted, and it envisages drafting an opinion and adequate recommendation in case the procedure of control of the allegations' authenticity shows that the whistleblower suffered a damage or there is a possibility for a damage to occur.

It is important to highlight that protection was enabled for a whistleblower who submitted the application in good faith, whereas the evaluation thereon is done by the Agency which is governed by the quality of submitted information, level of harming, and

the consequence which might arise due to jeopardizing public interest indicating the existence of corruption.

The protection was provided in case a whistleblower or a connected person suffers a damage by third persons, if a whistleblower makes probable a connection between third person's activity which caused the damage and the authorities, company, entrepreneur or other legal or natural person to whom the application applies.

If the whistleblower initiates court proceedings due to the damage suffered, the Agency was obligated to provide the necessary professional assistance in proving the causal link between the filing of the report and the damage cause, at request of the whistleblower.

Awards

Finally, articles 69 and 70 proscribed that a whistleblower may exercise the right to award, in case that the filing of a report contributed to generation of public revenues or the revenues of a legal or natural person and if those revenues and income would not have been generated had the report not been filed. A monetary award was defined in relation to a contribution and the amount of gained revenues, in the amount of 3 to 5 % out of the revenues generated from the institution which generated such a revenue, with prior submission of the request to such institution.

Apart from the provisions of the systemic Law on the Prevention of Corruption, the position and rights of whistleblowers are to a certain extent prescribed by other laws, including:

- Labor Law;
- Law on Prohibition of Harassment at Work;
- The Law on Civil Servants and State Employees;
- Criminal Code;
- Criminal Procedure Code;
- Law on Prohibition of Discrimination;
- Law on Public Procurement.

Efficacy of the legal provisions regarding whistleblower protection

As can be seen from the above, the scope of legal provisions directly aimed at protecting whistleblowers is very limited. Although Montenegro's law provides broader protection than a law merely for employees, as required for this standard and provides protection for institutions, as well as citizens who blow the whistle, which in fact means that every legal or natural person who reports a threat to the public interest is in fact a whistleblower, limited protection mechanisms lead to the fact that in practice the whistleblowers cannot count on their rights being protected.

Limitation of envisaged protective mechanisms is more than obvious given that the power of the Agency is in issuing an opinion and adequate recommendation in case the procedure of control of the allegations' authenticity shows that the whistleblower suffered a damage, i.e. that there is a possibility for a damage to occur (Article 62). Opinion also contain a recommendation about the actions to be taken to remedy or prevent the damage, as well as the deadline for the elimination of harmful consequences, or the prevention of possibility of damage. In case of failure to act in accordance with Agency's recommendation in the envisaged deadline, the Agency shall inform the body monitoring their work, and it may also submit a special report to the Parliament or inform the public.

There are also questions as to the effectiveness of the envisaged procedure set out in Article 63. If the legal entity has not corrected the retaliatory measures against the whistleblower, the Agency refers the matter to the next instance (supervisory body), submits a special report to the parliament, and makes the information public. Who would be the supervisory body of a private enterprise? There is no mechanism in place to compel private entities to restore the rights or position of a whistleblower, beyond the administrative penalties outlined in article 102.

A fine in a range from € 1,000 to € 20,000 is foreseen for legal person for the misdemeanor offense if "fails to submit, by the set deadline, a report on the actions taken to enforce the recommendation referred to in Article 62." For the similar violation a fine for the responsible person in the legal person, state authority, state administration body, local government and local self-government body is in a in the ranging from €500 to € 2,000.

Overview of data

According to the Agency for Prevention of Corruption as of the end of 2023, 36 people requested retaliation protection since the Law on the Prevention of Corruption took effect in January 2016. Of the 36, protection was granted in 12 cases. In these 12 cases, the APC found damage was caused to the whistleblower, or there was a possibility of damage. In 17 cases protection was not granted, six cases were pending, two cases were forwarded to the police for physical protection, and one case was terminated because no misconduct was reported.

Year	Number of received reports	Total number of reports before the Agency	Completed procedures
2020	75	114	31
2021	142	196	39
2022	188	320	81
2023	190	382	69

Table 1: Number of whistleblower reports, 2020-2023. Source: APC annual reports

From the data presented, it can be seen that there is continues trend of increasing of the number of reports, but also that significant number of reports fail to be completed in the year when the reports were submitted.

Year	Number of requests for whistleblowers protection	Number of completed procedures	Number of completed procedures based on the requests from previous years
2020	3	2 Proceedings ongoing 1 Proceedings was conducted by the competent institution, the Police Directorate	3 procedures were conducted for whistleblower protection requests from 2019
2021	5	3 Opinions were issued	1 procedure was conducted for whistleblower protection requests from 2020
2022	7	Proceedings ongoing	2 procedures were conducted for whistleblower protection requests from 2021
2023	7	Proceedings ongoing	2 procedures were conducted for whistleblower protection requests from 2022

Table 2: Number of requests for retaliation protection, 2020-2023Source: APC annual reports

From the data presented, it can be seen that, in relation to the total number of reports, there were not a large number of requests for protection. Also, there was fairly uniform trend in the number of requests for whistleblower protection. Nevertheless, bearing in mind the data presented, the question of the efficiency of the Agency's work can be raised. However, it should be taken into account that we do not have enough information on the basis of which we could make a well-founded conclusion about the effectiveness of the work. For instance, we do not have information about the time frame in which the requests for protection were submitted (perhaps they were submitted at the end of the year, so it was not even possible for them to be completed, taking into account the deadlines for processing).

Significant limitations in publishing information related to whistleblowers arise from the fact that, in accordance with the Law, whistleblowers are entitled to confidentiality of their identity and all identifying information, except when waived by their prior written consent or if required by official investigations or judicial proceedings. The law requires that the confidentiality of a whistleblower be maintained, until the person

“explicitly requests such data to be made available to the public”. All competent authorities, when acting on an report, not only have the obligation to protect the identity of the whistleblower, but also all data from the report, which greatly limits the possibility of assessing the effectiveness of the measures provided for by law. This is one of the main reasons why it is difficult to evaluate the effectiveness of whistleblower protection measures.

Protection measures implemented

Out of the three requests for protection that were submitted in 2020, according to the data from the Report, it appears that two procedures were ongoing during the reporting period, while for one case the Police Directorate, as the competent authority that acted (the subject of the request was the granting of physical protection), assessed that there are no grounds for protection.

Also in 2020, three procedures for whistleblower protection requests from 2019 were completed. In two cases, the Agency issued Opinions in which it determined that there had been damage to the whistleblower and gave a total of four recommendations to the employer on what should be done to remedy the damage. While in the third case where the Police Directorate also acted as the competent authority, it was judged that there were no grounds for protection (the subject of the request was the granting of physical protection).

In one procedure in which it was determined that there was damage to the whistleblower, the authority to which the recommendation refers informed the Agency that they will not fulfill the given recommendation, and the Agency informed the authority that supervises the work of the authority to which the recommendation refers.

In the second procedure, in which it was determined that the whistleblower suffered damage, three recommendations were given to the employer, but the deadline for implementation was only in the following year, so no information can be obtained from the aforementioned report as to whether the recommendation was implemented.

In 2020, there were no misdemeanor proceedings initiated due to non-submission of the Report on actions taken in connection with the implementation of the Agency's recommendations in this area.

During 2021, five requests for protection of whistleblowers were submitted. In the reporting period, the Agency issued three opinions in which it determined that damage occurred, i.e. that there is a possibility of damage to whistleblowers and gave a total of five recommendations to employers on what should be done to eliminate the damage. Also, in the reporting period one procedure was conducted on the request for protection from 2020, but there is no information about the outcome of that procedure.

In 2021, two requests were submitted for initiating misdemeanor proceedings for failure to submit a report on actions taken, regarding the implementation of the Agency's recommendations in this area.

During 2022, seven requests for whistleblowers protection were submitted to the Agency. In two procedures, the Agency issued an Opinion in which it determined that

damage had occurred, i.e. that there was a possibility of damage to the whistleblower and gave a total of three recommendations to the employer on what should be done to remedy the damage. One was not implemented, and the Agency informed the authority that supervises the work of the authority to which the recommendation refers. For other two recommendations the deadline for the implementation of was in the following period, so no information can be obtained from the aforementioned report as to whether the recommendation was implemented. Three procedures were ongoing during the reporting period. One procedure, the justification of the request was not determined, and one procedure was suspended due to the withdrawal of the request.

Also, in the reporting period one procedure was conducted on the request for protection from 2021. In the reporting period, three requests for initiation of misdemeanor proceedings for violation of the provisions of the LPC in the area of whistleblower protection/reports were submitted. Two cases based on requests from previous years were completed and in both cases fines were imposed, in total amount of €1,250.

During 2023, seven requests for whistleblower protection were filed and all of the proceedings were ongoing in the reporting period.

The Agency issued two Opinions in the proceedings for whistleblower protection requests from 2022, determining in one case that harm occurred, and that there was a possibility of harm to the whistleblower, and provided one recommendation to the employer on actions needed to remedy the harm. The recommendation was implemented. In the second Opinion, the validity of the claims from the whistleblower protection request was not established.

Given the already mentioned restrictions on publishing information, which is clearly seen in the scope of the information provided in the report, it is difficult to assess the extent, the scope and severity of the threat to whistleblower rights, as well as the content of the measures recommended by the Agency.

In addition to the above, the protection mechanisms provided by the law were the weakest point of the law. Although the law's provisions on protection against retaliation are multi-layered and multi-level, the APC could not provide an adequate administrative remedy, as it did not have the legal authority to order the suspension of retaliation, reverse the harmful consequences of retaliation, or compensate the whistleblower victim. Informing the authorities and the public about a case of whistleblower retaliation is only symbolic protection. Additionally, by the time the APC takes these steps, retaliation may be in an advanced state that would be difficult to reverse and correct.

New legal solutions for the protection of whistleblowers

Montenegro's firm committed to become the 28th member of the European Union and the opportunity that was presented to accelerate that path led to the rapid adoption of a set of laws whose adoption was necessary receive a positive report on the fulfilment of the interim benchmarks in the Rule of Law area (IBAR). One of the laws that was adopted under the rapid procedure is the Law on Prevention of Corruption.

Upon request for an Urgent Opinion of the Venice Commission on the draft law on the prevention of corruption,⁶⁷ the Venice Commission issued an urgent opinion on Montenegro's draft law. For the future process of the development of legal systems related to the protection of whistleblowers, it is very important to mention two positions that the Venice Commission gave in the Opinion:

- “When it comes to the process of preparation of the draft law, the Venice Commission understands the reasons for the urgency, but deeply regrets that a more thorough consultation and preparation process has not taken place.”
- “As a law on the prevention of corruption should understandably include provisions that are linked to corruption, the Venice Commission recommends creating a special law on whistleblowing.”

Bearing in mind this recommendation of the Venetian Commission, the government has already on several occasions expressed its readiness to start drafting a standalone whistleblower protection law, which is also recognized in the Strategy for the fight against corruption 2024-2028.

This is very encouraging considering that the legal solutions provided for by the new anti-corruption law related to the protection of whistleblowers represent a step backwards when it comes to the protection of whistleblowers. There are numerous deficiencies and shortcomings of the new legal solution, for the analysis of which it is necessary to look in detail at all aspects of the possible impact on the protection of whistleblowers. The material scope is still linked to corruption, and it raises a question when it comes to the material scope of the provisions, while threats to the public interest that do not have a link with corruption and are not covered by the Law?

Also, when it comes to the personal scope of the provisions there are limitation that are not in line with EU Directive. Of particular concern are the provisions of Article 50, which refer to the "prohibition of abuse of reporting". The article proscribes that “It is considered that there is an abuse of a whistleblower report if a report is submitted that contains information about irregularities that the applicant knew to be untrue”. Without the need to look deeper into the impact of this provision, it is clear from comparative practice what opportunities for abuse are being made available to anyone who wants to challenge the allegations of a whistleblower by introducing the concept of Malicious whistleblowing.

Bearing in mind the already mentioned determination of the Government to start drafting a new law, it is necessary to take advantage of this unique opportunity and prepare a dedicated law which will include experiences in the application of the previous legal solution as well as all international standards in the fight against corruption and enable to address the issue of whistleblowing effectively.

⁶⁷ <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI%282024%29008-e>



NORTH MACEDONIA

Executive Summary

The presence of whistleblowers in a society is of exceptional importance in the fight against corruption. Whistleblowers are the ones who can significantly help in finding the necessary evidence to punish committed irregularities. The very term “whistleblower” indicates that someone wants to point something out, to draw attention to irregularities that need to be prevented. Or simply “to blow the whistle”. However, whistleblowers are not always presented in a positive light by the society. They are often marginalized, labeled as “spies”, removed from their workplace and in some cases, their close surroundings face retaliatory actions.

It is precisely this retaliation that deters whistleblowers from fighting against committed irregularities. By analyzing the data obtained from this Report about retaliatory actions against whistleblowers, we can ascertain that the trend of retaliation has not bypassed us as a society.

The whistleblower’s battle begins later after reporting the irregularities to those more powerful than themselves. Here, the key role for protection is held by the institutions that have the authority for it.

This report presents the system of whistleblower protection in the Republic of North Macedonia. It contains a brief overview of the legal regulations for whistleblower protection, and explains the procedure and institutions responsible for administrative protection according to the Whistleblower law in the country.

The report also includes specific examples and data from submitted requests for protection and actions taken by the relevant institutions. Through concrete examples from the institutions responsible for providing whistleblower protection, from the challenges they face we can detect the need to improve the legal framework. During the research, practitioners in the field of whistleblowing were consulted and used information from internally organized events and workshops on the topic “[Workshop: Implementation of the Whistleblower Protection Law](#)”⁶⁸ and “[Workshop: Five Years’ Implementation of the Whistleblower Protection Law](#)”.⁶⁹

Additionally, the report will provide an overview of the new draft version of the Whistleblower Protection Law, which is expected to be adopted within 2025.

Analyzing the implemented protection system and the information received from the institutions shows that we should further promote the law. For a more successful implementation, it is necessary to provide human and financial resources to elevate the

⁶⁸ “Workshop on Effective Implementation of the Signpost Protection Act”- <https://www.youtube.com/watch?v=VER2OZZbwx4>

⁶⁹ “Workshop: Five Years since the Implementation of the Signpost Protection Act”- [Работилница: Пет години од имплементацијата на Законот за заштита на укажувачи, 18 мај 2022 - YouTube](#)

system to a higher level, strengthening citizens' trust and encouraging them to report irregularities.

More attention needs to be devoted to “bringing this law to life” and promoting it as one of the successful tools in the fight against corruption. The designated institutions responsible for external reporting channels should be more transparent and show readiness and a more protective approach towards whistleblowers. Additionally, the Assembly should promptly adopt the new draft law on Whistleblowers which its final phase so it can be implemented soon. With the implementation of the draft law, the state will align with the EU Directive 2019/1937, the Council of Europe's' recommendations, and the best European practice.

Introduction

The importance of whistleblowers in our country has proven to be significant over the years. However, their protection from harmful actions, both towards them and their wider family, is an exceptionally necessary mechanism. A society's readiness to provide efficient and effective protection for whistleblowers will result in positive outcomes in reducing corruption.

Calls for the need for a whistleblower protection law date back long before its adoption in our country. The need for whistleblower protection first emerged with the later formed court case “Magyar Telekom” when [Simo Gruevski](#),⁷⁰ risking his job and potential retaliatory actions, disclosed serious bribery involving high-ranking officials from several political echelons and a telecommunications operator back in 2006. This was the first “hot issue” faced by the newly formed State Commission for Preventing Corruption, but in the absence of legal regulations for whistleblower protection.

The determination and the will, and perhaps the necessary need, to enact a legal solution that would protect whistleblowers was achieved when two employees from the Ministry of Interior Affairs revealed maybe the biggest wiretapping scandal in our country. The Whistleblower Protection Law was first enacted in 2015 (Official Gazette of RM 196/2015) and was subsequently amended twice (Official Gazette of RM 35/18 and 257/2020). The Law includes a system for the protection of whistleblowers, but with the beginning of its implementation, the need for intervention arose.

Analyzing the data and information obtained in this Report leads to the conclusion that we need collective awareness as a society and a more positive approach towards whistleblowing as a concept, and subsequently towards protection mechanisms.

Establishing an efficient and effective system for whistleblower protection is challenging in many aspects. Strong and independent institutions with greater financial stability are needed. The need to improve the state of corruption has proved to be an essential element for improving conditions. Sincere will and desire for change within the institutions themselves are necessary, as well as raising awareness in society that the members of society are the ones who can make the change.

⁷⁰ [Постапката против Симо Груевски треба да запре - Транспаренси Интернешнл \(transparency.mk\)](#)

Protection system - Whistleblower Protection Law

A very important element in the process of protecting whistleblowers is the procedure and its implementation by the institutions. If we want to work on reducing the percentage of corruption, it is crucial to provide efficient and effective protection for whistleblowers. Why? Because whistleblowers play a key role in uncovering many corruption cases, they can greatly contribute to the conduct of investigations by prosecution authorities and can draw attention to illegal activities from within. They have the essential information needed to successfully address irregularities. Therefore, ensuring a protection system that functions de facto will encourage whistleblowers to speak out louder.

In our national legal framework⁷¹, there are two types of protection. One is implemented within the institutions by an authorized person and the other is judicial protection.

The protection procedure ensures protection against any violation of rights when responsibility is determined, a sanction or disciplinary action is imposed, termination of employment occurs, reassignment to a less favorable position takes place, discrimination and any harmful consequences arising from protected reporting. The protection enjoyed by whistleblowers is extended to the persons close to them.

The protection process begins⁷² when the whistleblower seeks protection from the institution or the legal entity where they report the irregularities internally. The institution or the legal entity should take action to prevent any harm that the whistleblower might suffer due to the reporting.

To enable better protection, the legislator has provided for whistleblowers if institutional/internal protection is not provided the possibility to report externally to the State Commission for Privation of Corruption, the Ombudsman of the RSM, the Inspection Council, the Ministry of Internal Affairs and the Public Prosecutor's Office of the RSM.⁷³

Upon receiving a protection report, the institutions must immediately determine whether there is any violation of the whistleblower's rights or to people close to them due to the reporting. The institution or legal entity is obligated to provide a notification letter and act on the request within 8 days, explaining their actions⁷⁴.

Once the necessary notification is received and it is determined that the legal entity of institution has violated the whistleblower's rights, the authorized institutions will appeal to the relevant authorities with an urgent request to take measures and actions to protect the whistleblower. The reported institution is obliged to rectify any violation

⁷¹ Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

⁷² Paragraphs 1 and 2 of Article 8 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

⁷³ Paragraph 3 of Article 8 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

⁷⁴ Paragraphs 1 and 2 of Article 9 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

suffered by the whistleblower due to the report. The whistleblower is always informed of these actions.⁷⁵

If the violation continues despite the actions taken by the protection institutions, an initiative for criminal prosecution or proceedings before the competent authorities for the dismissal, reassignment, removal or other measure of responsibility for elected or appointed officials, public enterprises and other legal entities managing state budget, will be initiated immediately and no later than 8 days⁷⁶.

This type of protection is administrative, provided by the authorized institutions. In addition to this type of protection, judicial protection⁷⁷ is also provided before a competent court in civil proceedings. This type of proceeding is urgent and as a facilitating measure, the law places the burden of proof on the institution that committed the violation.

Analysis of obtained data from institutions and its presentation

Overview of data

Following the method for collecting the necessary data, we reached out to the institutions authorized to provide protection. Specifically, we contacted the State Commission for Prevention of Corruption, The Public Prosecutor's Office, the Ministry of Internal Affairs, the Ombudsman and the Inspection Council.

We received responses from all the relevant institutions we contacted. However, the information we obtained are not very extensive. The Ministry of Internal Affairs⁷⁸, the Public Prosecutor's Office⁷⁹ and the Inspection Council⁸⁰ provided identical responses, stating that they have not received any requests for whistleblower protection. Two of these institutions are law enforcement bodies actively involved in the fight against corruption, so the lack of protection requests was surprising.

If we want to show certain cases and situations we will present the information provided by the State Commission for the Prevention of Corruption (SCPC) and the Ombudsman Office in North Macedonia.

⁷⁵ Paragraphs 3 and 4 of Article 9 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

⁷⁶ Paragraph 5 of Article 9 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020- Paragraph 5 of Article 9 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

⁷⁷ Article 10 of the 8 Law on the Protection of Whistleblowers "Official Gazette" of RM 196/2015, 35/18 and 257/2020-<https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nspix#>

⁷⁸ Information provided by the Ministry of Defence Law on Free Access to Public Information - May-June, 2024

⁷⁹ Information provided from the YRM under the Law on Free Access to Public Information - May-June, 2024

⁸⁰ Information provided by the Inspection Council under the Law on Free Access to Public Information – May-June, 2024

The experience so far shown in the public, we can for shore state that the State Commission for Prevention of Corruption plays a leading role in promoting and providing de facto support and protection for whistleblowers.

Institution	Number of requested protection	Measures	Final outcome
SCPC	3	All reports are accepted, and protective measures are provided	Positive outcome of court proceedings – whistleblower returned to workplace
Ombudsman	4	All reports were rejected due to the absence of fulfilled legal conditions	Provided protection in another procedure under the jurisdiction of the Ombudsman
Public Prosecution	0		
Ministry of Internal	0		
Inspection Council	0		
TOTAL	7		

Table 1⁸¹. Number of requests for protection received, measures and final outcome

State Commission for Preventing Corruption⁸²

From the provided data by the SCPC, we can state that although the number of requests for protection is low, it is the only institution that has implemented any measures for the protection of whistleblowers.

In the period since the adoption of the Whistleblower Protection Law, the SCPC received three requests for whistleblower protection in total. Two of these requests were submitted by the same person, while the third request was from a different case. All three requests for protection submitted to the SCPC were approved and actions were taken following Articles 8 and 9 of the Whistleblower Protection Law. This included a requests to the specified institution to respond immediately, no later than within 8 days, about the allegation of violation of the whistleblower’s and persons close to them rights due to the reporting.

⁸¹ Source: Information obtained in accordance with the law on free access to public information

⁸² Information provided from the SCPC under the Law on Free Access to Public Information-May-June, 2024

All three requests were submitted during the procedure of forming a case following the whistleblower's reports to the SCPC. The whistleblowers requested protection after the Commission began its procedures, i.e., started investigating the allegation in the report to determine the factual situation. From these allegations, we can assume that the reported institution, upon receiving the notification from the SCPC to respond to the alleged irregularities, realizes that someone has reported something and then starts looking for the so-called "intruder" who reported the irregularities.

In the first case, where the whistleblower submitted two requests for protection, the handling of the specific case took a longer period. Upon receiving the first request for protection, action was immediately taken under the Whistleblower Protection Law, and a request for a response was sent to the responsible person of the reported institution, who did not respond within the legally established deadline. At the same time, the SCPC also sent requests for competent action to the inspection authorities (State Labor Inspectorate and State Administrative Inspectorate).

The responsible person from the reported institution issued a decision to reassign the whistleblower to a workplace more than 50 kilometers away from Skopje, which is against the law. This was the first instance of retaliatory action faced by the whistleblower.

The inspection authorities alerted by the SCPC found that there were violations of legal provisions by the responsible person from the reported institution. They requested the annulment of the act that violated the whistleblower's rights. The responsible person complied with the inspection authorities' order, annulled the reassignment decision, and returned the whistleblower to their original workplace.

Although it seemed for a moment that the risk of retaliation was eliminated, after a certain period, the same whistleblower submitted a new request for protection to the SCPC. The whistleblower stated that the responsible person from the institution was threatening to start disciplinary proceedings to end their employment. The request was also approved and acted upon immediately. In accordance with the Whistleblower Protection Law, a response was again requested to the responsible person of the reported institution, who this time responded to the request. Additionally, the relevant inspection services were contacted again.

While the institutions were handling the matter, the reported institution issued a decision to end the whistleblower's employment.

The whistleblower continued their fight and sought judicial protection, initiating a labor dispute that lasted two years and resulted in the whistleblower being reinstated. The SCPC fielded an initiative for criminal prosecution against the responsible person of the institution and an initiative to determine responsibility, but the proceedings were stopped due to the death of the reported person in the COVID-19 period.

In the second case, while the procedure following the whistleblower's report was ongoing, the whistleblower submitted a request for protection. The request was approved by the SCPC and acted upon immediately following the Whistleblower Protection Law. The SCPC requested a response from the responsible person of the institution, who explained that the whistleblower had only been reassigned to another position horizontally without a change in salary due to an increased need for workers in

another sector. The SCPC also contacted the inspection authorities, but they did not find any irregularities in the procedure for the reassignment decision.

The whistleblower initiated a labor dispute before the competent court, which conducted with the whistleblower's lawsuit being dismissed as unfounded.

Examining the second case reveals a weakness outside the protection institutions. Specifically, the Whistleblower's lawsuit was dismissed as unfounded, which may indicate that the legal profession needs further training on this issue. The entire judiciary, including all relevant parties, needs to work more, improve, and raise their awareness about whistleblower protection.

According to the information provided, the SCPC has not rejected any requests for whistleblower protection. Due to the small number of protection requests – three in total since the law's adoption – all were handled within the legally established deadlines. Upon receiving each of the three requests for responsible person of the institution, as well as other relevant institutions to verify the allegations in the protection request.

Regarding the legal provisions and their enforcement, the SCPC reported that no misdemeanor proceedings have been initiated so far.

Over the past five years, the SCPC has undertaken activities to raise public awareness about the implementation of the Whistleblower Protection Law through regular training on the topic of whistleblower protection or training within the integrity system where protected reports is one of the elements.

The Ombudsman's Office⁸³

From the provided data by the Ombudsman, we can determine that, like to the case with the State Commission for Prevention of Corruption, the number of requests for protection is small but indicates trust from citizens to approach the institution.

In 2022, the Ombudsman's office received two requests for protected external reporting.

One came from a group of anonymous citizens employed in a state body, about a violation of labor rights, specifically reassignment to another, less favorable position for those who made the protected external report. Since the report was anonymous and only a phone number was provided for contact, they contacted the submitters shortly after. After discussing the allegations related to labor relations, more information was requested to identify the individuals experiencing adverse consequences from reporting the illegal actions, to establish the facts and next protective actions. The applicant stated that more information would be provided after consulting with the others, as it was a group request for protection. This conversation was the last communication with the whistleblowers, and no further information was provided nor did they follow up to confirm their protection request. As a result, the Ombudsman's office did not proceed with this request, considering that the reporters showed no further interest in cooperation.

The second protection request was submitted by a person that personally approached them and they discussed the specific events. The person requested protection following

⁸³ Information provided by the Ombudsman under the Law on Free Access to Public Information, May-June, 2024

articles 8 and 9 of the Whistleblower Protection Law, stating that she and a close to him person was experiencing damaging actions due to submitting a report to the competent prosecutor's office. The Ombudsman's office decided not to start proceedings because the legal conditions for protected external reporting were not met. Specifically, the report to the competent external reporting were not submitted following the Whistleblower Protection Law, meaning the reporter did not request protection as a whistleblower at the time and therefore did not have whistleblower status under Article 2, paragraph 3⁸⁴ of the law. The reporter was informed that article 8 of the Whistleblower Protection law could not be applied in this case because it pertains to a whistleblower, and she did not have that status when submitting the report to the prosecutor's office. For these reasons, the Ombudsman did not proceed with this case either.

During 2023, there were also two requests for protected external reporting from known persons, which were forwarded by the State Audit Office with explanation that they are not authorized to act on such requests. The reports were initially submitted to the State Audit Office by the citizens. After reviewing the protection requests, the Ombudsman concluded that they did not constitute requests from whistleblowers because, in both cases, the conditions set out in the relevant provisions of the Whistleblowers Protection Law were not met. Specifically, they did not concern the public interest but rather the private interest – violation of the personal rights of the reporters. Regarding all recorded requests, the actions were taken within the legally prescribed timeframe. Concerning the legal provisions and their enforcement, the Ombudsman's office reported that misdemeanor proceedings haven't been initiated so far.

Analyzing the data obtained from the Ombudsman's Office, several conclusions can be drawn. When citizens approach the competent institution for protection and are asked for more information to proceed specifically, there seems to be some skepticism and withdrawal from the whistleblower. Often, the reports are anonymous, likely due to a lack of trust in the institutions responsible for initiating accountability and imposing sanctions. A very common reason for the low number of whistleblowers is the fear of retaliation by employers, whistleblowers fear for their jobs which are their source of livelihood.

As a society, we still lack the collective maturity to understand that we must lead the fight to secure our rights and oppose irregularities. However, this is a topic that requires further analysis. Additionally, it has been shown that there is still insufficient information and awareness among citizens about the concept of whistleblowing and its role. Citizens are not well-informed, as demonstrated by the second specific case. However, it would also be beneficial for the institutions that citizens approach to guide them and assist them in exercising their rights if they are not knowledgeable. The competent institutions that provide protection according to the Whistleblower law should be the ones promoting protective mechanisms and the concept of whistleblowing. They need to be coordinated with each other to successfully implement the whistleblower protection system.

⁸⁴ Article 2, paragraph 3 – Categories of whistleblowers defined under the Law on the Protection of Whistleblowers-"Official Gazette" of RM 196/2015, 35/18 and 257/2020- <https://www.slvesnik.com.mk/zastita-na-ukazuvaci.nsp#>

From the conclusions conducted from the Focus Group, specifically for the protection reports submitted to the Office of the Ombudsman, we noticed the omissions that whistleblowers confuse the institution's primary competences with whistleblower reports. Very often, citizens turn to the Ombudsman through the channel for whistleblowers, and the real situation in the report indicates the authority to act in a regular procedure of the institution. That is, they do not meet the conditions in the law that indicate who can be a whistleblower.

In the specific examples, the persons who applied for protection submitted petitions to the Ombudsman in a regular procedure and regular procedures and activities by the Ombudsman already followed the same. We can agree that such weaknesses are the result of insufficient promotion of the term whistleblower itself as well as their protection.

Information on the New Draft Law in Its Final Stage⁸⁵

In 2023, the Ministry of Justice formed a working group to draft amendments to the existing Whistleblower Protection Law, in which Transparency International Macedonia participated.

The new draft law for whistleblower protection has been improved and aligned with the EU Directive 2019/1937⁸⁶, as well as international standards and best practices.⁸⁷ The new draft law contains eight chapters and has a much-improved content compared to the previous one. The material scope of the law is harmonized with the EU directive, as are the definitions of terms. Additionally, the system for protected reporting is regulated in accordance with the Directive. For the first time, the term "retaliation" and protection against it are introduced. The channels for protected internal and external reporting, as well as public disclosure, are regulated.

According to this draft law, the establishment of a system for protected reporting will apply to both the public and private sectors. Particular emphasis is placed on the protection of both the whistleblower and the appointed person who will be authorized to receive reports. The deadlines and the system for organizing protected reporting channels through an authorized person are aligned with the Directive. The law will also provide the possibility and conditions under which shared resources can be used or a legal entity can be contractually engaged to handle reports (outsourcing).

The procedures for handling whistleblower reports are more clearly explained and prescribed. To facilitate inter-institutional cooperation in handling reports, the law proposes the formation of a network for cooperation among those responsible for receiving whistleblower reports.

For additional motivation and encouragement, the law provides a 30% salary supplement for authorized persons or employees in the department for receiving

⁸⁵https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=74474

⁸⁶ EU. 2019. Directive 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 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

⁸⁷ Technical Paper "Assessment of the Conformity of the Macedonian Legal Framework for the Protection of Pointers with International Standards and Good Practices", June 2020, prepared by Professor David Lewis, Council of Europe expert under the Horizontal Instrument for the Western Balkans and Turkey II - Action Against Economic Crime (HFII-AEC-MKD)

reports. The conditions that must be provided to the authorized person(s) and their protection are also prescribed. Judicial protection is more precisely outlined.

The new law stipulates greater availability and accessibility for citizens to protected reporting channels, both external and internal. It ensures free legal assistance and counseling and the right to financial compensation in cases of violence. Special attention was given to gender sensitivity in drafting the proposal.

Focus Group

The focus group was conducted to identify gaps and areas for improvement in the protection of whistleblowers in the country as well as obtained data from these Report.

The general opinion of all participants in the focus group is that there are weaknesses in the protection of whistleblowers as set out in national legislation. Institutions are given limited opportunities to act, and during the initiation of the protection process, the lack of protective mechanisms diminishes the effectiveness of the final outcome.

In the open discussion on the approach to whistleblower protection, weaknesses in the legal framework were identified, and the need for its amendments was recognized in the ongoing process of law reform.

Members of the focus group who have direct contact with the whistleblower protection applications confirmed and pointed out that they are in constant communication with the whistleblower through the entire process of providing protection. They offer protection and provide access to all the resources available within their authority.

From the obtained data in this report, participants generally believe that more work is needed on judicial protection. Based on the current, very limited practice, the prevailing opinion is that the entire judiciary should be trained in the field of whistleblower protection and that priority should be given to the court cases involving whistleblowers.

Additionally, it was emphasized that all legal professions should be more informed about whistleblower protection. It is unacceptable for a court procedure, in which a whistleblower seeks to regain their job position, to last two years. This is an excessively long period that causes harmful consequences, often of an existential nature for the whistleblower. Such court procedures should be efficient and not lasting longer than six months.

Participants in the focus group generally believe that the low number of whistleblowers in the country is due to a lack of trust in institutions as well as insufficient promotion of the law. Furthermore, it is highlighted that retaliation is a serious reason deterring whistleblowers. The focus group in a more extensive discussion agreed that retaliation still remains the biggest reason for deterring whistleblowers.

When asked whether, as whistleblowers, they would report irregularities, the majority of the focus group participants responded affirmatively and stated that they would do so through one of the institutions appointed for external reporting.

From the entire discussion specifically about whistleblower protection, as well as the existing legal framework in general, participants agreed that there are gaps in several segments of the practical functioning institutions. Therefore, a new and improved legal framework is currently being developed.

Key findings, conclusions and recommendations

The whistleblower protection system in North Macedonia has been implemented, but its functionality is a topic for further discussion. From the presented data in this Report, we can determine that intervention is needed from many aspects. Improvements in legal regulations are necessary, as well as support for the institutions responsible for providing protection, of personnel and finance.

There is a need to raise awareness among institutions involved in identifying irregularities, particularly inspection bodies, about whistleblower protection.

It is necessary to motivate other institutions responsible for external reporting to take more active measures in retaliation protecting whistleblowers, especially the Ministry of Internal Affairs and the Public Prosecutor's Office of North Macedonia.

For more efficient and effective protection, institutions that are responsible for implementing protection mechanisms need to coordinate and deepen their cooperation.

In the area of judicial protection, the need for training of all parties involved in the judicial proceedings is of a must importance. Training should be provided for lawyers and judges to ensure more efficient protection in cases involving whistleblowers and to prevent delays in judicial proceedings related to whistleblower protection.

All responsible institutions should work together to promote the Law on Whistleblower Protection. They should inform the public about the success of their outcomes and prove that the protection system in the country is functioning effectively. Promotion is more than necessary due to the confusion of the whistleblowers to the institution's primary competencies with whistleblower reports. That's why every involved stakeholder should loudly promote the rights to whistleblowing and empower citizens to speak louder and clearer about irregularities. Only with a loud reaction we can make any changes for better tomorrow.

The Government and the Ministry of finance need to provide more resources to promote the whistleblower protection system and increase human capacity to achieve better results.

Annex

Participants in the focus group:

- Irena Popovska person appointed to receive reports from whistleblowers from the State Commission for Preventing Corruption
- Elena Dimovska, head of department in the Ministry of Justice
- Vida Kočishka Popovska, a person authorized to receive reports from whistleblowers at the Ombudsman
- Sasho Merzhanoski, General Secretary of the Inspection Council
- Blagoja Pandovski, lawyer and President of Transparency International Macedonia.

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SERBIA

Introduction

The context of the report

In 2024, Serbia marks ten years of adoption of the Law on Whistleblower protection.⁸⁸ When adopted, the Law was presented as one of the key preventative anti-corruption measures that will help Serbia support establish and support its constitutional principle of rule of law. At the same time, protection of whistleblowers was seen also as one of the ways for fulfilling the criteria for joining European Union.

Also, some of the interim benchmarks for evaluation of Serbia's accomplishments in EU accession process included effective implementation and monitoring of the implementation of the Law on Whistle-Blowers (2.2.7. of the Revised Action Plan on Chapter 23).

Within ten years of the Law on Whistleblower protection implementation, there was no serious evaluation of its implementation from Serbian authorities. We can also notice that, despite preliminary statements and strategic obligations taken, protection of whistleblowers never became a political and/or judicial priority in Serbia.

That being said, some rare reflections on the results of the implementation of the Law on Whistleblower protection could be found in annual EU country reports on Serbia. For example, in 2023 EU report on Serbia⁸⁹, the EU states that “in order to strengthen trust in the institutions, Serbia needs to step up its protection of whistle-blowers and investigate allegations in high-level corruption cases”⁹⁰ and that “the legal framework on whistle-blower protection is yet to be aligned with EU acquis.”⁹¹ In recently published 2024 report, the EU states that “the legal framework on whistle-blower protection is yet to be aligned with EU acquis”⁹².

Having this in mind, this report could contribute to evaluation of the Law effectiveness within almost a decade of its implementation and to establish a path for improvement – both in normative and practical sense.

Goals, methods of data collection and analytical framework

The objective of the report is to analyze and evaluate in a unified framework the performance of whistleblower protection institutions and the outcomes of cases, and to

⁸⁸ Published in Official Gazette of Republic of Serbia No.128/2014, adopted by the National Assembly in November 2014 and entered into force in June 2015

⁸⁹ Serbia 2023 Report, published on 8.11.2023.

⁹⁰ Serbia 2023 Report, page 34, par. 2

⁹¹ Serbia 2023 Report, page 37, par. 3

⁹² Serbia 2024 Report, page 34, par. 7

identify strengths and weaknesses in policies and practices that lead to good or poor case outcomes.

In the Republic of Serbia, the research team gathered quantitative annual data since whistleblower protection law went into effect, including:

- number of requests for retaliation protection submitted to the responsible institution
- number of requests for retaliation protection granted by the responsible institution
- number of requests for retaliation protection denied the responsible institution
- length of time needed for each protection decision to be reached
- number of open protection cases
- official violations of the whistleblower law, and any penalties or sanctions issued

Quantitative data were collected from all judicial institutions in charge - 25 higher courts in charge for individual judicial protection of whistleblowers and 44 misdemeanor courts, in charge of sanctioning for non-implementation of the Law on Whistleblower protection.

Also, we gathered qualitative data with the intention to explain the reasons/factors behind positive or negative results/expectations and the way forward by conducting four anonymous in-depth interviews with judges who participated in whistleblower cases decision making and journalists who made interviews or had other contacts with whistleblowers in Serbia.

Whistleblower protection law and implementing and overseeing public institutions

Aim of the Law and definition of whistleblower

The main aim of the Law on Whistleblower protection is to establish an efficient and effective protection of whistleblowers when they disclose information about various violation of regulations. The disclosure can have different paths – internal disclosure (within the institution/organization), external disclosure (to the prosecution, police, etc.) and also public disclosure, under some additional legal conditions.

Contrary to already established international recommendations which recommend more general protection of whistleblowers from all retaliation, including in an administrative and criminal proceeding, Serbian Law on Whistleblower protection still shields whistleblowers only from retaliation in the working environment.

By Serbian Law on Whistleblower protection, whistleblowing is the disclosure of information about violation of regulations, violation of human rights, exercise of public authority contrary to the purpose for which it was entrusted, information that

endangers life, public health, safety, environment, as well as information that prevent large-scale damage. On the other hand, the whistleblower is a natural person who disclose information in connection with his/her employment, employment procedure, use of services of state and other authorities, holders of public authority or public services, business cooperation and ownership of a company.

Institutions responsible for disclosure of information, prevention of retaliation and protection from retaliation

The disclosure of information may happen through different channels and all sorts of disclosure bring responsibility of the institution/organization to protect the whistleblower from possible retaliation, end the retaliation, and remove the consequences of retaliation.

Still, Law on Whistleblower protection is enabling whistleblower to ask for judicial protection, if they already faced acts of retaliation and enable whistleblowers to ask for:

- finding that a harmful action was taken against the whistleblower;
- prohibition of committing and repeating a harmful act;
- removing the consequences of a harmful action;
- compensation for material and non-material damage;
- publishing of the in the media, at the expense of the defendant.

In the court proceeding, whistleblower needs to make plausible that he received retaliation because of the information disclosure and the defendant then needs to prove the opposite.

Overview of Findings

This section presents the findings based on the quantitative and qualitative data since the whistleblower protection law went into effect.

Quantitative data

As previously described, this research is focused on number of cases in which whistleblowers requested protection in judicial proceedings in period 2014-2024. Out of 25 higher courts in charge for whistleblowers protection, 22 courts responded to research questions.⁹³

We note that the research aim was to see how many individuals requested from courts whistleblower protection since Law was adopted 2014, until June 2024. This note is

⁹³ Did not respond: higher courts from Zrenjanin, Kragujevac and Smederevo

necessary since Ministry of justice of Serbia in their several reports of whistleblower protection (last published for year 2022)⁹⁴ summarize all ongoing court proceedings as relevant, although some of them are the same cases in the process of appeal or revision (before the Supreme court). In that sense, by summarizing all ongoing processes, we cannot objectively see number of unique individuals who, during one year, requested the protection. The Ministry rather publish number of all cases related to whistleblowing. This can distort a picture on successfulness of the Law implementation and leave impression of the Law's greater impact than in the reality.

For those reasons, here we present number of unique cases before courts in period June 2015-June 2024, but together with the request about final decisions (including used legal remedies) – number of dismissed requests, number of adopted and denied requests, average length of the proceeding, level of compensation for material and non-material damage, number of open cases, etc. Here we also note that public authorities of Serbia only report of number of open and closed cases, and do not report on any other important aspect of the whistleblower proceeding.

No.	Court	Number of requests (June 2015-June 2024)	Dismissed	Denied	Withdrawn	Approved ⁹⁵
1.	Higher court in Belgrade	151 ⁹⁶	46	16	46	2
2.	Higher court in Valjevo	14	1	8	Did not respond	0
3.	Higher court in Vranje	21	Did not respond	11	Did not respond	2
4.	Higher court in Zaječar	12	4	1	Did not respond	0
5.	Higher court in Jagodina	3	Did not respond	2	Did not respond	0
6.	Higher court in Kraljevo	0	0	0	0	0
7.	Higher court in Kruševac	3	2	0	Did not respond	0
8.	Higher court in Leskovac	13	1	3	1	3

⁹⁴ <https://www.mpravde.gov.rs/tekst/14518/izvestaji-o-primeni-zakona-o-zastiti-uzbunjivaca.php>

⁹⁵ Fully and/or partially approved

⁹⁶ Other requests which are not emphasized here are finalized *in all courts* by other procedural means or are still open cases (not finalized)

9.	Higher court in Negotin	0	0	0	0	0
10.	Higher court in Niš	12	2	5	4	0
11.	Higher court in Novi Sad	35	1	7	3	4
12.	Higher court in Novi Pazar	0	0	0	0	0
13.	Higher court in Pančevo	1	0	1	0	0
14.	Higher court in Pirot	1	0	0	0	0
15.	Higher court in Požarevac	5	1	3	0	1
16.	Higher court in Prokuplje	6	0	0	Did not respond	2
17.	Higher court in Sombor	1	0	1	Did not respond	0
18.	Higher court in Sremska Mitrovica	5	Did not respond	Did not respond	Did not respond	1
19.	Higher court in Subotica	6	1	2	Did not respond	0
20.	Higher court in Užice	3	0	2	0	1
21.	Higher court in Čačak	1	0	1	0	0
22.	Higher court in Šabac	7	1	3	1	2
Total		300	60	66	55	18

Table 1. Number of requests for protection received – higher courts

Per received results, out of 300 requests for protection submitted within nine years, only 18 are fully or partially approved by final court decisions. Other were dismissed, denied, withdrawn, finalized by other procedural means or still pending.

When it comes to compensation for material and non-material damage, received data show that courts rarely approve damage requests. In all approved cases, compensation was included in only 6 cases and it was approximately between 500 and 1000 EUR:

- 100,000 RSD in 3 cases;
- 123,000 RSD in 1 case;
- 70,000 RSD in 1 case;
- 50,000 RSD in 1 case.

Higher courts out of Belgrade (total 21 court) within nine years received on average 7.1 requests (or only 0,7 annually). These results show that awareness about court protection and trust in its effectiveness is quite low outside of the capital, although the capital is getting closer to results of other courts in recent years.

Since over 50 percent of requests were received by the Higher Court in Belgrade, here we will present annual distribution of requests for this court, which is a good indicator of how the enthusiasm of the plaintiffs (claiming that they are whistleblowers who faced retaliation) waned through the years.

Higher court in Belgrade - number of requests annually		Length of preceding until final decision (in days)
2015	7	25,25
2016	95	74,20
2017	15	245,43
2018	8	359,94
2019	5	591,15
2020	4	730,33
2021	8	293,89
2022	4	869,80
2023	5	550,40
2024	0	473,00
Average		468,15

Table 2. Annual distribution of requests received by the Higher Court in Belgrade

Sanctioning for breaching the Law on Whistleblower protection (Articles 37 and 38) – misdemeanor courts

Out of 44 misdemeanor courts in Serbia, 41 court responded to a question regarding final decisions against legal and natural persons for their responsibility – not respecting their obligations from Articles 37 and 38 of the Law on Whistleblower protection.

Obligations include adoption of bylaws and/or act for internal protection of whistleblowers.

Only 26 proceedings were led (0,6 per court) in nine years. Cases of convicted legal persons (or responsible person in legal person) are even more rare. In 4 cases, legal persons received only court warning and in one case convicted was freed from the sanction. In only four cases, legal persons were fined (with 100,00, 40 000,00, and twice with 50 00,00 RSD). Rare pecuniary sanctions were on average less than 500 EUR.

Qualitative data

As previously described, this research included two anonymous in-depth interviews with judges who trailed in whistleblower cases and two journalists who made interviews or had other contacts with whistleblowers in Serbia. For all four interviewees, basic results from quantitative data were presented.

Interviewees from judiciary noted that judges don't have enough knowledge to trial in the cases of whistleblower protection. Systematic education of judges, even prescribed by the law, never happened. One of the judges remembered she went through only one education ten years ago but organized by one NGO dealing with whistleblower protection (not organized by judicial institution/s). Also, judges notice that courts are not motivated to inform citizens about the whistleblower protection, because they already have a significant backlog. On the other hand, attorneys at law are also lacking knowledge in the field. They are also not motivated to initiate whistleblower protection cases, since case-law is almost non-existent and there are not even slightest guarantees that their client will receive needed protection. Judges also mentioned that, given the type of the case, all parties – attorneys, judges and potential plaintiffs are afraid to ask for judicial protection since they don't have trust in courts' independence and impartiality, especially when it comes to litigations with state organs or state-related companies.

Journalists emphasized that all whistleblowers they cooperated with were advised to disclose information directly to the public/ journalists in order to keep themselves safe. Such advises came also from individuals from the institutions – police and judges. People who disclose information about violation of human rights or other regulations feel safer with public protection than with the protection of any institution. Additionally, they see all institutions, and especially executive power branch, prosecution and police, as their main presecutors, even as part of the organized group for prosecution of whistleblowers. Because of that, they don't have any motivation to turn to the institutions for help.

Conclusion

Within ten years of the Law on Whistleblower protection implementation, there was no serious evaluation of its implementation from Serbian authorities. Ministry of justice publicly report only on general number of cases pending, without data on the outcome of the cases or evaluation of the system efficiency. Despite preliminary statements and strategic obligations taken, protection of whistleblowers never became a political and/or judicial priority in Serbia. The European Union still states that the legal framework on whistle-blower protection is yet to be aligned with EU acquis

Quantitative data show that out of 300 requests for protection submitted within nine years, only 18 are fully or partially approved by final court decisions. Compensation for material and non-material damage was included in only 6 cases and it was approximately between 500 and 1000 EUR. Only 26 proceedings in nine years were led before misdemeanor courts. Convicted legal persons (or responsible person in legal person) are rare. They receive court warnings and in only four cases were fined with less than 500 EUR.

In-depth interviews with judges and journalists shown that judges and attorneys are not well educated for whistleblower protection. Courts, or any other institution are not encouraging plaintiffs to address the courts. Whistleblowers feel they can only find protection from retaliation in the public space. They lack trust in institutional protection and see state institutions, including courts, as their persecutors.

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