



# **THE STATUS OF WHISTLEBLOWERS IN ROMANIA**

**QUALITATIVE RESEARCH REPORT**

Project implemented by:



# **The status of whistleblowers in Romania**

## **Qualitative Research Report**

### **Research team:**

Irina Zamfirescu

Liana Ganea

Mircea Toma

Georgiana Gheorghe

Dolores Benezic

Mihaela Pop

### **Editors:**

Iulia Moraru

Ionuț Codreanu

### **DTP:**

Ioana Popa

CC BY 3.0

October 2021

### **ActiveWatch**

[www.activewatch.ro](http://www.activewatch.ro)

### **APADOR-CH**

[www.apador.org](http://www.apador.org)

[WWW.AVERTIZORI.RO](http://WWW.AVERTIZORI.RO)

# TABLE OF CONTENTS

CONTEXT .....	3
METHODOLOGY .....	5
TYPES OF WHISTLEBLOWING.....	6
HOW WHISTLEBLOWING WAS DONE .....	7
RECOGNIZING THE WHISTLEBLOWER STATUS.....	10
THE REPRISALS SUFFERED BY THE WHISTLEBLOWERS.....	11
PERSONAL CONSEQUENCES FOR THE WHISTLEBLOWERS.....	17
REACTION OF THE AUTHORITIES AND THE OUTCOME OF THE NOTIFICATIONS .....	21
SUPPORT SYSTEMS FOR WHISTLEBLOWERS .....	23
ROLE OF THE MEDIA .....	25
RECOMMENDATIONS OF THE WARNINGS WHISTLEBLOWERS FOR A BETTER LAW AND PRACTICE .....	27
EXPERTS' PERSPECTIVE.....	30
EXPERT RECOMMENDATIONS FOR A BETTER LAW AND PRACTICE.....	33
CONCLUSIONS .....	34

# CONTEXT

In 2004, Romania became the first European country to adopt a whistleblower legislation<sup>1</sup> as part of national measures to fight corruption in public administration.

Fifteen years after the adoption of the law, the general conclusions of the "Progress Report on the implementation of the National Anti-Corruption Strategy 2016-2020 for 2017"<sup>2</sup> indicate that whistleblowers are a vulnerable category to abuse by the authorities because there is no effective national protection system.

In 2013, the lack of effective protection of whistleblowers was emphasized by the ECHR in the case *Bucur and Toma*<sup>3</sup> v. Romania. However, this case did not produce significant systemic improvements. On the contrary, cases of harassment of whistleblowers have become increasingly frequent in recent years, and the right to freedom of expression in the form of whistleblowing is constantly undermined, with the individuals concerned suffering numerous reprisals.

The adoption in 2019 at EU level of a Directive dedicated to whistleblowers<sup>4</sup> shows an increased interest in their protection at the European level. Romania has to transpose this Directive into national legislation: the deadline for public authorities is December 2021 (the draft proposed by the Ministry of Justice is to reach the Parliament in autumn 2021) and December 2023

for some private companies.

In this context, we set out to map the experiences of whistleblowers in Romania, the impact they believe their disclosures have had, the reprisals to which they have been subjected, the solutions for legislative and institutional protection for future whistleblowers, which they can formulate following their experience. The research and the project that generated it started from the idea that the timeframe for transposition and implementation of the Directive into national law is an opportunity for civil society organizations and other stakeholders to contribute to the adoption of an effective protection system for whistleblowers, in line with European standards and in line with the needs identified by the persons who are subjects of the law (whistleblowers themselves).

In May 2021, Mercury Research collected quantitative data to conduct an analysis of public awareness of the role of whistleblowers<sup>5</sup>. The main findings that emerged from this quantitative research are:

- The whistleblower legislation, although adopted in Romania 17 years ago, has a low profile, with only 12% of Romanians saying they have heard of it.
- The law's notoriety is even lower among younger people, under 40, but higher among those with higher education.

---

<sup>1</sup> Law No 571 of 14 December 2004 on the protection of staff of public authorities, public institutions and other establishments who report violations of the law. Published in the Official Gazette no. 1.214 of 17 December 2004 <http://legislatie.just.ro/Public/DetaliiDocumentAfis/57866>.

<sup>2</sup> Progress Report on the implementation of the National Anti-Corruption Strategy 2016-2020 for 2017, published by the Ministry of Justice <https://sna.just.ro/docs/pagini/53/Raport%20monitorizare%20MJ.pdf>.

<sup>3</sup> *Bucur and Toma v. Romania*, European Court of Human Rights (Application No. 40238/02, Judgment of 8 January 2013) <https://apador.org/en/romania-condamnat-de-cedo-pentru-c-a-inclcat-obligaia-de-a-coopera-cu-instana-european-dar-i-for-violation-of-articles-6-8-10-i-13-in-cazul-bucur-2/>.

<sup>4</sup> DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons reporting infringements of Union law <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX-:32019L1937&from=EN>.

<sup>5</sup> "Notoriety of the whistleblower legislation", research by Mercury Research, ActiveWatch and APADOR-CH, published in 2021" <https://avertizori.ro/studiu-omnibus-privind-notorietatea-legii-avertizorului-de-integritate/>.

- Of those surveyed, just over a quarter (27%) know what the whistleblower law refers to, the majority (40%) believe that this law belongs to the field of consumer protection.
- Only 8% of all respondents say they have heard of whistleblowers.
- Most respondents (61%) believe that employees who publicly denounce allegedly illegal activities at work are brave people, a view supported in particular by those with higher education and middle and high incomes. The positive perception of whistleblowers was identified predominantly among employees in the budgetary system compared to other professional categories.
- Employees in the state sector, as well as people with higher education, are the most willing to take on the role of a whistleblower.
- People with higher education, middle and high income are more informed about the whistleblower institution and appreciate those who have taken on the role of whistleblower and are willing to take on this role themselves.

Based on the Omnibus results and in particular as a consequence of the conclusions and recommendations drawn from this research report, APADOR-CH made a number of recommendations<sup>6</sup> to be included in the transposition legislation of Directive (EU) 2019/1937 on the protection of persons reporting infringements of Union law (for details see [www.avertizori.ro](http://www.avertizori.ro)).

---

<sup>6</sup> [https://avertizori.ro/wp-content/uploads/2021/10/recomandari\\_apador.pdf](https://avertizori.ro/wp-content/uploads/2021/10/recomandari_apador.pdf).

# METHODOLOGY

Research aim: To identify and index the problems and needs faced by whistleblowers in the current national context and to involve them in identifying solutions for improvement.

Methodology: qualitative research - semi-structured interviews with 22 whistleblowers and four experts (lawyers, civil society representatives with expertise in the field). Interviews were conducted between April and July 2021. The method of selection of individuals included in the study was snowballing, with the research team finding that an informal community of whistleblowers already existed. Given the nature of the subject, we could not impose conditions on the geographical area or on the field of activity of whistleblowers (the potential number of people who could have been included in the study is relatively small). However, people from several Romanian cities (4) and Bucharest and from different institutions were included in the study, precisely in order to identify practices at the level of several institutions.

As we will show in the following pages, the whistleblower is exposed to reprisals for his or

her whistleblowing activity within the institution or in the public space. As a consequence of retaliation, the number of whistleblowers is relatively low. Moreover, some of those who have experienced whistleblowing do not want to be included in studies or to speak publicly about their experience.

As this is a qualitative study, the experiences detailed below are not exhaustive, representative of all whistleblowers. The impact on them and their families, as well as their institutional experiences are personal and have left a deep imprint on the individuals included in the study. Despite the particularities, we identified many elements which led to a number of recommendations on how to improve the legislative framework in order to increase whistleblower protection and encourage the act of whistleblowing. Also, the facts reported in the following pages should be read as they were reported, i.e. representing exclusively the perspective and information that the interviewees were able to provide at the time they spoke to the authors of this report.

Whistleblowers/ Expert coding	Description	Whistleblowers/ Expert coding	Description
A1	Public media whistleblowers	A14	Private whistleblower
A2	Health system whistleblower	A15	Road infrastructure whistleblower
A3	Government whistleblower	A16	National statistical system whistleblower
A4	Education system whistleblower	A17	Police whistleblower
A5	Public media whistleblowers	A18	Health system whistleblower
A6	Health system whistleblower	A19	Local authority (municipality) whistleblower
A7	Health system whistleblower	A20	Water management infrastructure whistleblower
A8	Forestry system whistleblower	A21	Water management infrastructure whistleblower
A9	Police whistleblower	A22	Research whistleblower
A10	Forestry system whistleblower	E1	Lawyer
A11	Public transport system whistleblower	E2	Independent expert
A12	Public transport system whistleblower	E3	Independent expert
A13	Police whistleblower	E4	Independent expert

# TYPES OF WHISTLEBLOWING

All the whistleblowing made by the interviewees were in the public interest, and some of them contributed to important revelations for society. Even if, as will be seen in the following chapters, they have only rarely been followed by the redress of the situations reported, the work of whistleblowers is crucial for reducing corruption in institutions, sometimes even for substantially reducing some public expenses. Despite the obvious public interest, public institutions have often focused more on sanctioning the whistleblower than on addressing the situation reported by the whistleblower.

The whistleblowers selected and interviewed for this research come from a wide range of fields and have reacted to various breaches of law or professional ethics. Some of the whistleblowers reported multiple such irregularities. The breaches of law and professional ethics reported by the whistleblowers interviewed include:

- complaints about serious health problems in large hospitals in Romania that were endangering patients' lives;
- reports of inappropriate behavior, including physical aggression, involving children with special educational needs;
- complaints about the working conditions of police officers in the field;
- complaints about shortcomings in the management of some public transport companies that put passengers at risk;
- complaints about non-compliance with procedures required by law in professional associations (medical colleges);
- complaints about editorial censorship in a public media institution;
- complaints about the manipulation of official figures/statistical data on the development of the economy;
- complaints about illegal seniority bonuses,

bogus employment;

- referrals of public procurement law violations in a state school;
- complaints about corruption in the reception of works;
- complaints about politically motivated employment in public institutions;
- complaints about procedures for appointment to posts by circumventing competitions required by law.

# HOW WHISTLEBLOWING WAS DONE

## Assuming whistleblower status from the start

For most of the people included in the study, the legal provisions on whistleblower protection were unknown at the time they made their complaints or decided to come out in public to complain about dysfunctions in the system. Some of the people included in the study learned about the whistleblower legislation from other people who had used it. Thus, most of the whistleblowers included in the study did not invoke the whistleblower protection at the time they made their public interest complaints, because they did not know that there were legal provisions to protect them from possible abuses<sup>7</sup>. Even after learning about the whistleblower law, not all individuals invoked this status, some considering the law's provisions unnecessary in the defense process or just went with the lawyers' strategy, who chose not to use this legal text.

Interviewees who also hold leadership positions in trade unions demonstrated a better knowledge of the whistleblower law and, moreover, some of them supported other colleagues to invoke this role within the institution.

**A5** *"Even if this law is amended and things are added to protect the whistleblower, the most important thing is that there should be a link between the whistleblower law and the labor code and that the employer should be aware of it. For example, at our [...], they said the whistleblower law does not apply. That's a lot of nonsense. They made a whistleblower regulation and said you have to go to your employer first and tell them. I mean you go sheep to wolf to tell him, look who bothered me. And the wolf says, oh, you come here, I'll take care of you. That's the principle. People do not know the provisions of Law 571/2004 on the protection of whistleblowers and how they can take advantage of this law. I have tried my best to tell people that they are protected, but the fear, the fear of losing their job, because, I digress, very many colleagues told me,*

*exactly, verbatim, if they kicked you out, who was a member of the Board of Directors, the employees' representative and the president of the union, they will spit us out like a rotten bone, I'll close the quotation marks. They wanted to set an example so that no one else would bite, and that's what happened. No one has moved since."*

## Steps taken to blow the whistle

Most of the whistleblowers interviewed first tried to find an internal solution to the problems they observed within the institutions:

**A5** *"I tried to report it to the council, if something was wrong I would report it inside first, I wasn't going to do laundry outside. I would say what was wrong and come up with arguments."*

**A16** *"But if I have a boss who doesn't know a law, I wouldn't jump on him with a shovel. Let's say that my direct boss is an imbecile. I don't think it's right to go straight to the press, but to go to the next boss and so on. Because there may be small, trivial problems that can be solved there, it is not malice only ignorance. In my case I exhausted all internal avenues first before going public."*

However, some of them criticized this circuit of referrals, saying that there were cases where, procedurally, the person who was supposed to deal with the referral was the person concerned by the referral. Moreover, one respondent complained about the volatility of the internal rules on how irregularities can be reported, as the rules contain contradictory provisions:

**A9** *"This internal route is questionable in the absence of clear regulations. There was another way they invoked, to report integrity issues to [name of institution, n.d.]. Only here too the provision is absolutely stupid in terms of legal logic, because it clearly stipulates that reporting to [name of institution, n.n.] is also done through the hierarchy and by an address signed by hierarchical heads. So basically I*

<sup>7</sup> Invoking the role of whistleblower was not, however, in itself a protective factor, as most of the people included in the study were helped by this legal status rather in court when challenging decisions of the institutions' disciplinary or ethics committees.



would have to write a document about X, which I would submit to X, a document in which I would write about X and Y. Basically I would submit this document to X, who would give it to Y, who would send it to [name of institution, n.n.]. The request is absolutely stupid because it would have been pointless, it would have been ... they would have taken all the measures to hide, to cover up in one way or another everything that I had pointed out, and then it would have made no legal sense... this whole approach as it is now envisaged. This whole system is chained. Realistically, nothing will ever be done against a set of cops, because they come in a package. X has the protection of Y, who has Z's protection and they all go chained. They will never point the finger at one of the chain and say - you're wrong".

**A13** "I did not make this referral internally because I know the reporting route too well".

The problem was also mentioned by other whistleblowers who complained that the internal circuit of complaints could not be efficient when, regardless of the level at which the complaint was made (even if it was addressed to the Presidency, the Prime Minister, the relevant ministry, etc.), it was sent to the institution to which the person concerned belonged for resolution. As a result of these experiences, for some of the whistleblowers included in the study, the option of making the initial referral to the press offered the greatest degree of protection:

**A21** "The only level of protection I felt was because the case was publicized. It was only from the press that I felt support."

Three whistleblowers in Romanian hospitals reported that they first tried to solve internally the serious problems they faced or observed. Although they approached the directors and management structures of the hospitals where they worked, when they saw that their complaints were being ignored, and, moreover, they started to be harassed, they decided to come out publicly.

A whistleblower in the education system also reported that he chose to report the problems he had observed internally first. He reported that he was unhappy about several problems at the school where he worked: physical abuse of

children by teachers, the way public procurement was carried out, and failure to follow certain procedures. The individual reported the problems of physical abuse of pupils to the head teacher, but was told that his allegations are false. As a result, he began documenting the abuses, including filming with a hidden camera, and filed a complaint with the relevant school inspectorate. To the whistleblower's surprise, the complaint was returned to the school in question without his identity being protected, at which point he started getting harassed at work. He found external support from a children's rights NGO, and some of the footage proving some of his claims of physical abuse of pupils (children with special educational needs) was published in the press and put the issue on the public agenda.

Five of the whistleblowers interviewed are union members or leaders, but their membership of trade union structures did not provide them with additional protection and did not protect them from reprisals, nor did it lead to resolution of the problems. Moreover, the way they were marginalized and harassed as leaders was, in their view, even meant to discourage future whistleblowing.

**A12** "The trade unionist's role is to take up the employee issues. But they have redrafted these regulations and invoke the image [of the institution, n.n.]".

**A22** "There is a form of demonization of trade unions by the current political class. They are hitting the unions because they are afraid of any organized form of workers."

Although a union leader is frequently asked to take a stand against irregularities in the institutions in which he or she works, respondents in the survey who were also union leaders, said that being a union leader does not actually protect you any more than the rest of the employees in an institution. This is perceived as bizarre by the union representatives interviewed, given that a union leader has these responsibilities by statute.

Two of the union leaders included in the study,

who worked in public transport, tried to raise issues both internally and by forwarding them to the mayor that they considered an imminent danger to passengers, but have been ignored both internally and by the authorities. Eventually they ended up reporting things in the public space, in the media.

Another whistleblower could not report internally, as pressure was put on him from the highest level to resign. He told the press that he had been told by his ministry that he was no longer wanted for the post he had won through a competition and he considered it unnecessary to make a complaint, especially as the people exerting the pressure were not from within the institution where he worked, but from the higher institutions. He showed on record that he had been asked to resign from his post and threatened that if he did not, he would face the consequences of check-ups.

**A8** *"In March 2019, because they realized they hadn't found what they wanted, my colleague, the Director General, called me in for a meeting with the Secretary of State. That discussion I also gave to the press. It went straight to the point that the minister asked him for me to leave. I asked him what the reasons were. <<Well, such are the times>>. I had to understand that I had to make room for others and I'd better leave or I'd have to endure the rigors of a check-up. I refused to leave. At some point they forced my colleague to issue a decision of change at any risk".*

And in the case of another whistleblower, the option to refer internally was ruled out from the outset, because the person who was the subject of the referral was a person from outside the institution and with a very high position in the central administration. From accounts of this whistleblower, there is a larger group of employees in his institution who go through the internal steps to point out various dysfunctions before going to the press. However, this kind of strategy does not exempt them from risks at work.

The experiences of all the whistleblowers interviewed show that internal referrals are ineffective. They do not lead to the resolution of

the problems reported within the institutions, nor even to a thorough and independent analysis of the content of complaints. In the absence of independent internal reporting procedures and safeguards (including protection of anonymity), the only consequences of public interest whistleblowing remain reprisals suffered by the whistleblowers themselves. In these vulnerable circumstances, the whistleblower's choice of the most effective channel for reporting remains essential. And so, in the absence of functioning institutions, the media and social networks are considered by many of the whistleblowers interviewed as the most effective reporting channels.

**A1** *"The whistleblower must be given maximum freedom. He is taking a risk anyway. The whistleblower must be allowed to choose his own channel of reporting and the moment he takes the case publicly, if he takes it publicly. Because he's taking big risks. A lot of whistleblowers get sacked, even I was prepared to be sacked."*

**A10** *"Whistleblowing happens even if it does not go public: usually they first discuss it verbally with someone in management and wait for a deadline until something happens. The person is less exposed, but is already targeted. You start to be marginalized, pushed aside."*

**A21** *"The only protection is a good journalist".*

# RECOGNIZING THE WHISTLEBLOWER STATUS

Very few of the people included in the study were allowed to have representatives of non-governmental organizations or the press during disciplinary or ethics committees, as provided for in the whistleblower legislation. From the analysis of the interviews, two types of response from public institutions were identified: either they did not recognize the possibility of having this role in the institution (for various reasons, such as the regime of functioning of the institution), or, under pressure from union members and representatives of the press or non-governmental organizations, they allowed hearings under the whistleblower law (without explicitly recognizing the role of whistleblower in the institution). Added to this, according to the persons included in the study, is the lack of knowledge of the legislation in this field by lawyers and judges. By virtue of creating informal relationships between some of the whistleblowers included in the study, there is a lawyer who represents several of them in the process of challenging the decisions of the disciplinary committees in court. At the same time, other whistleblowers who did not use this lawyer said they had difficulty finding lawyers who were familiar with the law and could use it in court.

While in some cases the special status of the institution in which the person concerned worked and the alleged non-applicability of this law (commercial company, albeit with majority public capital, or the Ministry of the Interior) were invoked, in others this role was simply not recognized. Among the whistleblowers interviewed were many individuals who did not invoke this role within the institution, either because they were not aware of the legal provisions or because they did not find it useful.

**A3** *"Do you know what [the government institution where he worked, ed.] told me? That our internal procedure, of [the government institution where he worked, n.n.] on the whistleblower was not respected. The internal procedure violates the law. And what does it refer to? It was a form, an A4 paper, that had to be filled in. All the information that should have been put on that form I had said, but not in the*

*form format. They were in the referral I made. I was warning the Secretary-General, as a warning. So I provided all the information that needed to be put in form, but it wasn't in the form. I told them it couldn't be because the law beats internal procedure."*

**A19** *"They didn't recognize my role as whistleblower because, you see, I didn't send from the institutional email, I sent from the personal mail (...) I have always made internal referrals, and I have always written on these referrals that I am a whistleblower. A counselor at one point cut what I wrote with a pen and wrote me: <<but who gave you this status>>?"*

**A21** *"We have no whistleblower procedure in the institution".*

In some of the cases presented in this report, following media coverage of the situations reported, special procedures for whistleblowers have been put in place in the institutions concerned by the complaints. But the persons who mentioned the existence of these procedures claim that they are purely formal and that they are not in fact designed to support the work of whistleblowers.

It appears, therefore that in the absence of clear procedures regarding the institutional route of a complaint, the authorities refuse to recognize the whistleblower status of persons who complain about illegalities or irregularities, invoking rules of procedure for making complaints which whistleblowers had allegedly breached but of which they had not been informed of. From the testimonies of whistleblowers included in the study, they did not and do not have institutional support in navigating the steps they would have to go through to be granted the whistleblower status. The only support comes from trade unions, media representatives or colleagues in other institutions who have been through this experience or from NGOs. Thus, at this point, from the interviews conducted, we can conclude that the recognition of whistleblower status, on the rare occasions when it happens, is strictly at the request (even pressure) of employees, not through an institutional procedure.

# THE REPRISALS SUFFERED BY THE WHISTLEBLOWERS

All of the whistleblowers interviewed suffered retaliation in various forms:

- thorough controls of the activity
- fines following checks, considered by whistleblowers as abusive
- disciplinary committees
- disciplinary sanctions - pay cut, detachment, disciplinary sanctions that can lead to dismissal from the profession
- disciplinary termination of the individual employment contract
- reorganization of certain departments within the institution, including the abolition of the post by amending the organizational chart
- detachment, outside the county, without the consent of the persons concerned
- moving the office to an isolated space without a job description, with drastic reduction of duties
- reducing budgets in the departments/institutions in which they work/were in charge
- harassment of family members employed by the same institution
- civil litigation against whistleblowers
- criminal complaints
- complaints to the National Integrity Agency
- attacks in the press about personal life/ smear campaigns

In most cases, retaliation against whistleblowers starts to escalate when the subject of the whistleblowing is made public, through the media or social media. It manifests itself in constant harassment in and sometimes outside the workplace and culminates in many cases, sooner or later, in dismissal. Employment disputes

triggered by dismissal are not always won by whistleblowers. Moreover, most whistleblowers mentioned that the courts had not awarded compensation for the personal trauma they have experienced or the debts they have accumulated in the process of defending themselves and ensuring their daily living during the period in which they challenged the dismissal decision.

In lieu of dismissal, some of the whistleblowers were offered positions in higher hierarchical positions shortly after blowing the whistle. They believe that the offer of advancement in the hierarchy was aimed at removing them from positions in which they made use of the whistleblower legislation. Two of these people refused promotions and both were detached to other institutions as a result. One of the whistleblowers decided to contact the press when threatened with detachment.

It is worth noting that the possibility provided in the Labor Code to order the detachment of the employee without consent is mentioned by some of the whistleblowers interviewed as being abused by the institutions as a "legal" way to harass whistleblowers.

A whistleblower who went on hunger strike to draw attention to serious irregularities and whose employment contract was terminated, has won the right to immediate reinstatement after 6 months. However, once back at work, the person reported that she was detached and asked to stay in an empty room of a few square meters where she had nothing to do. As she was aware of the labor law, and with the support of her lawyer, she did not object to the detachment, knowing that this could lead to a second, this time legal, termination of her employment contract. Instead, he waited until the period of detachment was over so as not to lose her job. The same approach was taken by other whistleblower.

The strategy of changing the working environment to improper conditions or reducing workload and responsibilities was also confirmed in other cases.

When one of the whistleblowers had exhausted all internal avenues of referral and decided to go public on Facebook, superiors "started the persecution". In the first instance, his work started to be examined beginning with the moment the department he was heading was set up. The first sanction came from a disciplinary committee and concerned public outings, with the whistleblower being accused of damaging the image of the institution. One of the members of this committee was one of the very people the whistleblower had referred to in public. Subsequently, the whistleblower was also found responsible for the failure to resolve cases which, in his view, could not be attributed to him (by virtue of internal procedures). Moreover, in this case two sanctions were imposed for the same irregularity. As a result of this check, his salary was reduced for three months and the third sanction was even removal from office. At the time of the interview (July, 2021), the whistleblower was waiting for a response to an appeal he had made to a higher institution. Expectations regarding the chances of a favorable outcome of this complaint were minimal:

**A9** *"They will definitely dismiss me, I don't expect anything else. I am still head of department because the appeal has not been resolved. When the case is settled, the decision will certainly be to uphold the sanction. And I will go to a inferior position, and then dismiss me from [...] probably. I will go to court; I will definitely win. But their logic - and functional logic... because that's the system - is that I'm going to lose time, I'm going to lose money, I'm going to lose... they're going to basically destabilize me. But I'll win, but they're all conceited. Even in a conversation with X he said to me: <<the sanctions [sanctions, n.n.] will certainly not last, but by then I have dismissed you>>".*

Several whistleblowers felt that representatives of the management of the institutions they had complained to wanted to remove them from that institution. While for some of them, in the first phase, the proposal of a promotion was advanced, for others the detachment solution

was used as a priority:

**A21** *"Normally, off the top of my head, this [secondment] is necessary if the employer is expanding to national level, so the employer can say: << Sir, I need X, he's very good in that city. Please, X, I need you to come and help us get out of this impasse>>. I'm thinking this was thought out. But here they use all kinds of politicians to punish..."*

One interviewee complained of strong peer pressure to petition for her dismissal and even feared she would be sabotaged. She too, like most of the people in the study, felt that she was being watched at every step in the institution with the aim of being "removed":

**A2** *"They didn't want to work with me. (...) I actually felt that if he could kill me with his eyes, he would have. I was afraid for my life. They sprayed my locker with bug spray and it smelled bad. I was paranoid they were putting something in my food. I thought they were capable of anything."*

Disciplinary committees are one of the tools used by the management of institutions to turn against whistleblowers. All whistleblowers interviewed said that once they had reported or publicized irregularities, they had been referred to a disciplinary committee. The general perception is that these committees treat the reporting of irregularities in the public interest as disciplinary misconduct.

In addition, all of the whistleblowers included in the study believe that the work of **disciplinary committees**, when formed to deal with whistleblowers is strictly focused on punishing behavior, not on a honest hearing. The whistleblowers interviewed also complained about the lack of independence of these commissions and noted that they felt that, in fact, they are formed strictly for the purpose of applying sanctions to deter any future whistleblowers.

**A20** *"I know people in the unit who are affected by what happens to them. There are people who go into a committee knowing that its members start from the premise that they want to fix things, but to hurt you."*

**A10** "Ethics committees are a necessary evil. You need advice, counselors. To tell you a point of view. The problem is that they are not subordinate to management, because that's what happens. It has leverage to force including the composition of those committees. It actually supports the leadership for various interests."

For one of the whistleblowers interviewed, it is clear that the members of the disciplinary committee respond to hierarchical orders and cannot be considered independent bodies of review in the case of whistleblowers. There is an ethics advisor in the institution, but according to the respondent, the ethics advisor was the main person who found reasons to put whistleblowers to the ethics committee:

**A10** "We have ethics counsellors on every sub-unit, but it was those ethics counsellors that were the problem, they were part of the problem because my colleagues [other whistleblowers] were accused through those ethics counsellors".

All the whistleblowers felt that the disciplinary proceedings were abusive. The formal reasons why the whistleblowers interviewed were brought before disciplinary committees can be placed into a few thematic categories: a) the whistleblowers were accused of "damaging the image of the institution" by going out in public to complain about wrongdoing; (b) they were accused of matters relating to their day-to-day work; and (c) the disciplinary committees have considered misconduct which the whistleblowers interviewed said was outside their area of competence and responsibility (at the time of the interview, most of the whistleblowers had had disciplinary committee decisions overturned in court or were in the process of appealing).

**A1** "The law will have to protect the whistleblower from this charge being brought against him no matter what irregularity he reports, because we see that the pattern is the same. Disciplinary committees do not judge the substance of the matter. Nor were we judged because we were right about the manipulative campaign in [name of

institution, n.d.]. The campaign was not judged. It was judged on the fact that we went out in the public space (...) Afterwards it was done a change in the internal rules of [name of institution, n.n.] whereby going out in public with a complaint must be preceded by a referral to the hierarchical superior - which is a violation of the law of the public whistleblower, a provision which in the organisational rules of [name of institution, n.n.] is still in force today".

Although internal regulations may not provide for rules derogating from Law 571/2004, or restricting the scope of application of this law, several of the whistleblowers interviewed complained that there are such regulations that do not take into account the provisions of the law<sup>8</sup>.

Some disciplinary proceedings are initiated under exceptional urgency, which may call into question the objective and well-founded nature of the procedure. For example, one of the whistleblowers interviewed was the subject of the most urgent procedure, being called before a disciplinary committee immediately after returning from a live broadcast on a national television, where he had made his complaint public.

The official reason was his departure from work, although he had submitted a paper requesting two free hours, without pay, for this trip. Furthermore, his wife, who worked in the same place, was informed on the same day that she was being dismissed and was prevented from entering the office without any explanation (she was subsequently moved to a another service - he blamed this change on the fact that he felt ill when he heard the news and needed hospitalization).

Another whistleblower was told only the night before that he was to go before the disciplinary committee the next day because he had come out publicly to report irregularities in the institution. He said it was crucial that whistleblowers had access to lawyers and time to prepare their cases. Fortunately, he had lawyers among his acquaintances who

<sup>8</sup> According to Article 11 of Law 571/2004: "Within 30 days of the entry into force of this law, public authorities, public institutions and other budgetary units referred to in Article 2 shall bring their internal regulations into line with the provisions of this one".

represented him pro bono, but said that a mechanism should be identified whereby law firms would be compensated for their expenses so that all whistleblowers would have access to a defense from the earliest stages of potential abuse (as early as the disciplinary committee stage, i.e. prior to going to court).

In another case, the institution used the provisions of the Labor Code to launch several disciplinary investigations. One of the reasons for setting up a disciplinary committee was Facebook posts about the work of some people in the institution's management. After several committees were set up for various reasons, the whistleblower's employment was terminated. After 10 months, following a court case, the whistleblower returned to the same job. But following a new Facebook post he was again dismissed (at the time of the interview for this report the process of appealing the decision was ongoing). According to him, although the provisions of the Labor Code state that any act imputable to the disciplinary committees is subject to a six-month statute of limitations, the second dismissal decision did not take into account the time elapsed since the previous misconduct and the obligation to erase from the file those alleged misconduct (invalidated in court, by the way).

In the case of the institution which has twice dismissed the whistleblower (institution where the status of whistleblower is not recognized) a clause has been included in the internal rules, which are annexed to the collective work agreement, providing for sanctions ranging from pay cuts to dismissal for publishing any information that may lead to "damage the image of the institution". Both interviewees from this public company are convinced that these provisions were introduced in the regulation in order to discourage the work of potential whistleblowers, who cannot solve any problems through internal complaints and have to come out publicly. They consider that their disciplinary proceedings for these postings were abusive, given that:

**A11** *"They have nothing to do with my work. In the Labor Code it says that research must be related to job duties. But I was put in the committee for posting on Facebook in my spare time."*

Another whistleblower also mentioned that as he made referrals, the rules changed.

And he believes that these changes were aimed precisely at making the referral process more difficult.

Another whistleblower, this time from the police, was also dismissed on the basis of a disciplinary proceeding, which was based on the accusation of "having damaged the honor of the institution". He too was a union leader and, as other whistleblowers who were union leaders have said, his actions in publicizing the dysfunctional system was aimed precisely at protecting the people working in the institution. At the time of his dismissal, the whistleblower was the subject of six ongoing disciplinary proceedings. In all six cases, the court decided to annul all sanctions.

The whistleblower also mentioned that the person appointed to investigate his work also ended up in a disciplinary committee "on grounds of not having found me guilty".

One of the interviewees, who took a public stand with the support of the territorial branch of her professional college, is on the verge of losing her right to practice, following disciplinary committee sanctions opened against her by the very central college he publicly criticized. It criticized a legislative change made in disregard of legal proceedings within the central professional college, including a potential criminal case. Eight disciplinary cases have been opened against her and she has also been sued in three libel cases by senior members of the central college. Her whistleblower status has not been publicly recognized by the central college on grounds that she is a private entity to which the whistleblower law does not apply. The territorial college of which she is a member has also suffered consequences as a result of its members criticizing the central college. According to the interviewee, a parallel territorial college, and now the old college is fighting in court to prove that this parallel college was set up illegally.

The whistleblowers also explained that the institutions frequently use bailiffs or contract large law firms to intimidate the whistleblowers.

One of them recounted how, in his case, despite having his office in the same building as the management of the institution, the paperwork for organizing the disciplinary committee were forwarded by bailiff. This episode took place after a committee had already met in the absence of the whistleblower, where he had been found guilty, but whose minutes were not validated for fear of being challenged because he was not given the opportunity to defend himself.

For another whistleblower, the consequences were manifold and deeply affected both his professional and personal life. Two separate disciplinary committees decided to reduce his salary, was seconded against his will, his work was scrutinised and he was fined a substantial fine (he contested the fine in court, although he made a considerable effort to pay part of the fine on the advice of his lawyer).

Moreover, at two public meetings, attended by the Minister in charge, the whistleblower was the target of public ridicule even from the dignitary, exposing him and even more opprobrium in the institution where he worked. In fact, one of the consequences of his whistleblowing work was his marginalisation in the institution by those in positions of authority. Among whistleblowers there is a perception that they are anathematised as 'whistleblowers' anyway.

In addition to these practices of public harassment by hierarchical superiors or colleagues, there have also been cases of whistleblowers being sued by various people in the institutions. These lawsuits have been an additional stress factor in whistleblowers' families and a significant expenditure (payment of lawyers' fees):

**A15** *"I was sued by six directors of [name of institution, n.n.] at the same time, in an obvious succession of harassment and I have a decision of the Bucharest Court of Appeal saying that what I did was in the general interest and that my expressions, although harsh and plastic, were*

*in line with freedom of expression - final and irrevocable judgment. But what use is it to me if for four years I have been dragged through [name of city, n.n.] where I have spent money, time, energy, nerves. When you know that you're being asked for exorbitant amounts of money that exceed the possibilities of payment, you and your family worry. Well, that's because they can and nobody holds them accountable."*

Another way of harassment, as reported by the people included in the study, was the extremely detailed analysis of professional work ordered by the management of the institution. All the people concerned by these checks were convinced that the purpose of these checks was to intimidate and/or to find new reasons to be introduced to the disciplinary committees. The whistleblowers who told of these checks did not contest the control attributions within the institution, but they are convinced that these controls were strictly aimed at finding new reasons to be sanctioned:

**A21** *"But I know that they have been looking for a problem in all the reception committees and everything I have done. But that was their annoyance, that they didn't find anything."*

One whistleblower complained that there were even instigation tactics. He said that his superiors sometimes even tried to provoke him ("they were pushing into me"). He believes that these episodes were part of the institution's strategy to terminate his employment by making him physically react to these acts of instigation.

Another whistleblower reported that at his annual medical check-up at the occupational medical clinic he received a "conditionally fit" from the psychiatrist. Despite having obtained a certificate stating that he was fit from a specialist doctor at the city hospital, the decision of conditionally fit was maintained. It was only after complaints to the Health Directorate that he managed to have the original document cancelled. The whistleblower in question is convinced that this decision is part of the institution's suite of harassment tools, given that the clinic where the occupational medicine was carried out was subcontracted by the institution. Other whistleblowers have had the same experience. One such whistleblower mentioned that within



the Romanian Police, the tactic of sending employees who come out publicly to complain about dysfunctions within the institution to psychological checks is "a frequently used weapon".

A13 "During the state of emergency, I had to set an example for all trade unionists in the country, the message being that every trade unionist, whistleblower, policeman in the country should stop commenting or else they will be like X".

**A17** "I've been lucky to have had some experience, but I've had colleagues who have been crazy or... Even I found myself being tested by the unit psychologist, who told me I was OK, and a few days later I found myself with a certificate saying that I had risk, not to be given the gun, etc. But I immediately was taken to neuropsychiatry, the MAI, the hospital, they gave me a test, and the ladies there had the courage to put their signature and stamp on my medical papers and guarantee that I am not a psychological risk"

One of the whistleblowers interviewed recounted that part of the reason he went to the disciplinary committee was because of the way he was dressed at work. He also reported that at the last disciplinary committee, where he was lost his job, the decision was already drafted and numbered before the meeting started.

One person stated (both as whistleblower and union leader) that it is clear that there is a decision at the level of the management of the institutions to harass and result in the dismissal of the person who has established himself as whistleblower, regardless of court decisions. He gave examples of several colleagues who, despite having overturned dismissal decisions in court, once returned, were put in a disciplinary committee, sometimes on the basis of changes to internal rules (changes made, according to him, specifically to punish people who publicly come out with problems within the institution):

**A12** "After they rehire you, they fire you again. Someone is a whistleblower, the institution, through the ethics or disciplinary committees, fires you, people go to court, they get their job back, they come back and if they say something, they get fired again."

The majority of the people included in the study are convinced that the virulence of the measures taken against them are meant to serve as an example to all potential whistleblowers in the institution or for union members:

# PERSONAL CONSEQUENCES FOR THE WHISTLEBLOWERS

We asked the whistleblowers interviewed what impact the events they had experienced had had on them and their families, whether they were satisfied with the outcome of their referrals, whether they thought what they had done had helped, and whether, going back in time, they would start again.

Three of the whistleblowers included in the study stated unequivocally that preparing to become a whistleblower also means preparing to write your resignation:

**A10** *"In the medium to long term a whistleblower must be prepared to change his field of activity. He will no longer be regarded with the same attitude".*

On the same note, another respondent said that anyone who becomes an integrity whistleblower needs to know that a tough time is ahead, personally and professionally:

**A16** *"It's a one-way street. These people don't forgive you because it's their jobs, their lives and their freedom at the end of the day. [The Integrity, n.d.] must be aware of."*

Most whistleblowers responded that they would start again, even if they would probably do it differently. Some said that if they went back in time, with what they had learned from their experience, they would know how to do things better, so that their disclosures would have greater impact and suffer fewer personal consequences. Better knowledge of the law, more personal strategies good ('don't trust everyone', 'don't tell everything you know'), the need to identify people (other warnings, advocates) and resource organisations are among the lessons learned as a result of the experience they have been through.

**A18** *"We would do it again, but we would do it differently, because now we have experience and we have to do it differently".*

**A7** *"I wouldn't. It's stupid to go on hunger strike in Romania. It's a corrupt system. Outside yes, I would go and do it outside (...) For example, in front of the European Parliament, that's where I'd go, evidence and all. Because there I'm convinced that there are people who will listen to us and know what we're talking about. (...) It's a long time before you find a team of journalists who are interested, who can do a story and blow it up. That's what we lacked. No real journalists who could do something. But who? Subservient TV stations? Trade unions [name of political party]?"*

**A4** *"If it helped in any way those at school behaved differently with children. (...). First of all, I was pleased for myself that I had got as far as I had and I made them ashamed. At least I made them ashamed, not only in the country, but all over Europe. And in America. And everywhere."*

**A5** *"At the moment, if anyone, anywhere, wants to report an abuse that happens in an institution, either they do it unconsciously, if they would do it, to report it, and they don't know what they might go through afterwards, and then they will be sorry. As I have been asked if I am sorry. I answered that my way of being is to see where the abuse is and where the truth is and I can't separate the two things and say that now I wouldn't do that, but certainly maybe I would. I would have taken more safety precautions. I think I yelled loud enough for this to be heard. Indeed, I admit, I didn't feel a lot of very big support from journalists elsewhere, not from [name of public media institution, n.d.], because in [name of public media institution, n.d.] it was more difficult, apropos of what I said earlier, that people were afraid and afraid. Unfortunately, when you go to court and if the person who manages to hit you also has the financial possibility, because it's not his money, then the discrepancy is very big. You don't have the means to support yourself and on the other side money and relationships are at hand and it's hard to survive. And if you happen to have another loan at the bank, with a mortgage, at that moment you don't know where to get your shirt. I've had good luck with friends who helped me during that period and they supported me financially, because otherwise I don't know if I would have succeeded."*

Most of the whistleblowers suffered personal consequences. Health problems, brought on by the stress of the experience, have affected most of them, sometimes in significant ways.

One panelist said he had lost weight suddenly, within days.

**A4** *"Not to mention the stress we've had. That I went to the doctor. Okay, it didn't take my heart and all that, but it took my stomach."*

**A5** *"I lost eight kilos in five days, eating normally. It was against a background of stress. On Monday (a week later) I went into hospital."*

One interviewee reported that she had lost a pregnancy as a result of the stress of workplace harassment. Health problems can also become chronic. For example, one warned that his experience left him with high blood pressure.

A major problem for the whistleblowers who lost their jobs was the suspension of payment to the health insurance system, overlapping with a stressful period and which caused them multiple health problems. One whistleblower brought up the expenses he had incurred during this period with doctors. Although he was reinstated in the same job, he said that he was not awarded damages and that, paradoxically, his salary payments for the months he was wrongfully dismissed included medical insurance payments for services he did not receive:

**A11** *"I had no job, no paid social security. Now the money has gone to health insurance for things I didn't get. I could have died and I wasn't entitled. I paid back for a service I didn't benefit from. I paid for the consultations out of my own money".*

Their families have also been emotionally affected. One person included in the study reported that his wife, who worked in the same job, was moved from her (competitively won) job on the very day he went public to complain about problems at the company where he worked. She got sick and needed an ambulance. Following this incident, she was moved to another post, without any explanation of her former post:

**A12** *"Yes, his [wife's] job was abolished. He didn't want to give her anything as a proof of that. She went to the staff [to get an explanation of her job, n.d.] and*

*she got sick. She didn't get to know more because she went to the hospital. That's when the heart problems started."*

Another whistleblower also went through the same experience of his wife's job being taken down, linking it to a harassment campaign against him. He also reported that he had suffered as a result of his work as a whistleblower:

**A15** *"The children told me not to do this anymore because it affects them even at school, they are looked at differently even by teachers".*

**A15** *[people in the management of the institution from which he made the warning told him]: "<<We are destroying you and your family, others should be afraid and not do like you>>"*

The wives of two other whistleblowers, who worked in the same place as their husbands, also suffered at the hands of management and colleagues.

The stress of the trials the whistleblowers went through took its toll on each of the family members, some of whom were extremely affected throughout the time the whistleblowers fought to regain their jobs or overturn abusive disciplinary committee decisions. There have also been whistleblowers who have had problems in their relationships, with partners blaming them for having become completely absorbed in these conflicts and that the family was going through major financial problems due to job loss. Three of the whistleblowers told us that their minor children were deeply affected by their situation, and another told us that they even had to pay psychological assessment for the minors in his care.

One of the interviewees confessed that a great help during the period of public exposure came from a psychotherapist. Relations with the family deteriorated and this person's mother went through a period of stress.

Several of the dismissed warnings recounted the financial stress they went through after being left without an income, when they also had minors in

care or bank loans. Another whistleblower reported high spending on court trials, which they have to support from their own resources. As well as lawyers' fees, one of the whistleblowers has also had to pay a large sum for a fine following an inspection, which he is now contesting in court and which he says should not have been imposed on him.

**A12** *"Now I'm fired. Financially I'm doing very badly. [...] Who hires people at 52?"*

**A5** *"It's been a tough time. That's when I discovered what the value of a leu was, because it happened that I didn't have, for example, for a loaf of bread. And I remember the bread was 90 cents and that's when I realized how much a leu was worth to have to get a loaf of bread."*

**A18** *"For the last year I have worked just to pay the lawsuits."*

One whistleblower said that during the period when he was challenging the dismissal decision in court, he had to live on one leu a day. The financial stress of this situation has seriously affected the quality of life for the whole family, sometimes even to the point of having to pawn things to make ends meet:

**A15** *"I was forced, like other colleagues, to sell and pawn even things from the house. I went through this situation where I lived on one leu a day, I would get a pretzel because the rest I had to save to pay for maintenance, heat, to be able to give the children to go to school and it is a situation of mental and moral degradation".*

Some of the people included in the study also brought up the discrepancy in financial strength between the institution and them. The lawsuits in which they challenge the decisions of disciplinary committees or even the criminal trials they end up in involve high legal fees, while the institutions hire large law firms (a point made by most of the whistleblowers included in the study):

**A21** *"They have fun on the institution's money, I have fun on my money. I meanwhile have taken out another loan so I can pay the lawyer."*

The power differential was also mentioned by another whistleblower who believes that people in leadership positions use institutional force, through all available mechanisms (disciplinary committees, human resources departments, legal departments, etc.) at their disposal, and end up dismissing people who are whistleblowers. He calls it "a mafia-like use of state force against people who have instalments to pay, families to support".

The psychological stress to which they were subjected, including receiving indirect death threats, led some of the whistleblowers interviewed to have suspicions about the real causes of events that occurred in their lives. Such events include: a fire breaking out at a whistleblower's home, a car wheel with loose lug nuts that may have come off in transit, a broken car windscreen, a house broken into by burglars. The whistleblowers who were involved sought rational explanations, but did not definitively rule out the hypothesis that these events were not simple accidents. Some of the whistleblowers also have suspicions about the probity of the lawyers who represented them or believe that the courts were influenced.

**A18** *"The moment your house is broken into... you feel insecure. I perceived housebreaking in a way, to teach myself. Now I put up my fence, barbed wire, rollers, we secured the windows with thermopane".*

In this context, support from a psychologist can be helpful, as one of the interviewed warnings said.

**A10** *"Psychological counseling would also help. I have not used such means, but I recognize their usefulness. Especially to overcome fear, which is the main obstacle, because [the whistleblowers] don't know what might happen to them in the future."*

But psychological support can also come from other whistleblowers.

**A10** *"It would be super important for whistleblowers to meet and talk about their experiences. It's a kind of post-*

*trauma treatment. I don't think anyone who isn't a whistleblower understands what it's like to go through that experience."*

A major impact on the personal lives of the whistleblowers and their families is the deployment against their will to another city, an action considered profoundly against the freedom of the families affected by this decision:

**A8** *"They play with people's fate so lightly and decide the fate of a man, of a family..."*

For one of the whistleblowers interviewed, who works in the police, it is clear that his entire career has stagnated because of referrals and lawsuits filed. He said that over the years he had recuperated some of the salary money he had lost through sanctions, but is convinced that in career terms he would now be in a much better position.

The desire to be vindicated, to be proven right about the problems they have reported them was expressed by several of the whistleblowers interviewed.

**A5** *"What interests me now is my rehabilitation. To be seen to have been abused. That's my most important thought, actually. It still lingers, maybe, in some people's minds, that, boy, maybe it was for real."*

Four of the whistleblowers included in the study mentioned that senior people in the institution had told them that they knew the sanction will be cancelled in court. What's more, the four whistleblowers were convinced that the disciplinary committee sanctions were strictly harassment and intimidation strategies. One of the reasons cited by one of the whistleblowers interviewed for this strategy is to discourage potential whistleblowers from taking a stand.

**A22** *"[One director's name, n.n.] even told them [other whistleblowers in the institution, n.n.] in a meeting: <<I'll kick you all out>>. A whole department, the heads of the rebellion who had the courage to say no to him. <<You will win in court, but for two years you will stay on the side, so I can see what you live on>>".*

**A9** *"Even in a conversation with [name of superior, n.d.] he said to me: <<They will certainly not keep [sanctions, n.d.] in court, but until then, I have dismissed you>>".*

**A16** *"The President [name of the person, n.n.] told me: 'Don't worry, you'll win and the institution will pay [the outstanding salaries, n.n.]'"*

One interviewee suggested that moral damages could be a form of image rehabilitation for the whistleblower who suffered sanctions. In this whistleblower's view, beyond the material problems that a person faces during the period when they are dismissed and the annulment of this decision is being judged, for a person there is an image damage, which is all the more serious when this person is also a union leader.

One of the interviewees tried to change her job following the scandal caused by the public disclosures, but said that no other institution wanted to employ her.

For most of the whistleblowers included in the study, the experience was traumatic and defining for their career path. For most, after they came out into the public arena, almost instantly, the institutions set up disciplinary committees and evaded discussion on the subjects of the issues raised. Most of the time, whistleblowers have had no legal support in these committees. The loss of employment has deeply destabilized family budgets and they have had to resort to crisis solutions (borrowing from friends, pawning assets).

Leveraging support came exclusively from outside institutional mechanisms, namely from individuals and communities willing to stand by the whistleblowers, either with expertise, psychological or financial support. Throughout the experience, although whistleblowers were convinced that they were working in support of the public interest, they felt hostility, violence and actions from people in public institutions designed to make them give in, not support them.

# REACTION OF THE AUTHORITIES AND THE OUTCOME OF THE NOTIFICATIONS

Some of the warnings indexed in this report have led to institutional changes or had concrete legal consequences, but most of them have been more about informing the public and bringing the issues to light.

Most of the people included in the study were dissatisfied with the reaction of their colleagues in the institutions where they worked at the time they were whistleblowers (but put the lack of support at the expense of fear) and the way in which complaints were dealt with. For those cases where whistleblowers felt they had made a difference in the institution, there was still the complaint that the changes were rather ad hoc, without producing systemic changes. Most have mentioned that, following the complaints made, they felt or were themselves rather vulnerable and exposed to possible abuse by the institution.

The problems reported by one of the whistleblowers interviewed resulted in the opening of several criminal cases against teachers accused of physically punishing pupils at a school for children with special educational needs. The cases stemmed from hidden camera footage taken by this warning. However, four years after the events, the whistleblower knows nothing about the status of these cases, because he has not received any further information from the public prosecutor's office or the police.

In the case of another whistleblower, from the public transport system, cases were opened at DNA, following the warnings, and this institution partially confirmed potential violations of the law, as reported by the whistleblower.

In the case of two health whistleblowers there have been some positive changes in their

workplace, as a new manager has been appointed (but long after the public complaints) who is trying to improve the situation in the hospital and has invested the two whistleblowers with decision-making roles in this change process. But the complaints made when they came out publicly have not been solved. The two accuse that the Control Corps report that has been made public is a truncated version. The two also claim that the Ombudsman, who was in office at the time of the complaints, did not keep the information they submitted confidential and that, on the basis of this information, the irregularities reported were buried. The petition to the Presidency did not receive any response even after more than three years. Similarly, the memos to Parliament's Committees on Investigation of Abuse, Corruption and Petitions have been fruitless. The dissatisfaction of these two whistleblowers, also mentioned by many other whistleblowers interviewed, is that no institution in Romania could tell them that they were right.

**A7** *"There is the Control Corps Report, but it cannot be accessed. The rigged one can be accessed. The real report has disappeared. Neither journalists nor [gives name of MP, ed] could access it. What can I say? That we didn't have disinfectants and we washed instruments with liquid soap. What should they say? That the operating tables were full of blood? What did they say? That the dead were sitting on the stairs? That blood was being thrown into the sink? Into the water... What if we got to DNA? Before I went on strike, I went to the DNA."*

Some of the whistleblowers interviewed say that they have found no support and no resolution from the Ombudsman, on the contrary, the Ombudsman's actions have backfired. Despite the fact that there are no direct powers for the Ombudsman to deal with whistleblower complaints, some of the whistleblowers sought

support to solve some of the problems they had raised in the institutions and which could have been, in the opinion of the whistleblowers, the object of the Ombudsman's activity, because targeted potential human rights violations. Other whistleblowers turned to the Ombudsman because they felt their own rights had been violated.

Another negative consequence of the work of whistleblowers has been the amendment of internal regulations or documents governing the work in the field, so that it is forbidden to communicate outside the public institution anything that may "damage the image of the institution". The four whistleblowers who mentioned this measure are convinced that these changes were aimed precisely at reducing the possibility of a future whistleblower among employees.

**Excerpt** *from the rules of one of the institutions in which an integrity whistleblower works: [punishable by reduction of salary or dismissal]: "Dissemination or communication in the public space - on media channels or social media - of any information related to the activity of [name of institution, n.n.], in particular information that may generate a state of uncertainty among service users, with negative consequences for the activity and image of [name of institution, n.n.], as well as for the cooperation with third parties".*

**A13** *"During the state of emergency, they even amended the Police Statute so that each inspectorate chief could remove troublesome policemen (...) in 10 or 12 days. Since 2002, this statute has not been changed. Only now, in a state of emergency, it has been amended with an emergency procedure, so that policemen can be removed without IGPR's approval."*

However, most of the whistleblowers mentioned that they felt frustrated that they had not obtained changes in the institutional mechanisms of the institutions in which they worked, but rather only punctual changes, and these very rarely. All the whistleblowers who explicitly mentioned this frustration blamed this lack of systemic response on intense politicization:

**A12** *"I'm also frustrated because nothing actually happens after we expose ourselves. They've gone all the way with these political appointments down to the cleaning lady. And they're covering for each other."*

All whistleblowers included in the research said that there was no internal route for dealing with complaints. In general, whistleblowers are dissatisfied with the way state institutions respond to such complaints, at all levels (be it internal complaints, central institutions or criminal investigation bodies).

Because they have not found support within the institutions to which they have made their complaints, whistleblowers look for support outside the institution. Some of them have chosen to turn to higher institutions, central ministries, such as line ministries or criminal investigation bodies. They expressed disappointment at the reaction of people in these institutions. Most whistleblowers tried to make public the problems they had complained about, either because they felt threatened or because they felt that the public interest issue would not be resolved. In order to go public, they either posted the information on social media or wrote to the press. In all cases, whistleblowers felt that their situation within the institution had worsened following the publication of the information. But they all said they would do the same, because the option of not coming out publicly would not resolve the situation.

# SUPPORT SYSTEMS FOR WHISTLEBLOWERS

## Colleagues

One problem some of the interviewed whistleblowers faced was the way their colleagues viewed them. For some of the respondents included in the study, the image of whistleblowers among their peers is that of "informers" rather than civic-minded people.

**A6** *"The average Romanian doesn't know what the whistleblower means. The whistleblower today is considered the security informer of the past."*

**A5** *[Does there seem to be a stigma attached to the whistleblower?]: "yes and no. Yes, because some people see it as a kind of an informer, as it was in the communist days. Those who are actually hand in glove with the management, which forms an aura that makes the warner feel very uncomfortable. And no, because people agree with the whistleblower, but don't have the guts to do this. They're afraid, they have families, they have children, they have a bank loan and they're afraid of losing their job."*

In the respondents' opinion, however, the lack of solidarity also stems from fear. Thus, financial insecurity, having children or other family members in their care, or having bank payments make people fearful, and solidarity is therefore rarely shown publicly. Most of the whistleblowers included in the study showed understanding of the situation and did not blame their colleagues:

**A7** *"This everyday poverty of ours makes you shut up. But when two fools or three or five or ten have the guts to speak up nobody listens. Why? Because if you listened to them, you'd be moving the pyramid. And if you move the pyramid it's a big trouble."*

**A8** *"I didn't have many allies, because even colleagues who were very close to me were shy, they were afraid to show themselves with me."*

**A18** *"To me, academics from the university gave me emails, called me privately. But they won't come out*

*publicly unless there's a fuss. They don't have the courage (...) [professionals, n.n.] in the system to come out publicly. People write to me, I've filed them in court. That they [the people targeted by the warnings, n.n.] tried to make me crazy. It would have helped me a lot to get these people out publicly."*

One cautionary note explicitly mentioned that he avoided reaching out to colleagues for support because it would have exposed him, "I was screwing them too."

Some of the whistleblowers mentioned that there are several colleagues within the institution who systematically carry out whistleblower activities and therefore they did not feel alone. However, such cases are isolated. According to one whistleblower, the whole process of warning about irregularities was done collectively, to the press, after internally they had not solved any of the problems reported. He was the only one who came out publicly, making him the most vulnerable person in the institution strictly by virtue of having made that information public. He noted that the role of the press was fundamental and that the publication of information played a crucial role in encouraging potential whistleblowers and increases solidarity within institutions:

**A20** *"Features like that [another feature about another whistleblower, n.n.] encouraged us to come out and I hope that what happened afterwards will encourage others. Many people have written to me asking me how to contact the press."*

One police whistleblower mentioned that not only did he have supporters among his colleagues, but some of them even asked him to teach them how to make a report. As a result of the referrals, this whistleblower claims, his colleagues were also sanctioned. The whistleblower said that after



this episode, he had come to believe that those who were younger in the institution should wait to gain experience and build their careers, because as young people they risk totally compromising their career in the institution. Otherwise, the whistleblower said he also shows understanding for the senior people in institution because, by virtue of the hierarchy, every single person in the institution is at the "mercy of those above".

## Trade unions, other whistleblowers, lawyers

For many of the whistleblowers interviewed, support came from trade unions or other whistleblowers. Two of the whistleblowers who were on hunger strike were helped from the outset by another whistleblower, even if he was from an unrelated field. The latter was also a trade union leader and immediately, even while the two were on hunger strike in front of the institution where they worked, he wrote them papers to protect them from the consequences of the application of labor law. He also put them in touch with a lawyer, who incidentally also won the lawsuits involving one of the whistleblowers who went on hunger strike. The same union leader also supported another whistleblower, also in an unrelated field, including putting him in touch with the same lawyer. Another whistleblower, from the public administration, said that during conflicts with the management of the institution where he worked, he joined a trade union which offered to support him.

The trade union members included in the study mentioned that part of their work is precisely to guide those who make complaints in the public interest, as many of them are not aware of the legal provisions concerning whistleblowers. They stressed the major importance of popularizing the law and the defense tools available to employees.

Interviews show that lawyers play a key role in supporting whistleblowers. Those who have lawyers, especially with a specialization in employment law, manage to protect themselves better. The whistleblowers included in the study, however, say that there are very few lawyers who

know the law governing public interest whistleblowing, and that they and their lawyers choose to use legal arguments from outside this law, precisely because they feel that lawyers cannot handle arguments based on a law they do not know.

**A5** *"It's good for people to know, to know the law, and the moment they want to take a step, to not be alone in the sense of asking for help. (...) At least in the trade union area, they should ask for support, for a lawyer, so that they can take the right steps, without any doubt. Because the whistleblower, as the law says, reports on serious, criminal acts, but in good faith."*

The authors of the report found, as they progressed with the interviews, that there is an informal network of whistleblowers. According to the individuals included in the study, support from peers who had gone through similar experiences was extremely valuable, both in terms of providing information and as an emotional support system. Also through peer whistleblowers, some of the people included in the study were able to contact journalists and put issues of public interest on the public agenda. In the absence of institutional tools to guide and support whistleblowers, they formed an informal community from which information and advice could be drawn.

## Assistance from international organizations

One of the whistleblowers interviewed reported that support from an international professional organization, of which he was a member, provided him with protection, but not from dismissal, but from exclusion from the Board of the institution where he worked, a position to which he had been elected by the employee.

**A5** *"They tried to kick me out of the board. He made all the other 12 members sign a paper. They sent it to Parliament. Only then we were lucky enough to have someone in a committee say: <<Well, are you guys messing with the biggest [name of international professional organization, n.n.]? What did he do?>>... And they didn't kick me off the board."*

# ROLE OF THE MEDIA

Many of the whistleblowers interviewed mentioned how important it is to publicize the situations they report on and how important the media is in this endeavor, as it gives credibility and scope to the issues reported. In discussions with one whistleblower, it emerged that bringing reported issues to the public's attention subsequently protects the whistleblower from accusations of making these issues public following the internal sanctions it has suffered. Other whistleblowers have shown how the situation escalates in the case of internal warnings, to the point where whistleblowers are forced to make these internal warnings public.

**A5** *"The more you publicize an action or an attitude, the more people will know. And the abusers will be afraid to do anything. (...) If the media takes a case and passes it on to the press and it comes out, and people they read it, it's viewed, and the employer will be afraid and afraid to press further."*

**A10** *"I thought for a few days about whether or not to send the material to [name of publication, n.d.]. A friend told me that it was a legal oddity. And I realised that if I don't come out, I become guilty. I have lawsuits to conceive anyway for not doing it sooner."*

The media is also considered to play an important role in putting public pressure to ensure that reported irregularities have legal consequences. For most of the whistleblowers included in the study it is a certainty that if the information had not reached the public, nothing would have changed in the institutions:

**A4** *"No, he didn't even mention [the press about the case he reported, n.n.] (...) I say, if I go to the press, (...) at least let them play the film back a little bit, to show, look, sir, nothing has been done in two years. (...) If it goes on TV, it can be twisted there, but we as individuals, I as an individual, I have no power. But if it were on television, on the news: look, sir, it's been 4 years".*

**A18** *"The press, the people from [name of media institution, n.n.], helped me a lot. The moment they did the media and it came out, they backed off. "*

Public whistleblowing, although permitted by the whistleblower law, is discouraged by various internal regulations. Such a regulation, the application of which brings one of the whistleblowers to the brink of being banned from the profession, states: 'If (...) he or she addresses the media before the matter has been resolved at college level, this will constitute disciplinary misconduct".

**A18** *"They said I violated the unconstitutional article (...) of the code of ethics. That I should have gone to them first. But it is in the public interest."*

Hunger strike is a way chosen by some of the whistleblowers interviewed to put the issues they raise on the public agenda.

**A18** *"Don't think it was easy for me to go on hunger strike, but I was afraid I would be thrown out of the profession. (...) I was on hunger strike for a day, they called me immediately, they were scared. It was even one of the ministers, the secretaries of state, they had been told about me that I was crazy. When I went and I presented the whole situation, and he, who was also a psychologist, said: <<You are not crazy, you speak coherently, you defend your colleagues>>".*

Some whistleblowers who go public end up being asked by other colleagues to expose other problems in their field:

**A18** *"There are people who write to me about problems in the system and tell me to go public with them. Me being someone who has nothing left to lose."*

When a whistleblower's allegations are made public it activates what they felt was a solidarity network - people, either citizens or colleagues . to support them and express their admiration for their courage. The messages, gave the whistleblowers courage to go ahead, feeling that their approach was useful and appreciated (even if these signals came from outside the institution). In addition, there were also messages asking for

information on press contacts or legal advice to support other potential whistleblowers:

**A13** *"I have received many messages of support from colleagues and the public. I don't want to exaggerate, but hundreds of messages of support. Those messages gave me the necessary strength and fortitude to go on (...) At that time [when the case was in the media, n.n.] several colleagues in the country called me to ask me if I could give them journalistic references to turn to, because they also had similar cases and asked me for such data to publicize cases in the system."*

Another important role of the publication of whistleblower complaints is, according to one interviewee, access to free legal support. She is convinced that if the situation she complained about (withholding of almost her entire salary by her private employer) had not been made public, she would not have been able to find a lawyer to represent her pro bono. Moreover, following the media coverage of her case, large private companies, which had business relations with the company where she worked, pressed for a resolution of the employee's situation (other colleagues had also received very low salaries in relation to their monthly salary).

The press is also important for the direct protection of whistleblowers. Many of those interviewed referred to the journalists who took up their complaints as allies, as a kind of guarantee that internally they would be protected from abuse (although in fact in most cases this was not the case). It emerged from the interviews that the presence of the press in disciplinary committees plays an important role in ensuring that the employment rights of whistleblowers targeted by potential punitive measures are respected. One of the interviewees recounted that the meeting of one of the disciplinary committees to which she had been summoned was cancelled precisely because there were media outlets that wanted to participate in the discussions. Another interviewee, who mentioned the crucial importance of press attendance at disciplinary committees, said however that very few media outlets were interested in participating, being

rather interested only in those committees involving the case that had aroused much public interest, leading to the vulnerability of whistleblowers whose case had not gained much popularity.

Some of the whistleblowers mentioned that in the later stages of workplace harassment they would have still needed the protection that the media coverage had brought them in the first place. One whistleblower said he felt that this protection was weakening as time passed and there was no follow up from the press on the case they had reported.

# RECOMMENDATIONS OF THE WARNINGS WHISTLEBLOWERS FOR A BETTER LAW AND PRACTICE

All whistleblowers included in the study mentioned that **the law is extremely little known**. A first measure suggested by many was to popularize the provisions of the law. It was suggested that the law should also be popularized among the general public in order not to be perceived as a *former security informer* and to have the support of society (one of the whistleblowers interviewed even suggested a campaign with public interest TV spots to publicize the damage recovered as a result of whistleblower complaints).

Many of the whistleblowers included in the study believe that **lawyers and judges are not aware of the provisions of the whistleblower legislation**. Some of them have proposed **an official mechanism through which the whistleblower status can be recognized as such** and who can be used in court.

**All of the whistleblowers included in the study reject the idea whereby they receive part of the damage recovered as a consequence of whistleblowing**, believing that this alone would turn them into *informers*<sup>9</sup>. On the other hand, **the need for financial aid** was mentioned in various forms. One of the whistleblowers proposed that during the appeal of the dismissal decision, when the person is left without a source of income, his/her salary should be paid, as this is a gesture of 'moral guarantee from the state'. This would avoid acute financial hardship, as it is now the case when people lose their jobs. Another whistleblower raised the need for financial support from the state for those who *"due to pressure go crazy, who will not be able to support themselves"*. A third whistleblower also

called for financial support in case the whistleblower becomes unemployed as a result of the referral: "after all, think that a whistleblower is punished worse than a person who steals". All whistleblowers ruled out remuneration for their whistleblowing.

Setting up an organization which has the function of **coordination and supervision** of the way processed notifications are made by whistleblowers was mentioned by several interviewees. At the same time, it was noted that those who process whistleblower referrals must have expertise applied to the area in which the whistleblowing is being done, otherwise they will not understand the issues raised. One whistleblower suggested creating a common database of all whistleblowers and following closely how whistleblower complaints are dealt with, so that "you can see that you were right, that you are a credible person".

Protecting the anonymity of the whistleblowers was also mentioned. One of the whistleblowers interviewed suggests that the identity of the whistleblower is basically the main difference between an informer and a whistleblower. He believes that, given the experiences of whistleblowers, there should be the possibility of anonymizing the name of the complainant within the institution. He even suggested the possibility of having an intermediary institution between the whistleblower and the institution from which the referral is made, with anonymization within the intermediary institution of the complainant.

Some of the whistleblowers suggested a **mechanism which is able to block the**

---

<sup>9</sup> 1.MP Sebastian-loan Burduja announced in April 2021 that he will support a legislative initiative in this regard - <http://www.cdep.ro/pls/steno/steno.stenograma?ids=8257&idm=1,011&idl=1>

**possibility of the institutions of opening files in disciplinary and ethical commissions.**

Since this is the most widely used tool of abuse, the whistleblowers believe that many reprisals would be prevented this way.

Another way to discourage abuse would be for **courts to grant huge damages to whistleblowers reinstated in their jobs and to impute these costs on the persons responsible for the reprisals.** With this in mind, one whistleblower suggested amending the Labor Code so that it would be mandatory for an institution to take action against those responsible for unfair dismissal (following a final court decision). Another whistleblower mentioned that he had been dismissed "multiple times" and each time got his job back in court. However, it is the institutions that pay the severance payments, out of public money, and not the responsible persons. The whistleblower considers that amending the Labor code to punish those responsible for these abuses would considerably reduce the risk of whistleblowers being subject to further abusive measures in the institutions to which they report.

**A change in the Labor Code concerning the provision allowing the detachment of an employee against his will** is another recommendation that emerged from discussions with the whistleblowers. Although some of them agreed that this measure provided for in the Labor Code can be useful for the work of an institution, all people who have been through this experience are convinced that in their case it was used strictly to punish them, not because the detachment was necessary.

**Establishing a mechanism through which the referrals made to superior institutions do not return to the institution that was targeted by the notification** was another proposal resulting from interviews.

In order to prevent retaliations against whistleblowers, one interviewee considered it imperative that **the whistleblower legislation should be able to provide for the option of the whistleblower to be able to remain in his**

**position until the outcome of the court trial.**

Because lawsuits can take years, one of the biggest problems for whistleblowers is the lack of income during this period.

One of the whistleblowers interviewed mentioned that the current law, as it is now worded, is more of a support in case it goes to court, rather than protecting a potential whistleblower while the complaint is being made, by not protecting them in disciplinary committees, for example. He noted that it would be helpful is **there is a body to which the whistleblowers can apply for legal support, because it had difficulty** finding lawyers who were familiar with the whistleblower legislation.

**Labor law must provide in an explicit manner the obligation to correlate the whistleblower legislation with internal regulations/ethical codes.**

At the moment, many of the institutions are trying to stop whistleblowers by inserting clauses in these internal regulations/codes of ethics, which makes public whistleblowing a possible reason for opening a file in the disciplinary or ethics committee, by virtue of *damaging the public image of the institution*. As this is the most common accusation made within the institution (confirmed in this research) and the main lever that allows abusive dismissals, one of the whistleblowers suggested introducing an explicit prohibition on organizing such committees during the period in which the reported facts are verified. Another whistleblower raised the issue of the fact that utilizing the pretext of "image of the institution" should be irrelevant in any other context than a commercial conflict and therefore shouldn't be applied to public institutions.

One of the interviewed whistleblowers mentioned **the importance of maintaining all referral channels possible – internally through the institutional hierarchy, to an external body and the press.** He is convinced that information provided by a potential whistleblower is crucial both for the protection of the whistleblower and to put pressure on the authorities to resolve the situation reported (so that the situation reported is not covered up).

This view is supported by the majority of the whistleblowers.

Another whistleblower proposed the establishment of a **legal framework through which the law firms to be able to be paid through public funds so that the whistleblowers can have access to legal counseling and representation**, even from the first phases (disciplinary commissions).

Also, one of the whistle-blowers considers it necessary to **introduce the term “suspected violation of the law” in the text of the law when defining whistleblowing in the public interest** (Art 3 of the law states that "*blowing the whistle in the public interest means notification made in good faith regarding any act that involves a violation of the law, professional ethics or the principles of good administration, efficiency, effectiveness, economy and transparency*").

One of the whistleblowers pointed out as a possible solution to abuses by disciplinary committees **introduction of prohibition of any form of reprisals which can be applied by them against whistleblowers**. In his view, disciplinary committees could only impose fines, which could be challenged in court. He also said it would be useful to have explicit mention in the Labor Code of the fact that anything relating to the status of whistleblowers cannot be assimilated to disciplinary misconduct.

Another proposed change was: **The clear regulation of the labor code of the activities of disciplinary commissions**. At the moment, one whistleblower said, each institution operates according to its own regulations.

In order to reduce the risk of bankruptcy for whistleblowers, it has been proposed that the Labor Code **should explicitly state that in a work court case with the employees, the institution cannot ask for trial costs**. (all the more so as the institutions hire high-priced law firms).

Another proposal to improve the institutional framework for a possible whistleblower would be

to strengthen and assign an active role to Territorial Labor Inspectorates, without the need to create a new institution.

It was also stated that the **labor law trials should be dealt with swiftly** so that people don't become unemployed for so long, and **courts should be specialized in cases involving whistleblowers**.

There are also whistle-blowers who believe **that the provisions of the law are sufficient but that they are not put in place**. One whistleblower gave the example of the law's obligation to amend internal regulations in accordance with this law, an obligation that is not respected in all institutions in Romania (Art 11 of Law No 571/2004: "Within 30 days of the entry into force of this law, public authorities, public institutions and other budgetary units referred to in Article 2 shall put the rules of procedure in accordance with its provisions").

According to several respondents, **depoliticising the leadership of public institutions could help protect whistleblowers**. The view that emerged from many of the interviews is that the political factor is a major barrier to encouraging people to become whistleblowers. From this point of view, one whistleblower believes that even protecting the identity of complainants would not increase the number of complainants because of political interests.

# EXPERTS' PERSPECTIVE

All four whistleblowing experts interviewed for this report consider that, so far, the law has been little known (including by public authorities) and that, in general, being a whistleblower entails very high professional and personal costs. The legislative changes proposed by these experts take into account all the limitations they have encountered in their work.

## Perception of the whistleblower

According to the experts, the image of *the informer* prevails in Romanian society. The main reason why this perception still exists is because there have been no public statements from the leadership of political parties, heads of institutions or persons in high positions in the state, recognizing the fundamental role of a whistleblower in a democratic society:

**E2** *"The campaign will be successful when party leaders come out and say that they have received notifications for which they are grateful, because without this warning they would not have been able to correct things in the parties. Then the heads of public institutions will come out and say the same thing. Say what you have already done, not what you are going to do."*

**E4** *"I'm also missing a message from him [the Prime Minister in office, ed.] saying - thank you for coming out publicly, we wouldn't have known about these problems if you hadn't come out publicly. Even the leadership of political parties should come out. We are in a situation where [party name, nn.] does not recognize the role of the whistleblower even in the party."*

Historically, one of the causes of this phenomenon was identified by experts in the communist course of the country. But on the other hand, said one of the experts interviewed, part of the problem is generated by politicians themselves who try to fuel this association to discourage the phenomenon. All four experts

interviewed believe that an intensive information campaign is needed on the role of the whistleblower, either to encourage potential whistleblowers to take on this role or to make known the provisions of the law in public institutions. One of the experts included in the research mentioned situations where representatives of the public authority have appointed a person from within the institution to be a whistleblower, which shows, in an absurd key, how little the legal provisions are understood by those who are supposed to apply them.

## Main problems in implementing the current text of the law

According to the experts included in the study, the first organizational reaction when a whistleblower appears is to *hunt* him. At the moment, in the absence of clear enforcement rules, representatives of institutions where someone blows the whistle trigger harassment mechanisms:

**E3** *"So the knee-jerk and visceral reaction of organizations is to silence the whistleblower."*

One of the experts, a lawyer, noted that the current text of the law does not contain very clear protection mechanisms. Under these conditions, the whistleblower often remains exposed and vulnerable in the institutions from which he or she makes the referral:

**E1** *"There is, in my view, no encouragement for a bona fide citizen working in a public institution, or even in the private sector, to be encouraged to take such an approach, because he will be left alone in the in front of the community, especially because the management of the public institution always has enough resources to make mischief."*

According to this lawyer there is also some reluctance on the part of the professional legal community to represent whistleblowers in court. One of the reasons is precisely the disproportionate power that public institutions have in relation even to lawyers representing whistleblowers, hence the fear of some of them. He gave the example of a client who, before he became represented by him, was turned down by several lawyers.

The same expert, a lawyer, argues that, at the moment, in Romania, there is an uneven practice of the courts regarding cases involving whistleblowers. According to him, situations involving the whistleblower are still "unclear" and are largely dealt with by the labor courts. Cases involving a whistleblower and of which this expert was aware, were rather won precisely on the grounds of labor law and legality disciplinary procedure, while the part where the whistleblower status is acknowledged was rather ignored.

The two experts who work closely with whistleblowers described how deeply the lives of whistleblowers and their families are affected. Job loss, harassment and psychological pressure can deeply and irreparably affect whistleblowers.

Another major shortcoming of the current law, raised by one of these experts, is the inapplicability of the whistleblower law in public order services (editor's note: as mentioned above, there are public institutions which, by virtue of special operating laws, claim that the whistleblower law does not apply to them).

## Directions for the Whistleblower legislation

There are several points on which the four experts agreed. One of these points related to **maintaining the possibility that the whistleblower can choose the way he can**

**make the public interest warning**. The four experts gave several reasons - the impossibility of making the referral internally, increased safety for some of the whistleblowers by the appearance of the subject in the media. Another argument raised by all four experts was that the law does not currently provide for such a hierarchy, and that imposing such steps would be unconstitutional (it is impossible to restrict rights already legally granted).

Another common opinion of the experts was that **no rewards or financial incentives should be provided for the whistleblowers**<sup>10</sup>.

One expert said such a measure would undermine the idea of good faith and cast the stigma of opportunism on any whistleblower. Introducing the idea of reward would call into question the ethical foundation of whistleblowing and, experts believe, further compromise public perception of the whistleblower. The presumption of good faith is one of the best provisions of the current law and the reward measure would totally undermine it.

At the same time, all the whistleblowers interviewed admitted that there are major financial problems for a person who ends up being fired because of a referral. The need for support must be taken into account in one form or another by the text of the law, but the experts completely rule out the option of a cash payment for whistleblowers. One expert considers that an *emergency fund* to support whistleblowers financially during the period when they have not received income is appropriate. However, another expert argues that a range of services (psychological counselling, legal advice, etc.) made available to whistleblowers would be more useful, in order to avoid people taking advantage of this emergency fund (i.e. offering services rather than money).

Other experts also mentioned **the need for provisions of some services from the state**, bringing legal aid into particular question. They rule out the possibility of a public defender,

---

<sup>10</sup> MP Sebastian-Ioan Burduja announced in April 2021 that he would support a legislative initiative in this regard - <http://www.cdep.ro/pls/steno/steno.stenograma?ids=8257&idm=1,011&idl=1>



stating that trained lawyers are needed and experienced. Two of the experts believe that a fund made available by the National Agency of Seized Assets could be a solution for funding these services. One of them believes that for psychological counselling services, a system of settlement through the National Health Insurance House should be set up, and for legal aid, a system through the bar association.

Another major aspect that the law should include is the possibility of **anonymous and/or anonymized complaints**. Given whistleblowers' experiences following referrals, anonymization could lead to an increased sense of security and encourage people to become whistleblowers.

According to experts, there is a need to clarify internal procedures that often lead to dismissals or other disciplinary measures against people who become whistleblowers. For one of the experts interviewed, it is clear that whistleblowers in Romania suffer retaliation for the complaints they make, given that the first measures taken by the institutions from which these whistleblowers come are concerned with the person making the referral, not the facts being reported. This expert proposed **suspending disciplinary measures during the duration of the warning analysis**. Another expert however raised the problem of possible abuses (people that profit from this status) and considers the whistleblower should **not be included in the process of professional evaluation, one year from the moment the warning was made**. In this way, this expert believes, the referral cannot be a springboard to a career, nor is his professional status affected out of revenge.

On the recognition of whistleblower status, one expert proposes that a *whistleblower certificate* be issued by the National Integrity Agency. However, the concern raised was that if this mechanism were to be put in place, it would be deeply bureaucratic and complicated, and should be more of an automatic process, regardless of the subject of the complaint. Such a certificate would be useful in court, where judges often deal with these cases strictly from an employment law

perspective, without granting this status.

One of the experts interviewed raised the acute need for centralization of cases and constant analysis of the phenomenon by a central public institution. In the absence of information (such as: number of complaints/institution, number of complaints solved, number of complaints found to be unfounded, etc.) and statistical analysis of the data collected in this way, it is difficult to assess the extent to which institutions understand how to apply the law, what kind of support services need to be developed, what kind of support institutions need to better apply the law, etc.

If for one expert the option of having the National Integrity Agency oversee the proper implementation of the law is a good option, another says that the only viable option is for the Ombudsman to take over this role.

One expert believes that the private sector is largely unprepared for the whistleblower institution. While for large companies there are already mechanisms and tools in place that respond to the need to deal more internally with any potential public scandal, for medium-sized companies or those without international leadership, this process will be extremely difficult. Moreover, the lack of promotion of the law amendment by the Ministry of Justice is also likely to lead to delays in implementation:

**E4** *"The message from the authorities on this issue will not be there. The Ministry of Justice makes a law, sends it to Parliament, Parliament adopts it. Nobody thought about comprehensive information (...). You introduce a new obligation, but nobody announces that it will exist."*

# **EXPERT RECOMMENDATIONS FOR A BETTER LAW AND PRACTICE**

- Maintain the whistleblower's freedom to make the referral through whichever channel he or she thinks best suits him or her (internal, public)
- Clarification of internal procedures regarding the whistleblower
- Possibility of anonymous/anonymized referral to protect the whistleblower
- Explicit inclusion of law enforcement institutions among the institutions where there is a possibility to be a whistleblower
- Establish mechanisms to fund services to support whistleblowers
- Explicit inclusion of legal rules to protect the whistleblower from abuse in the form of disciplinary investigations/low scores in professional assessments
- Establish an explicit mechanism to monitor and evaluate how institutions implement their obligations and the phenomenon of integrity warnings as a whole
- Information campaigns and promotion of whistleblower practice
- No material reward mechanism for whistleblowers

# CONCLUSIONS

- The majority of whistleblowers included in the study were not aware of the Whistleblower legislation at the time they made their complaints
- Most whistleblowers initially made their whistleblowing complaints internally, but then had to go public (either through media outlets or their own social media pages) because nothing happened internally
- Whistleblowers in the field of public order (police) are not granted this status on the grounds that current legislation does not allow it
- Most whistleblowers are convinced that the reprisals they have suffered as a result of their reports have also served to discourage any potential future whistleblowers in the institution
- The union leaders included in the study believe that this has made them even more vulnerable to abuse by the institution's management, in order to "set an example" and discourage future whistleblowers
- In the absence of detailed internal regulations on whistleblowing and informing employees of the provisions of the law, the institutions often accuse the whistleblower of not having fulfilled the "official" route and therefore claim that he or she cannot be recognized as such
- Although there is a presumption of good faith in the case of the whistleblower, the almost instant reaction of the institutions, following complaints, is to punish the whistleblower (often through disciplinary or ethics committees) and not to look into the problems reported
- In most cases, reprisals against whistleblowers intensify once the facts reported are made public.
- All whistleblowers have suffered retaliation in one form or another. The most common were reduction of pay, secondment without consent, reduction of job description to the point where they had nothing to do and termination of employment
- All of the whistleblowers included in the study felt that they were being hunted at work so that mistakes could be found that could have led to their dismissal
- All whistleblowers believe that the objective of disciplinary or ethics committees in the case of whistleblowers is to remove them from the institution
- One of the most common reasons due to which whistleblowers are investigated in disciplinary or ethics committees is "damaging the image of the institution" and is triggered as soon as the whistleblower goes public with his/her complaints. Generally, whistleblowers who have received sanctions on the basis of an allegation that they have damaged the image of the institution have won in court to challenge the decisions of the disciplinary or ethics committees.
- One of the most effective ways of defending against abuses in the institutions, but also of resolving the issues raised, is precisely the publication of complaints by the press. All whistleblowers who have appeared in the press have mentioned feeling protected, but say that as time goes on and disciplinary or ethics committees move forward, they feel vulnerable (public pressure is diminishing)

- During the periods when dismissal decisions were contested, for whistleblowers who lost their jobs, there were major personal consequences which were also reflected on their families
- For all the whistleblowers included in the study, the professional and personal consequences (for them and their families) were significant (health problems, major financial problems, sometimes family conflicts, etc.)
- Most of the whistleblowers included in the study had either won their lawsuits seeking the annulment of disciplinary committee decisions or the lawsuits were ongoing. For some of the whistleblowers, however, the decisions of the disciplinary committees remained final
- Whistleblowers have complained of a lack of knowledge and/or understanding on the part of judges and lawyers of the provisions of the Whistleblower Act and, therefore, say that in few cases have been able to make use of this law
- Whistleblowers have often invoked the unequal balance of power between themselves and the institutions to which they have made their complaints. They gave the example of the institutions' hiring of large law firms, a tactic they saw as designed to intimidate them and their lawyers
- All of the whistleblowers included in the study feel dissatisfied that they cannot bring about systemic change, but only, at best, one-off changes. Most of them said that the reason why these major changes do not happen in different systems is the political factor
- Levers of support have been completely outside institutional mechanisms, and have come from individuals, organizations and communities who understand how to deal with whistleblowers, either through expertise or emotional support. Throughout the experience, although whistleblowers were convinced that they were working in support of the public interest, they felt hostility, violence and actions designed to make them give in, not support, from people in public institutions
- The institutions to which the whistleblowers included in the study belong have a range of reactions to the work of the whistleblowers, indicating a pattern in such situations: Triggering of controls of the departments/institutions that whistleblowers coordinate, triggering of disciplinary committees against whistleblowers whereby a series of progressive sanctions are instituted, up to and including dismissal from their post, secondment against their will for the maximum period allowed by the Labor Code, reorganization of the department of which the whistleblower is a member, and termination of their post.
- The public institutions represented in this study do not have clear and popularized mechanisms for employees to make a complaint
- Although most lawsuits involving whistleblowers are won, the arguments, more often than not, are in the area of employment law, not whistleblower law
- Although Territorial Labor Inspectorates could, in the opinion of the whistleblowers, play an important role in the institutional architecture of the whistleblower, this institution does not get involved in whistleblower cases.

**editors:**

**ActiveWatch**  
**[www.activewatch.ro](http://www.activewatch.ro)**

**APADOR-CH**  
**[www.apador.org](http://www.apador.org)**

**[www.avertizori.ro](http://www.avertizori.ro)**

*CC BY 3.0*

*October 2021*