

Public Ethics

The protection of whistleblowers

Challenges and opportunities for local and regional government

Congress of Local and Regional Authorities
of the Council of Europe

The Congress



Le Congrès

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Public Ethics

**The protection
of whistleblowers**

**Challenges and
opportunities for local and
regional government**

Congress of Local and Regional Authorities
of the Council of Europe

Contents

FOREWORD	5
THE PROTECTION OF WHISTLEBLOWERS	7
CHALLENGES AND OPPORTUNITIES FOR LOCAL AND REGIONAL GOVERNMENT EXPLANATORY MEMORANDUM	7
Introduction	10
Whistleblowing in local and regional governance	15
Legal protection of whistleblowers in Europe	21
The challenges and opportunities for local and regional protection of whistleblowers	57
RÉSOLUTION 444 (2019)	65
RECOMMENDATION 435 (2019)	73

Foreword

Corruption is a persistent problem throughout Europe in its many forms, such as the manipulation of public procurement, conflicts of interest or the diversion of administrative resources for private purposes or to further the interest of a political official. Although local and regional authorities enjoy greater trust than other levels of governance, they are not immune.

Whistleblowers often have access to information that only they can detect and thus constitute a unique added value compared to institutional control mechanisms. In the adopted report, the Congress of Local and Regional Authorities of the Council of Europe stresses the need to adopt national legislation concerning whistleblowers and, above all, to ensure its implementation at the local and regional level. Policies on whistleblowers should not only ensure their legal protection, but also provide internal and anonymous reporting channels.

The Congress also encourages the establishment of specific independent institutions, such as local and regional ombudsmen, to supervise and deal with the disclosure of information.

The booklets in the “Public Ethics” series are part of the Congress’ roadmap on activities to prevent corruption and promote public ethics at local and regional levels. The objective is to provide a set of practical responses and tools for the challenges facing local and regional authorities.

The protection of whistleblowers

Challenges and opportunities for local and regional government

Explanatory memorandum

CG36(2019)14final

3 April 2019

Rapporteur: Josan MEIJERS, Netherlands (R, SOC)

Summary

Disclosing information in the public interest is fast becoming a critical safeguard of local and regional democracy and governance. Whistleblowers can provide urgent and much-needed checks in local and regional governance. Although more countries are now adopting legislation on whistle-blower protection, this protection remains underdeveloped at local and regional level.

This report provides an overview of the issues regarding whistleblowing, outlines the legal protection of whistleblowers in member States, examines the standards provided by international organisations and highlights challenges and opportunities for the local and regional protection of whistleblowing.

In its resolution, the Congress invites local and regional authorities to establish and disseminate a whistleblowing policy, with appropriate internal and anonymous reporting channels and to ensure that independent designated institutions exist to oversee and process the disclosure of information.

In its recommendation, it asks that national legislation provide for the protection of whistleblowers at the local and regional levels and proposes agencies at the national level to monitor the implementation and effectiveness of whistleblowing legislation.

INTRODUCTION

This report sets out the current state of whistle-blower protection in Europe and describes national legal frameworks, while highlighting recent advances in legal protection in the Council of Europe, developments in the European Union and other relevant transnational rules and principles. It analyses the challenges and opportunities for protecting whistleblowers at the local and regional level of governance and identifies how the relevant authorities can respond to and ensure the protection of whistleblowers at the governance level.

The local and regional levels of governance are often the most significant arenas where individuals can disclose information in the public interest and contribute to advancing the interest of their communities. Important reasons render the local and regional levels of governance indispensable venues for reporting. First and foremost, for many important social issues, local and regional authorities are the closest to the citizen in the delivery of public services including crucial issues such as housing, employment, education, and health. Trust in local and regional governance is rated more highly than at the

national level.¹ Trust is linked with the capacity and credibility of local and regional governance to deliver results and govern in an accountable and transparent manner.

Notwithstanding this higher level of trust, local and regional authorities are not immune to corruption and reporting by whistleblowers at this level is therefore also salient. Reports on anti-corruption efforts show,² corruption has become a prevalent and persistent issue in Europe and poses a major threat to local and regional governance. Corruption is found in many forms such as through public procurement, conflict of interests, the use of administrative sources for private or political interests of officials, etc.³ A crucial way to detect and unveil these acts is through the disclosure of information by individuals who have direct access to such information and

-
1. 5 See Alina MUNGUI-PIPPIDI et al., *Public Integrity and Trust in Europe*, European Research Centre for Anti-Corruption and State Building, Hertie School of Governance, Berlin 2015, page 12 (Available online: http://www.eupan.eu/files/repository/20160202135959_2016-01-21_-_Public_integrity_and_trust_in_Europe_-_final.pdf). It is noteworthy that this study found that sub-national governance presents the greatest and most stable trust in all tiers of governance (including national level and that of the EU).
 2. Herwig VAN STAA, Governance Committee, Preventing corruption and promoting public ethics at local and regional levels, Report CG31(2016)06prov, 23 August 2016 (Available online: <http://cor.europa.eu/en/events/Documents/Preventing%20Corruption%20and%20promoting%20public%20ethics%20at%20local%20and%20regional%20levels%2023%20August%202016.pdf>).
 3. *Ibid.*

can report on the wrongdoing. However, without the necessary legal protection, their reporting comes at a very high personal cost – reprisal, recrimination and in extreme cases even death threats.⁴

Whistleblowers provide urgent and needed checks in local and regional governance. They have direct access to information and insights about the activities of their organisation that possibly violate the law. This gives whistleblowers a unique added value in comparison to many institutional mechanisms of oversight. Institutional accountability bodies and processes often lack timely and sufficient access to information, speed and efficiency in exposing and addressing organisational wrongdoing. That is especially the case if regimes of protecting information, such as official secrets, are used to hide embarrassing or incriminating information on the side of officials. Hence, whistleblowers not only compliment institutional checks and balances but they offer a *distinctive* advantage in ensuring accountability, fighting corruption and protecting the public interest.

Whistleblowing is also positive for organisational efficiency as it promotes organisational learning and development through the reports on misconduct. Whistleblowing systems are an important element of corporate governance. Some companies, including multinational firms operating in corrupt environments, have established whistle-blower systems,

4. For concrete examples of the latter, see Mark WORTH, *Whistleblower Protection in Southeastern Europe: An Overview of Laws, Practices and Recent Initiatives*, Regional Anti-Corruption Initiative, 2015.

including hotlines and similar reporting tools in order to ensure reporting by employees.⁵

Few studies or reports have focused on whistleblowing specifically at local and regional levels. Valuable reports by regional and international organisations often overlook the rules and practices of whistleblowing at the local and regional level of governance.⁶ We are yet to fully grasp what is taking place at local and regional level and what are some of the challenges and opportunities that can be observed at this level of governance. This report aims to contribute towards filling these gaps and provide initial guidance in what can be

-
5. Maira MARTINI. Best Practices and Challenges for Whistleblowing Systems in Multinational Companies, Transparency International, 2015

http://www.transparency.org/whatwedo/answer/best_practice_and_challenges_for_whistleblowing_systems_in_multinational_co). See also, Transparency International, Whistleblowing protection in Romania and Hungary, https://www.transparency.org/files/content/corruption-qas/Whistleblowing_regulations_in_Romania_and_Hungary_2015.pdf); See also the Guidelines by the International Chamber of Commerce, Available online: <https://cdn.iccwbo.org/content/uploads/sites/3/2008/06/ICC-Whistleblowing-Guidelines.pdf>).

6. See discussion below for the many reports in more recent years including within the context of the Council of Europe, Reports by GRECO, the Committee on Legal Affairs and Human Rights, but also at the European Union level such as resolutions of the European Parliament and impact assessments commissioned by the European Commission. A similar trend is notable for relevant reports produced by Transparency International and other not for profit organisations.

done to improve the position of whistleblowers at the local and regional level.

This report shows that dedicated rules for protection of whistleblowers at the local and regional level are rather exceptional. Although increasingly more countries are adopting legislation on whistle-blower protection, legal protection is generally underdeveloped, especially at local and regional level. For member States that are also members of European Union this legal situation would change if the proposed Directive on the protection of persons reporting on breaches of Union law were to be enacted. This Directive would foresee obligations to establish internal reporting and follow up for regional authorities with more than 10,000 inhabitants. The report explains that an additional challenge in the local and regional context is the increasing divide between rules provided that offer protection in the public and private sector, with the latter mostly remaining outside the scope of regulation. , when protection is stipulated at the national level, in some cases the necessary implementing acts and provisions are not enacted at local and regional level leading to lack of protection for whistleblowers.

Exceptionally, some recent proposed legislation on whistleblower protection curbs rather than ensures disclosure of public interest information due to the procedures set out for reporting channels and who may qualify under the law to be protected as a whistle-blower. In practice this vacuum of rules and/or their limitations have been filled with initiatives to provide platforms and hotlines for secure and confidential reporting. Often these initiatives are led by NGOs and other non-state actors in cooperation with local authorities. The

report also shows that disclosing corruption is one of the main reasons why some of the laws on whistle-blower protection were enacted. This in turn leads to some laws having a narrow material scope for reporting.

This report is structured as follows: Section 1 provides an overview of the issues regarding whistleblowing at local and regional level of governance. Section 2 outlines the legal protection of whistleblowers in Europe, providing more details on eleven Member States of the Council of Europe. It also examines rules and principles stipulated by the international organisations. Section 3 focuses on the challenges and opportunities for local and regional protection of whistleblowing.

WHISTLEBLOWING IN LOCAL AND REGIONAL GOVERNANCE

the past decade has seen significant efforts have been made to advance protection of whistleblowers. More national laws have been enacted, existing protection has been expanded as well as relevant reports and recommendations at the international level have been issued, including the Council of Europe report on 'The protection of 'whistleblowers' in 2009,⁷ a series of evaluation reports by the Group of States Against Corruption,⁸ and the Report of the UN Special Rapporteur to the General

7. Pieter OMTZIGT, Committee on Legal Affairs and Human Rights, Protection of Whistleblowers, Report, Doc. 12006, 29 September 2009 (Available online: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12302&lang=en>).

8. E.g. see Seventh General Activity Report of GRECO, 2006 (Available online: <https://whistlenetwork.files.wordpress.com/2014/01/seventh-general-activity-report.pdf>).

Assembly on the Protection of Sources and Whistleblowing in 2015.⁹ The European Commission has also proposed a Directive on the protection of persons reporting on breaches of Union law,¹⁰ the legislative debate for which is on-going. Hence, the value and importance of whistleblowing has become widely recognised through a variety of legal and policy instruments.

Whilst this report focuses on whether legal protection exists for whistleblowers and how this protection affects the possible public interest reporting, it is important to note that other factors, some of which are specific to the context of local and regional governance, are relevant and determine whether and how disclosure of information in the public interest would take place. Maintaining legal protection for whistleblowers is a first step in the broader mosaic of factors that influence whether reporting will take place, whether appropriate authorities will follow-up on those reports, and what consequences could arise for the whistleblower. For example, societal culture and acceptance of whistleblowing rather than viewing it as a negative phenomenon is one such important factor, both in terms of whether individuals would report any wrongdoing and, if it is reported, whether there would be negative repercussions for the individuals either at the workplace or in their community.

9. UN Special Rapporteur to the General Assembly on the Protection of Sources and Whistleblowing, 2015 (Available online: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ProtectionOfSources.aspx>).

10. See the proposed Directive and the other measures proposed by the European Commission available online: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=620400

Research focused specifically on the local and regional level of whistle-blower protection is under-developed and studies in this field are not numerous. Yet, there are some important recent contributions explaining structural aspects of local government and how that in turn affects whistle-blower protection. Through surveys and other data gathering methods, more information is also available as to how managerial and organisational aspects of local and regional governance affect whistleblowers and reporting channels of disclosure.

The level of centralisation or separation between local and central government is an important factor for whistleblowing at a local and regional level. Specifically, channels of disclosure can be determined by the extent to which there is a separation between administration and politicians at local governance, as recent studies show about Norway. Namely, as a consequence of legal revisions to the Norwegian Local Government Act of 1992, at local level of governance in Norway there is a separation between the administrative and political staff. These revisions were driven by the aim to increase transparency and clarify spheres of responsibility. In the analysis of 20 municipalities in Norway about how politicians handle whistleblowing, research showed that whether whistleblowing takes place and how it unfolds depended on the separation between the political and administrative level.¹¹ Whilst these are important findings and should be taken into account for other local governing authorities, it should be noted that each country's specificities

11. Marit SKIVENES & Sissel C. TRYGSTAD, Whistleblowing in Local Government: An Empirical Study of Contact Patterns and Whistleblowing in 20 Norwegian Municipalities, *Scandinavian Political Studies* Vol. 39, No. 3, 2016.

are also important in how the implementation of similar rules could work.

Organisational aspects within local and regional governance are also salient for whether individuals would disclose information in the public interest. For example, in the UK, the local government is one of the top six industries where whistleblowing takes place, according to a study that examined 1000 whistle-blower stories.¹² Furthermore, people in different positions within an organisation tend to use different routes to try and raise their concerns. For example, those in administrative positions are more likely than others to raise their concerns with higher management.¹³ However, the same study found that the more senior the whistle-blower is, the more likely it was that they would be dismissed.

This is especially the case when the whistle-blower is higher in the organisational hierarchy. In cases where the whistle-blower was not immediately dismissed, they were still more likely than others to experience harassment or blocked resources.¹⁴ Furthermore, alarming data in the UK context suggests that in 69% of cases in local government whistleblowing, the position of the whistle-blower worsened after the first attempt to report wrongdoing. In the second attempt, 75% worsened and whistleblowers in local government tend to resign after their third attempt, more than in other sectors.¹⁵ In local government

12. Public Concern at Work and University of Greenwich, Whistleblowing: The Inside Story – A Study of the experiences of 1.000 whistleblowers, 2013.

13. Ibid, page 16.

14. Ibid, page 22.

15. Ibid, page 28.

more individuals said nothing was done to address the concern and low expectations of a good investigation is more likely in this sector throughout the process of raising a concern. In terms of respondents, 75% noted that nothing is done at their first attempt of reporting, and 79% noted that nothing is done at second attempt to raise concerns and report wrongdoing.

These numbers are concerning, especially since the UK is one of the countries with a longer experience in legislation to protected whistleblowers and many NGOs that are active in the field. However, broader claims cannot be made as to whether this data is indicative of other practices at local and regional level and hence it cannot be claimed that this data is representative of how whistleblowing takes place at local and regional level in other countries. For example, in Norway more than half of the employees that have experienced wrongdoing report it usually initially to their immediate supervisor.¹⁶ Regarding the effectiveness of whistleblowing, 50–71% of respondents reported that the misconduct was fully resolved or corrected. Studies that include samples of the entire Norwegian labour force indicate that more than eight out of ten employees who had blown the whistle stated that they would do it again if necessary.¹⁷ Hence, it is the combination of organisational, legal and structural factors that matter in

16. SKIVENES & TRYGSTAD, Whistleblowing in Local Government, 2016, supra note 12, page 271.

17. See, MATTHIESEN S. B., BJØRKELO, B. & NIELSEN, M. 2008. Misconduct and Whistleblowing in Norwegian Working Life. Bergen: University of Bergen Press; TRYGSTAD, S. C. 2010. 'A Right to Blow the Whistle But Does It Help, and Is It Wise?', Faforeport 2010:18

terms of whistleblowing effectiveness and to what extent whistleblowing would lead to negative consequences for the individual filing the report. More in-depth empirical studies are necessary to gather data from practice in order to map this variety for countries.

Another relevant aspect to local and regional governance is how reporting is done by individuals. Especially in smaller administrations, the whistle-blower would need safe means of reporting. In this regard, a recent Report to the Nations on Occupation Fraud and Abuse prepared by the Association of Certified Fraud Examiners, found that over half of those who report their suspicions do so by email and that 14% of all tips are made anonymously. This is particularly relevant to note as the same report found that in both Western and Eastern Europe tips from employees are still the primary way fraud is detected in both the public and private sectors.¹⁸ In conclusion, the report emphasises that limiting or restricting organisations from accepting anonymous reports risks losing the opportunity to learn of a problem from individuals, who at least at the initial stages of the reporting are not comfortable to reveal their identity due to concerns for reprisal and other negative consequences.

18. Association of Certified Fraud Examiners (2016) Report to the Nations On Occupational Fraud and Abuse: 2016 Global Fraud Study, page 24 (Available online: <http://www.acfe.com/rtn2016.aspx>).

2.1. National legal frameworks

In a survey conducted by the Parliamentary Assembly of the Council of Europe in 2009, it was concluded that only six countries had dedicated rules on whistle-blower protection: Belgium, France, Norway, the Netherlands, Romania, and the UK.¹⁹ Today, almost a decade later, the number of countries that have enacted laws for the dedicated protection of whistleblowers has grown to 15.

For the purposes of this report, almost all member States of the Council of Europe have been examined in order to evaluate applicable rules and regulations on whistle-blower protection.²⁰ The focus is particularly on the local and regional level of governance and what -if any- measures exist at this level. More than half of the countries examined have some legal protection for whistleblowers. Such protection is stipulated in dedicated legislation for protection of whistleblowers but it is also provided in labour laws, administrative laws or anti-corruption legislation.

19. Paul STEPHESON & Michael LEVI, *The Protection of Whistleblowers: A study on the feasibility of a legal instrument on the protection of employees who make disclosure in the public interest*, Report commissioned by the Secretary General of the Council of Europe, CDCJ(2012)9FIN, 20 December 2012, page 12.

20. Due to more limited resources the following countries have not been included in this analysis: Andorra, Armenia, Azerbaijan, Georgia, Lichtenstein, Monaco, San Marino.

An increased awareness about the importance of whistleblowing and many legislative debates are taking place in Europe for increasing the protection of whistleblowers. For instance, since January 2017, Sweden has expanded the protection of whistleblowers to the private sector, and in November of the same year, Italy adopted a law on whistleblower protection, aimed at employees in the public sector and contractors of companies providing goods or services on behalf of the public administration. Discussions for enacting dedicated laws on the protection of whistleblowers are also currently ongoing in Poland and Greece.

However, this numerical increase of legislation of whistleblower protection does not *per se* imply that whistleblowers are fully protected taking into account the limitations to the scope and type of protection. Firstly, protection is still provided in a fragmented manner for the public and private sector, the latter often remaining outside the scope of regulation. Secondly, protected disclosure in many countries is limited to corruption and abuses of power, leaving a wide range of issues outside the scope of protection. The latter issue also leads to concerns for legal certainty and limitations to freedom of expression.

For many countries the laws on whistle-blower protection arise in the context of legislative efforts to increase state instruments in the fight against corruption. Many of the legal frameworks specifically refer to the reporting of corruption or for example, link the reporting to be done by the whistleblowers with anti-corruption authorities. For some countries the protection is specifically limited to the reports on anti-corruption. For example, Austria's first-ever legal provision specifically designed to protect whistleblowers, which was passed in January 2012 and added to the Public Service Law to shield public employees who report certain offenses to their managers or the Federal Bureau of Anti-Corruption. The measure was

passed in response to recommendations from the Council of Europe's Group of States against Corruption (GRECO).²¹

Under GRECO's evaluation of the general anti-corruption measures applicable to the administration and public officials, a recommendation was made to more than half of the GRECO members, both 'old and new democracies', to introduce a mechanism for the protection of whistleblowers who report in good faith suspicions of corruption and against negative consequences.²²

Only a handful of member States of the Council of Europe have specific protection for whistleblowers at the local or regional level. Very few countries specifically address this issue in their legislations and only a number of countries that provide avenues for whistleblowers to report on wrongdoing such as hotlines, include: Belgium, Bulgaria, Denmark, Italy, Spain, Switzerland, and the UK.²³ Often such channels of providing information are established or managed mainly by NGOs active in this field rather than local/regional authorities.

21. See Blueprint for Free Speech, Change of Direction, Briefing Paper, Whistleblower Protection in Austria (Available online: <https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Austria%20-%20english.pdf>).

22. Christophe SPECKBACHER, The Protection of Whistleblowers in Light of GRECO's work, 20 March 2009 (Available online: <http://www.batory.org.pl/doc/Whistleblowing%20mechanisms%20REV2%20for%20Batory%20Foundation%20Conf%20of%2030March09.pdf>).

23. See Transparency International Italia, Milan Introduces Protection for Public Sector Whistleblowers, Council Votes Protection and Promotion of Whistleblowing in the public interest, 19 June 2013 (Available online: https://www.transparency.org/news/pressrelease/milan_introduces_protection_for_public_sector_whistleblowers%2).

Hence, from a legal perspective, reporting channels at local and regional level are either not regulated or do not provide for specific rules on protected disclosure.

2.2. Spotlights on different national frameworks

In line with the Council of Europe's Principles and Explanatory Memorandum on protection of whistleblowers, the following elements are highly pertinent to determine whether existing rules offer the necessary protections: (i) the definition of whistle-blower/whistleblowing; (ii) the material scope of the law (iii) the personal scope of the law; (iv) the normative framework; (v) the envisaged channels for reporting and disclosure of information; (vi) whether confidentiality is guaranteed for the whistle-blower; (vii) what follow-up measures are foreseen to act on the reporting and disclosure; and lastly, (viii) what protections are provided against retaliation and other work risks. The aim of this subsection is to provide a closer look at national frameworks in order to better understand the applicable laws as well as the diversity of the legal frameworks applied to whistleblowers. The selected countries portray the diversity in whether and how whistleblowers are protected, but also the broader context of the country in which this legislation takes place. The main elements as well as country-specific issues are elaborated below.

2.2.1. Albania

Albania adopted a law on 'Whistleblowing and Protection of Whistleblowers' in June 2016.²⁴ This is the first comprehensive

24. See the original source of law in Albanian, available online: <https://www.parlament.al/wp-content/uploads/2016/06/ligj-nr.-60-dt.-2.6.2016.pdf>

effort to provide protection to whistleblowers in the private and public sector. The implementation of the law is foreseen to take place in two stages: starting with the public sector on 1 October 2016 and thereafter for the private sector on 1 July 2017.

It provides definitions for whistleblowing and whistle-blower that are in line with international best practices. However, the definition on whistleblowing is mainly focused on reporting corruption without providing a broader scope of other types of wrongdoing. Hence, while the law has a broad personal scope because it includes persons working in the public and private sector, including those who are no longer active, it has a limited material scope due to its focus only on corruption. In terms of reporting, the law provides for the establishment of internal and external disclosure channels. Private entities with more than 100 employees and public entities with more than 80 employees are obliged to establish internal reporting units. These units are also responsible for the investigation of reported cases. Whistleblowers can report directly to the 'High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest'. Such reporting is particularly foreseen in cases when the private or public entity fails to initiate an investigation, when there are doubts that the entity is not impartial or that evidence could be destroyed.

Whistle-blower protection in Albania is established in the context of other legal efforts to address corruption. In fact, the law on whistle-blower protection aims to address some of the deficiencies identified with the application of the Law "On Cooperation of the Public in the Fight against Corruption". The latter law regulates the reporting and recording of corruption practices by promoting public participation to report on

corruption and protect individuals who report on corruption practices from public authorities.

Since the law on the protection of whistleblowers is more recently adopted, data is missing for its application, especially at the local and regional level. Yet, when compared with the local experience in the application of the anti-corruption law, which also provides for reporting of corruption and wrongdoing, it could be noted that implementation of reporting is rather unsatisfactory. Particularly noteworthy is the fact that local government units have not adopted the majority of the anti-corruption measures derived from the legislative framework and they do not have enough professional capacities to exercise their authority and enforce the applicable legislation.²⁵

Furthermore, implementation of laws and adoption of necessary bylaws at local and regional level has been an issue in Albania, as shown in the European Commission's progress reports.²⁶ Hence, this raises questions regarding the

25. Institute for Democracy and Mediation, Challenges of local government units in the fight against corruption: An Assessment of the Anti-Corruption System in 20 municipalities of Albania (Available online: http://idmalbania.org/wp-content/uploads/2016/10/Report_Challenges-of-LGUs-in-the-fight-against-corruption.pdf).

26. See European Commission, European Neighbourhood Policy and Enlargement Negotiations, Key Documents – Albania (Available online: https://ec.europa.eu/neighbourhood-enlargement/news_corner/key-documents_en?field_file_theme_tid%5b0%5d=96&field_file_country_tid%5b0%5d=79).

implementation of whistleblowers protection, although in the case of this legislative act additional implementing measures are not foreseen. Equally concerning to legal implementation is the societal context for whistleblowers in Albania. Namely, there is generally low level of social support for whistleblowing and this practice is not yet a regular or normalised one. A survey conducted for the Western Balkans, which included Albania, shows that from more than 7000 people interviewed region-wide, only about a third of them noted whistleblowing to be acceptable, and one in six people thought that whistleblowers should be punished for their actions.²⁷ These social attitudes toward whistleblowing are linked with the weak checking function of the judiciary and overall low levels of trust in the public institutions especially in cases of high profile anti-corruption that the necessary sanctions would follow.²⁸

27. Regional Cooperation Council, Public Attitudes to Whistleblowing in Southeast Europe – Data Analysis of Opinion Survey About Whistleblowing and the Protection of Whistleblowers, Report, 12 April 2017 (Available online: <http://www.rcc.int/pubs/44/public-attitudes-to-whistleblowing-in-south-east-europe--data-analysis-of-opinion-survey-about-whistleblowing-and-the-protection-of-whistleblowers>).

28. Konard-Adenauer-Stiftung e.V., Whistleblowers Protection in Albania: An Assessment of the Legislation and Practice, 15 November 2013 (Available online: http://www.kas.de/wf/doc/kas_11294-1442-1-30.pdf?131119092415).

	<p>Dedicated law: Law No. 60/2006 for whistleblowing and protection of whistleblowers</p>
<p>Laws that render protection to whistleblowers</p>	<p>Other relevant legislation²⁹:</p> <ul style="list-style-type: none"> ▶ Law “On Cooperation of the Public in the Fight against Corruption” ▶ Labour Code, which was amended in 2008 to provide protection for employees who report corruption from unjustified sanctions; ▶ Law on Civil Servants, which gives civil servants the right to disobey an illegal order but does not provide protection from retaliation if they so disobey; ▶ Law on the Prevention of Conflict of Interest, which allows disclosures to be made to government regulators or through external channels such as the media; and ▶ Code of Administrative Procedure, which allows any person to complain about any administrative act, and gives civil servants the right to request the revocation or amendments of an act.

2.2.2. Belgium

Legal protection for whistleblowers at the federal level in Belgium entered into force on 4 April 2014.²⁹ Belgium is the first country where regional protection for whistleblowers existed prior to the national law. Provisions on whistleblowers

²⁹. See the original source of the law (Available online: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2013091506).

have existed since 2004 in the Flemish administration, where the Ombudsman provides an external communication channel and protection for those who are unable to submit their report in their own workplace. The Flemish Parliament further strengthened these provisions in a decree in 2012.³⁰The whistle-blower protection procedure is also laid down in the Ombudsman decree, which dates from 1998 and has been recently renewed in 2014.³¹

In terms of reporting channels, employees can turn to different channels and authorised contact persons to report cases of wrongdoing, such as to their superior, the 'Audit Vlaanderen' (the internal audit division of the Flemish government authorities) and the 'Spreekbuis'. The latter is a central contact point established by the Flemish authorities, but acts as an independent central point, and focuses on the integrity and wellbeing of employees. The Spreekbuis is operated by "trained professionals and specialists who know how to deal

30. See the original source of the law (Available online: http://www.etaamb.be/nl/decreet-van-09-november-2012_n2012206772.html). See also European Commission, EU Anti-Corruption Report on Belgium 2014 (Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_belgium_chapter_en.pdf).

31. Kristien Verbraeken, The Flemish Government's central point of contact for integrity and wellbeing at work – Committing to Effective Whistleblower Protection, Organisation for Economic Co-operation and Development, 16 March 2016 (Available online: <http://www.oecd-ilibrary.org/docserver/download/4216061ec009.pdf?expires=1511899895&id=id&accname=ocid177380&checksum=9913F5A03417A3D7A4E0845D97C70204>).

with the highly emotional calls and messages they receive”³²
In addition to the Speekhuis, there is a call centre 1700 to which the public can report for acts of the Flemish authorities. For example, in 2017 the call centre 1700 received 1,042,708 calls, emails and chat messages.³³

2.2.3. Czech Republic

In the Czech Republic, protection of whistleblowers is viewed as an important instrument in the broader anti-corruption agenda, drawing from the Governmental Anti-Corruption Policy and 2015 Action Plan, which are significant strategic documents. Legislation however provides protection only in part, as efforts for a dedicated law failed. In the period of 2007-2010, the Ministry of Interior in cooperation with Transparency International Czech initiated efforts to establish whistle-blower protection. However it was reported that:

“The difficulty in distinguishing the specialised nature of the advice required for a reporting/whistleblowing line, and general legal services under public procurement rules led to the service being abandoned altogether.”³⁴

34. In 2014 the Government Anti-Corruption Committee was established to provide a coordinative and advisory role on this issue. Specific proposal for legislation and discussions have circulated since 2013 and a new proposal has been

32. Ibid, page 134.

33. Ibid, page 137.

34. Anna MYERS & Petr LEYER, Possible Functions of a Whistleblower Centre in the Czech Republic, 2015, page 30.

underway since 2015.³⁵ Yet, a dedicated law to protection of whistleblowers is not yet established. Within the public sector, the Civil Service Act of 2014 protects employees when they report a wrongdoing. The implementing regulation came into force in 2015 and it stipulates an obligation for each ministry to provide for closed boxes in which reports can be posted by civil servants who want to report on a wrongdoing.³⁶

35. In addition to the Civil Service Act, provisions offering at least some level of partial protection to whistleblowers are found in the Labour Code, the Administrative Procedure Code, and the Criminal Code. Regarding the Civil Service Act, it provides legal protection and anonymity to the civil servants who report cases of corruption or unlawful actions of their colleagues in civil service. Yet, there is a 'duty of silence' for civil servants and it is not clear how this obligation matches with the whistle-blower protection. Among other factors, this issue is a reason why in practice only very few civil servants have filed reports of unlawful actions.³⁷ Or when reports are made, as a recent study in the Czech Republic and four other countries, including Poland, Slovakia, Hungary, and Estonia, shows, that poor levels of institutional support lead

35. Ibid.

36. Government Regulation No. 145/2015 Coll., on measures related to the reporting of suspicions of illegal behaviour at a public office.

37. Frank Bold, Briefing on Implementation of Civil Service Act, Czech Republic, 1 October 2015, page 6 (Available online: http://en.frankbold.org/sites/default/files/tema/briefing-civil_service_act-2015-10-09_0.pdf)

individuals to seek other means to report harmful, unethical, or illegal conduct.³⁸

An institutionalised body addressing concerns of whistleblowers is lacking at national as well as local or regional level. Discussions for an establishment of an institutionalised body, similar to that in the Netherlands, took place along the debates on legislation for the protection of whistleblowers, but the latest research shows that such a body is yet not established. In this vacuum, Transparency International Czech has established an Advocacy Legal Advice Centre since 2005. The purpose of this Centre is to offer a free-of-charge legal assistance to whistleblowers but also witnesses of corruption practices.

2.2.4. Estonia

Estonia does not have a dedicated protection to whistleblowers. However, it has ratified international instruments that require some form of protection for reporting such as the Criminal Law Convention on Corruption and the Civil Law Convention. It is also a party to the UN Anticorruption Convention, the OECD Convention on Combatting Bribery.

38. See Anna MYERS & Petr LEYER, Concept Paper: Possible functions of a Whistleblower Centre in the Czech Republic, Project to Strengthen anti-corruption and anti-money laundering systems in the Czech Republic (Available online: <https://rm.coe.int/16806d11e5>). See also FRANKOVA, L and L. PETROKOVA (2014) About Us With Us: Protection of whistleblowers in the Czech context and in comparison with other countries. OŽIVENÍ: Czech Republic.

Since 2013 Estonia has adopted the Anti-Corruption Act, which provides for protections for public sector employees in cases of reporting of corruption.³⁹ This law creates a duty for public sector employees to report on corruption, unethical or illegal behaviour as well as sets disciplinary measures if this duty is not complied with.⁴⁰ Yet, this seems to be the only protection and the private sector is not included, although it is noted that public officials reporting on issues of private sector would benefit from protection.⁴¹ While the Employment Contract Act forbids unfair dismissal, it is not clear whether in instances of whistleblowing this protection could be invoked.

Recent research has also examined the practice of reporting in Estonia. A study including 40 interviews with whistleblowers shows concerning results. From the reports made, approximately 80% of cases were investigated and only 30% of those investigations were concluded or resulted in some sort of disciplinary measure.⁴² Another relevant aspect is that all the

39. Blueprint for Free Speech, Whistleblower Protection Laws (Available online: <https://blueprintforfreespeech.net/whistleblowing-laws-map>).

40. See Transparency International Estonia, Country Report, Whistleblower Protection Assessment Report on Estonia, 2009 (Available online: http://www.whistleblowers.org/storage/documents/Estonia/transparency_estonia.pdf).

41. Blueprint for Free Speech, A Change of Direction, Briefing Paper, Whistleblower Protection in Estonia (Available online: <https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Estonia%20-%20english.pdf>).

42. Lenka FRANKOVÁ, About Us With Us, Protection of whistleblowers in the Czech context and in comparison with other countries, 2016 (Available online: https://whistlenetwork.files.wordpress.com/2016/12/v4-and-estonia-study-on-wb_eng.pdf).

whistleblowers interviewed wished to remain anonymous due to strong concerns of negative consequences if their identity were to be known. This fear is justified when taking into account that the general public in Estonia has negative views on whistleblowing and the more common opinion held is that problems should be handled within an organisation or institution.⁴³ In fact, this is not only a question of social perception or social pressure, but rather alarming that one in five whistleblowers lost their job, according to available figures.⁴⁴ For example, a local case of whistleblowing regarding the mismanagement of city property and public procurements in the city of Narva, resulted in the loss of jobs for all the three whistleblowers involved. In fact, an entire department in the local government was disbanded due to the reporting.

2..2.5. France

France has a new law providing protection for whistleblowers that was adopted in late 2016, known as Sapin II.⁴⁵ This is not a law fully dedicated to whistle-blower protection, but provides for provisions on the type of reporting and issues that are covered to report for whistleblowers. It is noted that the law comes as a response to international criticism of France's perceived

43. Ibid, page 15.

44. Ibid, page 19.

45. See the original source of the law in French, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&dateTexte=20170616>

“hands-off attitude” toward anti-corruption enforcement.⁴⁶ It is also noted that with the initial debates in France on whistleblower protection in 2005, for many trade unions whistleblower protection was viewed as ‘exogenous’ and a system influenced by the USA through the Sarbanes Oxley Act (SOX, 2002) to the detriment of the trade unions and to the advantage of investors.⁴⁷

Protection for whistleblowers was scattered in different provisions prior to the Sapin II law. Statutory protections for whistleblowers exist in issues of discrimination, harassment, corruption, grave risk to the public health or the environment, and in criminal matters⁴⁸ Hence, Sapin II aims to standardize what has been a fragmented legal framework for protecting different types of disclosures in the public interest. Yet, Sapin II does not have a comprehensive scope and criticism persists that it does not cover disclosure of information which is of a medical

46. See Susrut A. CARPENTER, Patrick HANNON, George A. STAMBULIDIS, *New French Anti-Corruption Law: Companies Doing Business in France Must Beware*, 22 November 2016 (Available online: <https://www.lexology.com/library/detail.aspx?g=bab97afd-83bb-40be-bdc7-39aaec08f797>).

47. Nicole-Marie MEYER, Christophe SPECKBACHER, Katharina WEGHMANN and Marc LE MENESTREL, *Towards effective protection for whistleblowers; making whistleblowing work with and beyond the Council of Europe, Recommendation on the Protection of whistleblowers. How could France implement the Council of Europe’s principles concerning the protection of whistleblowers?*, *La Revue des droits de l’homme*, October 2016.

48. Sophie PÉLICIER-LOEVENRUCK, *Decrypting the New Whistleblower Law in France*, 24 May 2017 (Available online: <https://www.lexology.com/library/detail.aspx?g=1d511e5e-ffe4-4543-93f7-61ed49e1b30f>).

nature, legally privileged or relates to intelligence/national security. The latter protection for secrecy in issues of security has been noted as a serious shortfall of the law, especially because the law criminalizes retaliation against whistleblowers,⁴⁹ but disclosure of national secrets could lead to criminal charges. Hence, Sapin II does not erode confusion about the consequences and protections available for whistleblowers.

In terms of scope of protection, Sapin II extends whistleblower protection to any 'disinterested' person who in good faith reports a violation of the law to his or her employers or to the relevant judicial or administrative authorities. Channels of reporting have also been criticised by experts since the law creates an obligation to first report to a direct or indirect supervisor and if such report is not followed by any action (or in case of serious and imminent danger, or where irreversible risks are triggered), the report can be made to the judicial or administrative authority, or the representative of a professional order; as a last resort, the report may be made to the media.

Importantly, the identity of the whistle-blower would remain confidential and this confidentiality is further protected by stipulating that unwilling disclosure of the identity of the whistle-blower is fined with up to two years in prison and a fine of up to €30,000. This level of protection for the confidentiality of the whistle-blower is justified when taking into account that in order for an individual to qualify for protection, the person must first report the wrongdoing or violation to her supervisor. Unlike more laws on whistle-blower protection, Sapin II also foresees a punishment with up to one year in prison and a fine of up to €15,000 if there is retaliation

49. See supra note 49.

against the whistle-blower or if there are attempts to prevent individuals from reporting.

In addition to the public sector, Sapin II foresees protection for the private sector and requires companies to provide internal rules for whistleblowers. More specifically, companies with over 500 employees and revenues of at least €100 million are required to establish compliance policies and procedures. The Decree n°2017-564 of April 2017, provides further guidance on the implementation of the law. The Decree sets out that employers must determine the appropriate legal instrument for raising concerns but there is no obligation to set up a hot-line or any other electronic process for reporting.

2.2.6. Germany

There is no general law in Germany that provides for protection of whistleblowers in all sectors. In 2013 proposals for protection were rejected, as the existing fragmented rules were deemed sufficient by the government. Since that period, there has been no legislative debate on a possible dedicated law on whistle-blower protection, although the civil society remains active and tries to push for legislation on this issue.

A different set of constitutional provisions in the German Constitutional Law guarantee the freedom of conscience, of information and expression, the right to petitions, which also includes the right to address request or complaints to government agencies, as well as the right to report offences. Hence, the fundamental legal framework in Germany sets out the parameters that provide general protection for reporting.

Secondary legislation also provides for some provisions through which protection is foreseen. In July 2016, the

new legislation regarding the Federal Financial Supervisory Authority was enacted in order to protect whistleblowers. Any individual can provide information regarding violations of regulations that are under the supervision of the Federal Financial Supervisory Authority through an online portal. Importantly, such information can be provided anonymously and if that is not the case the Federal Financial Supervisory Authority has the duty to protect the identity of the person filing the report. Individuals reporting to this financial authority are not protected from retaliation, dismissal or harassment. Rather, the main protection is the identity of the individual reporting as a means not to allow for that individual to become a target of the negative personal consequences.

The need for this legislation was motivated after several cases of fines to German companies and authorities regarding cases of whistleblowing that had not been followed up. Namely, it is reported that Deutsche Bank ended up paying a €52.6 million fine to the US Securities and Exchange Commission to settle charges after three former employees reported that the institution had misled the investor community by inflating the value of its derivatives portfolio during the financial crisis. Similarly, in 2013, Gary DEDILECTIS sued Deutsche Bank in the US after he was fired for revealing that Deutsche Bank had overcharged its customers without notifying them.⁵⁰

Another piece of legislation providing for some form of protection is the Employment Protection Act, which does not

50. Ben KNIGHT, Deutsche Welle, Germany sets up banking whistleblower portal, 4 January 2017 (Available online: <http://www.dw.com/en/germany-sets-up-banking-whistleblower-portal/a-37005663>).

specifically address whistleblowers but regulates unfair dismissal.⁵¹ Furthermore, in line with the Law on Civil Servants, public officials are specifically protected when reporting but only in the issues of corruption.⁵²

In Germany the jurisprudence of courts is also a salient source of law for protecting whistleblowers, although the case law has not been fully consistent. In 2001, a decision by the Federal Constitutional Court provided that a dismissal violates the fundamental general freedom of action and the rule of law principle when it is carried out because someone served as a witness for the public prosecutor and thus did nothing else but follow his civic obligations.⁵³ Furthermore, the Court held that such dismissal would also be a violation of the law in the case of a voluntary notification to the law enforcement agencies, at least if the whistle-blower acted in good faith, assuming the existence of a criminal offence, perpetrated for example by his employer.⁵⁴ However, experts note that in later judgments in 2003 and 2006, the Federal Labour Court held that an employee may only report internally first and

51. Full text of the law (in German): <https://www.gesetze-im-internet.de/kschg/BJNR004990951.html>

52. Report on legal situation in Germany (in German, available online: <http://www.dgb.de/presse/++co++e6fb1f4c-8e05-11e5-bf89-52540023ef1a>).

53. BVerfG, Beschluss der 2. Kammer des Ersten Senats vom 02. Juli 2001 - 1 BvR 2049/00 - Rn. (1-24) (Available online: http://www.bundesverfassungsgericht.de/entscheidungen/rk20010702_1bvr204900.html).

54. Guido STRACK, Whistleblowing in Germany; https://www.whistleblower-net.de/pdf/WB_in_Germany.pdf

in cases where there is a failure to first report internally the dismissal would therefore be legal, unless exceptionally, an internal clarification would have been unreasonable. Yet, the latter term and principle is vague and hence does not provide for legal certainty for the whistle-blower. It becomes a case-by-case approach by the judiciary whether and when a disclosure made externally would be considered reasonable.

2.2.7. Hungary

Hungary has a dedicated legislative protection for whistle-blowers, enacted in 2014.⁵⁵ The legislation forbids retaliation against whistleblowers in the private and public sector who disclose unethical or illegal behaviour related to the exchange of public money or property. Importantly, this legislation applies to central and local government entities and establishes an electronic whistleblowing system operated by the commissioner for fundamental rights.⁵⁶ With regard to the private sector, companies may – but are not obliged to – set up an internal whistle-blower system. If, however, a company decided to set up a whistle-blower system, it must do so in compliance with the requirements of the law. No data is available in measuring whether companies in Hungary are setting up these systems and in case they do whether they are indeed in compliance with the legislation.

55. Blueprint for Free Speech, Whistleblower Protection in Hungary (Available online: <https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Hungary%20-%20english.pdf>).

56. Zoltan HEGYMEGI-BARAKONYI, New whistleblowing legislation in Hungary, 9 June 2014 (Available online: <https://globalcompliance.com/new-whistleblowing-regulation-in-hungary/>).

In terms of the procedure for reporting, every employee of the employer may file a notice into the system either under his own name, or anonymously, however, the employer may choose not to investigate the cases which have been reported anonymously.⁵⁷ The employee filing the notice must explicitly declare her good faith in the filed notice. There is an obligation for the employee who has filed the report to be informed about the results of the investigation and the measures taken to address the reported wrongdoing.

However, the effectiveness of the law in practice may be questioned due to societal attitudes towards whistleblowing. In a study done by Transparency International Hungary, data shows that 70% of Hungarians would not report corruption as there is prevailing belief that action would not be taken and rather there is an atmosphere of fear of reprisal.⁵⁸

2.2.8. The Netherlands

Provisions for the protection of whistleblowers have been in force in the public sector since 2009. Whilst legislation was lacking for the private sector, the unions together with the employers developed a Code of Practice, which was intended

57. Tamás BALÁZS, Whistleblowing – legal situation in Hungary (Available online: <http://east-legal.com/whistleblowing-legal-situation-in-hungary/>).

58. Transparency International Hungary, 'Hungarians say our country is corrupt, and the situation is getting worse, 8 July 2013 (Available online: <https://transparency.hu/en/news/a-magyarok-szerint-korrupct-az-orszagunk-es-a-helyzet-romlik/>).

to guide the conduct of employers and employees.⁵⁹ Moreover, in October 2012 the Advice Centre for Whistleblowers – (*Adviespunt Klokkenluiders*) – was opened with the purpose to provide independent legal advice and serve as a policy think tank, which was set up with a decree of temporary effect.

The *Adviespunt Klokkenluiders* was evaluated in mid-2014 and legal revisions were made to establish the House of Whistleblowers, (*Huis voor Klokkenluiders*), which now has permanent legal basis. The latter has three main functions: to provide advice, conduct investigations, and conduct research.⁶⁰ This body is a very salient example of a country that is making serious efforts to provide support for whistleblowers not merely through legal instruments but also through dedicated bodies which have the capacity and expertise to address whistleblowing in a serious manner. However, in practice the House of Whistleblowers has mostly remained inactive and it has not been at the forefront of guaranteeing the protections and support that it was intended to offer.

Another important feature of the reporting system in the Netherlands is that it encourages confidentiality. When individuals approach the House of Whistleblowers, they are not in breach of rules of loyalty to their employer, although exceptions do apply in matters of national security and duties

59. Stichting Van de Arbeid (2010) *Statement on Dealing with Suspected Malpractices in Companies*. Publication no.1/10, 3 March 2010, Netherlands (Translation updated August 2012, Available at: http://www.stvda.nl/en/~media/files/stvda/talen/engels/2012/20120829_en.ashx).

60. See details <https://huisvoorklokkenluiders.nl/>

of professional secrecy.⁶¹ Reports for 2015, for example note, that 85% of whistleblowers who proceeded with a report experienced adverse effects as a result of filing the report.⁶²

2.2.9. Norway

Norway has strong whistle-blower protection, with one of the most advanced practices of whistleblowing and high effectiveness in following up with the reports filed.⁶³ In 2004, there were amendments to the Norwegian Constitution in order to strengthen the right to freedom of expression, including the right to speak freely to the administration. Any legitimate limitation to such a freedom must be prescribed by law and justified.

At a secondary law level, Section 2 of the Working Environment Act (2005, amended in 2015)⁶⁴ protects whistleblowers in the public and private sector against retaliation and provides for compensation. As of March 2017, the protection of

61. Anna MYERS & Petr LEYER, Possible Functions of a Whistleblower Centre in the Czech Republic, 2015, page 19.

62. Advice and Referral Centre, Annual Report 'Honouring Courage' 2015 (Available online: https://huisvoorklokkenluiders.nl/wp-content/uploads/2015/03/ENG_JV.pdf).

63. Marit SKIVENES, Sissel TRYGSTAD, Explaining whistleblowing processes in the Norwegian labour market: Between individual power resources and institutional arrangements, *Economic and Industrial Democracy* Vol. 38, Issue 1, pp. 119 – 143, 2015 ; SKIVENES, M, TRYGSTAD, SC (2010) When whistleblowing works: The Norwegian case. *Human Relations* 63(7): 1071–1097.

64. Blueprint for Free Speech, Norway – Whistleblower Protection (Available online: <https://blueprintforfreespeech.net/document/norway>).

whistleblowers has been further strengthened through the Working Environment Act as the protection on whistleblowers now extended to include also contract workers.⁶⁵ Furthermore, businesses that employ ten or more people have an obligation to prepare a notification. This law also foresees an extended confidentiality regulation, which is aimed at making it safer to alert public authorities. Some experts however note a few gaps with regard to the protection of whistleblowers in Norway, such as the missing definition of ‘whistleblowing’ in the legislation as well as the lack of mention of external disclosure channels. Yet, empirical studies show that Norway generally provides for a safe environment for reporting and that whistleblowers would file reports again in the future if necessary.

2.2.10. Poland

Support for protection of whistleblowers has been on the rise in Poland and a study conducted in 2016 of trade unions and employers in both the private and public sectors concluded that reporting mechanisms were viewed positively as effective tools for internal risk management.⁶⁶ Debates about legislation on whistle-blower protection in Poland have been ongoing and a proposal was put forth in November 2017 by the Minister for Special Services. Chapter 9 of this legislative proposal deals with the rules and procedures for protection of

65. Pieter WIJNEN, Strengthening protection of whistleblowers, 31 March 2017 (Available online: <http://norwaytoday.info/finance/strengthening-protection-whistleblowers/>).

66. G. MAKOWSKI, & M. WASZAK, The Act on whistleblower protection: The need for and the prospects of its introduction in Poland, Stefan Batory Foundation: Warsaw, 2016, page 4.

whistleblowers, which also for the first time in the Polish context includes a definition of a whistle-blower as ‘any person who credibly reports on a suspected crime or crimes.’

However, this proposal is seen as highly problematic by the active NGOs, since the law limits the whistle-blower status only to individuals who report suspected corruption to law enforcement agencies and importantly, the status of a whistle-blower is arbitrarily granted by a prosecutor. Should the prosecutor decide not to grant this status to the individual filing the report, protection would not be granted and there is no foreseen right of appeal. The proposed legislation also has a very narrow material scope as it fails to grant protection to individuals who might expose other threats that are not categorised as crimes.

Experts have also noted that the proposed law ‘undermines public trust, may be abused by law enforcement to put employers under surveillance in violation of the principles of social co-existence and the freedom to engage in business.’⁶⁷ Many organisations have expressed criticism of this proposal. Transparency International has noted that the proposed legislation severely limits the protection of whistleblowers in both the public and private sector.⁶⁸ The Whistle-blower

67. Citizens Observatory, Main Challenges Regarding the Draft Law on ‘Transparency’ in the Public Life, 30 October 2017, (Available online: http://citizensobservatory.pl/wp-content/uploads/2017/10/Ustawa-o-jawno%C5%9Bci_g%C5%82%C3%B3wne-problemy_EN_03112017.pdf).

68. Transparency International Secretariat, Proposed ‘Transparency’ Legislation in Poland must be rethought and revised, 3 November 2017 (Available online: https://www.transparency.org/news/pressrelease/proposed_transparency_legislation_in_poland_must_be_rethought_and_revised).

International Network has written directly to the Polish government noting that the provisions fail to meet international best standards including the most recent 2015 PACE Resolution and Recommendation on Improving the protection of whistleblowers, European Court of Human Rights jurisprudence under Article 10 of the European Charter of Human Rights, and the Council of Europe's CM/Rec(2014)7 of 30 April 2014 on the protection of whistleblowers.

2.2.11. Switzerland

Switzerland does not provide specific protection to whistleblowers,⁶⁹ and it has been noted to be a 'rocky terrain' for whistleblowers,⁷⁰ as it is home to many multinational companies. A proposal dating from 2013 has been part of ongoing discussions but has not been passed by November 2017.⁷¹

Since 2011, Article 22a(5) of the "Federal Personnel Act"⁷² protects employees of the federal government against

69. OECD Report, Committing to Effective Whistleblower Protection, 16 March 2016, page 185 (Available online: <http://www.oecd.org/corporate/committing-to-effective-whistleblower-protection-9789264252639-en.htm>).

70. The Economist, Whistleblowing in Switzerland: Rough Terrain – Two court cases illustrate the struggles of employees who allege wrongdoing, 5 December 2015 (Available online: <https://www.economist.com/news/business/21679456-two-court-cases-illustrate-struggles-employees-who-allege-wrongdoing-rough-terrain>).

71. Andreas D. LÄNZLINGER & Roman HUBER, Whistleblowing in Switzerland, 3 August 2017 (Available online: <https://www.lexology.com/library/detail.aspx?g=6d5174ef-67d7-4cc2-97da-0cf77c649912>).

72. Full text of the law (in German, available online: http://www.gesetze.ch/sr/172.220.1/172.220.1_000.htm).

occupational disadvantages in case of reporting 'irregularities' and Article 34c provides for compensation in case of dismissal. The Federal Personnel Act does not apply on the regional level or local level. Cantons and communes are responsible for setting up their own whistle-blower systems. Since 2003, federal administration staff has been able to report suspicions of irregularities, including those relating to corruption, to an independent state body: the Federal Audit Office (FAO). The FAO is Switzerland's supreme financial supervision body and although it is officially attached to the Federal Department of Finance, it is independent and bound only by the constitution and the law.

In terms of channels of disclosure, a whistle-blower may make the disclosure to the prosecuting authorities, or supervisors or the FAO. The law does not provide for an order in which the reporting would be done, hence a staff member can decide freely between these different channels. A relevant aspect for regional governance is that the whistleblowing system in Switzerland is considered to be decentralised. Different cantons have internal reporting bodies and anti-corruption experts note this system to be valuable. Hence, it is not considered relevant for whistle-blower protection in Switzerland to establish a centralized body of reporting.

2.2.11. Common features and shortfalls of the analysed national laws

The whistle-blower protection laws for most of the countries analysed have emerged due to concerns on corruption and calls from the international community, particularly GRECO, for the adoption of measures to address this issue. The rationale of protection is viewed as establishing protected

disclosure as a measure against corruption and often the scope of protection is specifically focused on corruption. The compound nature of whistleblowing, especially it being a practical manifestation of freedom of expression, as also recognised in the case law of the ECtHR, is often missing. This raises concerns with the limitations that current laws create to enabling individuals to rely on their freedom of expression protections when reporting suspected wrongdoing.

From a legal perspective, a focus on the local or regional enforced protection is generally missing in the countries portrayed. Furthermore, countries have not made significant efforts to ensure that the additional necessary rules are stipulated at the local and regional level when protection is provided at the national level. Often the necessary rules for the implementation of national rules are missing and hence the effectiveness of national rules at the local and regional level may be questioned.

Not all laws examined provide definitions of the key terms of 'whistleblowing' and 'whistle-blower'. In terms of the personal scope of protection, most laws are restricted to the public sector employees, whereas in terms of material scope, often the main focus –if not the only- is on corruption. Channels of reporting are also not clear in all the legislations examined and some require that internal reporting is mandatory before external reporting. Furthermore, clarity is lacking in terms of whether confidentiality is guaranteed. Anonymous reporting is generally not encouraged and in some instances, investigating into anonymous reports may be refused. In some

cases, whistleblowers are required to declare that the report is made in good faith, such as in Hungary.⁷³

2.3. Council of Europe: rules, principles and jurisprudence

The Council of Europe has developed a number of legal instruments that address the issue of reporting and whistleblower protection both from the perspective of anti-corruption and well as from a human rights angle. This section of the report aims to provide a joint legal analysis of the most salient sources of the Council of Europe in order to identify the level of protection and the requirements for reporting. It consolidates different sources such as conventions, jurisprudence and reports.

The two main legally binding instruments that provide for some level of protection for reporting and require countries to take action to protect those who disclose information in the public interest are the Civil Law Convention on Corruption and the Criminal Law Convention on Corruption. With regard to the former, Article 9 therein stipulates that each party to the convention “shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith the suspicion to responsible persons or authorities”. Whilst the Criminal Law Convention

73. Dóra PETRÁNYI & Marton DOMOKOS, Hungary New Whistleblowing Law, 18 November 2013 (Available online: <https://www.lexology.com/library/detail.aspx?g=482b2d89-a20f-411b-80e1-aa2fb910c569>).

on Corruption is not strictly related to whistleblowing, Article 22 therein stipulates that members of the convention have an obligation to adopt necessary measures to provide for effective and appropriate protection for those who report the criminal offences, such as active and passive bribery in the public and private sector, trading in influence, money laundering, account offences. Whilst the two conventions do not provide a robust or comprehensive protection for whistleblowing, they do set in motion action from countries, pushing protection forward.

Within the realm of anti-corruption instruments that contain elements of protection of whistleblowing is also the Committee of Ministers' Recommendation (2000)4 on Codes of conduct for public officials. This recommendation encourages countries to adopt codes of conduct and Article 12 therein refers to reporting specifically of illegitimate hierarchical orders, breaches of the code, criminal misconduct relating to the public service concerned.

The Group of States against Corruption (GRECO) plays an important role in evaluating and addressing member States' compliance with key Council of Europe legal texts. Such instruments include the Resolution (97) 24 of the Committee of Ministers on the Twenty Guiding Principles for the fight against corruption, the Criminal Law Convention on Corruption (ETS No.173), and Recommendation Rec(2003)4 of the Committee of Ministers on common rules against corruption in the funding of political parties and electoral campaigns. In its evaluation report for the period of 2000-2010, GRECO provided an analysis of whether members of GRECO complied with whistle-blower protection.

In its Report, GRECO noted that it is not sufficient that national laws provide that officials cannot be disciplined or dismissed when they report. Rather it is necessary for countries to examine the more 'subtle types of retributive action' and ensure that officials are not exposed to such action. Furthermore, the report, in line with international best standards, also emphasises the need for certainty and clarity in the procedures for reporting that officials need to follow. Another highly pertinent element to the report by GRECO is the issue of differentiation and necessities of confidentiality and anonymity with regard to reporting. The report points to the fact that providing only for the possibility of confidential reporting would not be sufficient to fully protect whistleblowers from retaliatory acts. Especially in cases where the identity of the official may be deduced from the type of information disclosed, it is crucial to provide for the possibility for anonymous reporting. This aspect of the report is relevant for whistleblowers at the local and regional level of governance where it may be more easily to deduce the identity of the individual disclosing the information.

Further significant efforts to evaluate and improve whistleblower protection in Europe have been taken by the Committee on Legal Affairs and Human Rights in 2009 and 2015.⁷⁴ The former report showed that the concept of whistleblowing was at the time not well-known and that there is no common definition for the term 'whistle-blower', and in some countries

74. Committee on Legal Affairs and Human Rights, The protection of "whistle-blowers", 2009, PACE Doc. 12006. Report to the Committee on Legal Affairs and Human Rights, Improving the protection of whistle-blowers, 2015, PACE, Doc. 13791.

the notion as it is known in English has no equivalent, such as in Estonia, Poland and Turkey. At the time, only Romania had adopted a legislative act with a specific definition.⁷⁵

In addition to the conventions and reports, the jurisprudence of the European Court of Human Rights (ECtHR) is a very important source for analysing the legal developments and protections. Unlike most legal instruments in the field, the case law does not approach the issue of whistleblowing from the type of information disclosed, but rather what is of key importance is that whistleblowing is a practical manifestation of freedom of expression as stipulated in the European Convention on Human Rights (ECHR). Furthermore, unlike the reports and resolutions, the jurisprudence is a source of law that has a mandatory nature and is binding. Hence, any development by the ECtHR is very relevant for the protection of whistleblowers.

In February 2008, the ECtHR Grand Chamber decided on the case No.14277/04, *GUJA v. Moldova*. The Court held that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should enjoy protection, under certain circumstances. The Court acknowledged the danger of the 'chilling effects' the sanctions against a whistle-blower may be that in turn lead to the silencing of any further reporting by others. The importance of this case is that the Court for the first time explicitly lays out certain factors that are relevant in determining whether freedom of expression has been infringed. The Court notes the following factors:

75. Ibid, Report, 2009, paragraph 26.

- a. public interest involved in the disclosed information;
- b. authenticity of the information disclosed;
- c. the damage, if any, suffered by the authority as a result of the disclosure in question;
- d. the motive behind the actions of the reporting employee;
- e. whether, in the light of duty of discretion owed by an employee toward his or her employer, the information was made public as a last resort, following disclosure to a superior or other competent body;
- f. severity of the sanction imposed.

Since the 2008 judgment *GUJA v. Moldova*, the ECHR has dealt with a series of cases in which issues of whistleblowing emerge.⁷⁶ For example, in the case of *HEINISCH v. Germany*, the Court applied the criteria as previously established and held that external reporting is justifiable when internal complaints have been ineffective.⁷⁷

76. 19 February 2009, Case No. 4063/04, *MARCHENKO v. Ukraine*; European Court of Human Rights (ECtHR) 26 February 2009, Case No. 29492/05, *KUDESHKINA v. Russia*; ECtHR 21 July 2011, Case No. 28274/08, *HEINISCH v. Germany*; ECtHR 18 October 2011, Case No. 10247/09, *SOSINOWSKA v. Poland*; ECtHR 8 January 2013, Case No. 40238/02, *BUCUR and TOMA v. Romania*; ECtHR 21 October 2014, Case No. 73571/10, *MATÚZ v. Hungary*; ECtHR 22 October 2009, Case No. 69519/01, *PASKO v. Russia*.

77. See paragraph 71-92.

2.4. International and European Union rules and principles

At the international level, the United Nations Convention against Corruption is the legal instrument that provides for protection for reporting person. Article 33 therein stipulates that parties to the convention would consider incorporating into their domestic system ‘appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences.’

A series of different initiatives have recently taken place in the European Union in the past year with regard to possibly enacting a dedicated EU law on the protection of whistleblowers. In May 2016, the Greens/EFA of the European Parliament presented a draft Directive on whistle-blower protection that relied on Article 153 TFEU with the aim of encompassing protection for workers both in the public and private sectors.⁷⁸ In June 2016, the EU Trade Secrets Directive entered into force, which presents whistleblowing as an exception to the legal regime on the protection of trade secrets.⁷⁹ In its Working

78. See *Vigilencia ABAZI & Alberto ALEMANNI*, Legal Elements of the Proposal, Draft Whistleblower Directive on Protection in the Public and Private Sector in the European Union, 4 May 2016 (Available online: https://www.greens-efa.eu/legacy/fileadmin/dam/Images/Transparency_campaign/WB_directive_draft_for_consultation_launch_May_2016.pdf).

79. See Art 5 of EU Directive on Trade Secrets (Available online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0943>).

Programme 2017,⁸⁰ the European Commission indicated that a legislative act on whistle-blower protection would possibly be proposed after examining the legal issues with regard to the EU's competences in this field. In March 2017, the Commission opened a public consultation process for a possible legislative act on whistle-blower protection.⁸¹

In April 2018, the European Commission proposed a Directive on the protection of persons reporting on breaches of Union law,⁸² which offers minimum standards of harmonization on whistle-blower protection in certain fields of EU competences. The proposal in its Explanatory Memorandum points to the relevance of whistleblowers in reporting at the local level particularly for 'reporting unlawfully granted [state] aid and informing when [state] aid is misused'.⁸³ Furthermore, the Explanatory Memorandum notes the importance of ensuring that public procurement rules are respected, and hence 'the obligation to put in place internal reporting channels should

80. Commission Work Programme 2017, Delivering a Europe that protects, empowers and defends, COM(2016) 710 final, 26 November 2016, page 12 (Available online: https://ec.europa.eu/info/sites/info/files/cwp_2017_en.pdf).

81. Public Consultation on whistleblower protection, 3 August 2017 (Available online: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254).

82. See the proposed Directive and the other measures proposed by the European Commission available online: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=620400

83. European Commission, Explanatory Memorandum, page 4 (Available online: https://eur-lex.europa.eu/resource.html?uri=cellar:a4e61a49-46d2-11e8-be1d-01aa75ed71a1.0001.02/DOC_1&format=PDF)

apply to all public legal entities, at local, regional and national level, whilst being commensurate with their size.⁸⁴

Importantly, in terms of scope of the proposed Directive and the obligations to establish internal reporting and follow up of reports, Article 4(6) foresees such an obligation for regional administration and departments as well as municipalities with more than 10 000 inhabitants. If the proposed Directive is to be adopted and the current provision remains unaltered in the amendment stage of the legislative process, this will be a binding obligation to all EU member States, which are also member States of the Council of Europe, to establish mandatory internal channels and procedures for reporting and follow-up of reports at the local and regional governance. Hence, if the Directive were to be adopted, this would be the strongest existing direct obligation for local and regional governance for ensuring reporting channels for whistleblowers and has tremendous potential to ensure protection at the local and regional level. In terms of material scope, the Directive applied to areas of law that fall under the competences of the European Union, more specifically in the following areas: public procurement; financial services, prevention of money laundering and terrorist financing; product safety; transport safety; protection of the environment; nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal

84. European Commission, Explanatory Memorandum, page 9 (Available online: https://eur-lex.europa.eu/resource.html?uri=cellar:a4e61a49-46d2-11e8-be1d-01aa75ed71a1.0001.02/DOC_1&format=PDF).

data, and security of network and information systems. As it is evident from this enumeration, many fields that are covered by the proposed Directive are issues of direct interest and prerogative of local and regional authorities.

With regard to EU level protection, specifically EU civil servants, the 2014 revised Staff Regulation stipulates protection for whistleblowing and obliges the EU institutions to adopt rules on this matter, but without providing a set deadline. At the EU level, there is a varied patchwork of standards for whistleblower protection, resulting directly from the fact that each EU institution has the discretion to adopt its own rules. For example, whereas the Commission's rules only refer to 'internal' whistleblowers and treat protection of external whistleblowers as a matter of national law, the rules of the European Court of Auditors apply to internal whistleblowers and also to 'economic operators participating in procurement procedures, as well as to contractors and their staff'. Hence, at the EU institutional level, protection of whistleblowers is not unified.

THE CHALLENGES AND OPPORTUNITIES FOR LOCAL AND REGIONAL PROTECTION OF WHISTLEBLOWERS

A series of serious challenges persist regarding the protection of whistleblowers and channels of reporting. For example, risks of retaliation and effective implementation of laws in practice are consistently emphasised. At the same time, legitimate public concern at the manipulation of public opinion in the media through so-called "fake news", can make it easier for those accused of misconduct to dismiss those criticisms as being false. In this section of the Report, the focus is on challenges that link specifically to the local and regional level of protection

in order to identify what actions could and should be taken at this level of governance. Some of the indicated issues are not necessarily limited to the local and regional level, but may have more significant implications at this level or are more urgent to address in order to foster an overall legal framework and practice that ensures effective reporting and protection for individuals who disclose their concerns in the public interest.

Internal reporting: from the jurisprudence of the ECtHR, the individual is required to have made efforts to report internally at the organisation where she is based and suspects a wrongdoing. These efforts have to be shown prior to the individual publically exposing information if the individual is to benefit from protection, as the court has stated that this as one of the elements that are necessary to qualify an individual for protection. Practice also shows that individuals predominately report internally. For example, a study conducted by Public Concern at Work in collaboration with the University of Greenwich covering a thousand cases found that a vast majority of individuals report internally to their employer and while they may report an issue twice, they rarely report it a third time when nothing is done.⁸⁵ However, having a *legal* requirement for internal reporting could be a particular challenge at the local level due to possible smaller administration. When local administrations consist only of some departments, it would be challenging for the individual to first report internally and in case when such reporting has taken place and no measures are taken to address the concern

85. Public Concern at Work and the University of Greenwich (2013). *Whistleblowing: The Inside Story. A study of the experiences of 1,000 whistleblowers*. PCaW: London, U.K. <http://www.pcaw.org.uk/whistleblowing-the-inside-story>

expressed, the individual would be in a difficult position to continue collaborating and working in such an environment. Hence, consideration should be given to having designated institutions for reporting that are external to the local administration.

Anonymous reporting: the possibility for the individual to report anonymously is very relevant at the local and regional level. Similarly to issues regarding internal reporting, even in cases where the individuals do not face grave repercussions, the smaller work community may be a more challenging environment to report suspected wrongdoing. If the individual is obliged to always disclose their identity in cases of reporting, even if protection of confidentiality is foreseen, this may still be a disincentive for the individual because of the important consequences that could follow, such as dismissal, retaliation, hostile working environment. To clarify, there is a distinction between confidentiality (where the whistle-blower's identity is known to the authority to which he reports) and anonymity (where his identity is entirely unknown). Yet, offering the option of anonymity for the individual at local and regional level may prove difficult since many national laws do not foresee protection for anonymous reporting. In instances where this option is not possible for the local and regional level, consideration could be made to provide an option of so-called 'pre-emptive protection' that is for example stipulated in the legislation of Bosnia and Herzegovina and provides for protection of the individual being exposed to retaliation.⁸⁶

86. Blueprint for Free Speech, Whistleblower Protection in South-east Europe: An Overview of Laws, Practice and Recent Initiatives, the Regional Anti-Corruption Initiative, 2015, page 13. See also, Handbook for Enforcing the Law on Whistleblower Protection in the Institutions of Bosnia-Herzegovina," Centre for Responsible Democracy–Luna, March 2014.

Increasing trust: clear procedures for reporting increase trust internally within a working environment also foster trust in local and regional governance overall. Lack of trust and reliability of reporting channels are often indicated as reasons why individuals do not report at all even when they suspect or have information about a wrongdoing. For example, recent research shows that both in Albania and North Macedonia, individuals do not trust the official reporting channels. In order to address these concerns, local and regional administrations could work to take local actions and initiatives to increase possibilities for safe reporting.

Local action: in many member States there are multiple laws and often there is lack of legal clarity on the provisions that should be applied. For example, a law may give a civil servant rights to disobey an illegal order but provides no protection from retaliation to the civil servant.⁸⁷ One of the important steps that local and regional authorities could take is to review such laws as they pertain to the local and /regional level and provide more clarity and coherence as well as specify what protections would apply in this context.

Another way to address this challenge is through more direct local action. As changing and revising laws at the national level may not be feasible for the authorities at local and regional level, they nevertheless can provide proactive initiatives for ensuring reporting. For example, encouraging reporting can be attained through local hotlines. The municipality of Aerodrom, one of the municipalities of Skopje,

87. Ibid.

North Macedonia, set up an integrity system that included awareness about reporting and the municipality set up a hotline and Internet portal for reporting misconduct.⁸⁸ Another example is a local whistle-blower project set up in Sofia, Bulgaria (co-funded by the European Commission) to expose corruption in the city's administration.⁸⁹ Similarly in Barcelona, the Spanish authorities together with active NGOs in the field have set up a whistleblowing platform that allows for anonymity in reporting. This platform, called the 'Anti-Corruption Complaint Box', allows not only employees but any citizen to report on corruption while aiming to protect their identity by using sophisticated technological devices to prevent the tracking of the individual filing the report. Overall, combined with anonymity for reporting, these hotlines and whistle-blower platforms could become valuable tools at local and regional level to increase incentives for reporting as individuals will have fewer concerns regarding negative legal and social repercussions that may arise. This is especially relevant in countries where authorities generally do not gain high levels of trust about their reliability of handling reported wrongdoing.

Scope of protection: increasingly, both local and regional authorities rely on public-private partnerships. Hence, in

88. Ibid, page 35.

89. RiskMonitor, RiskMonitor Launches a New Project on Corruption Prevention in Sofia Municipality, 12 June 2013 (Available online: <http://riskmonitor.bg/en/news/riskmonitor-launches-a-new-project-on-corruption-prevention-in-sofia-municipality>).

countries that do not include the private sector to their protection regime, such as Romania, if the reporting is done by individuals employed by the private company they may not be protected. This challenge cannot be addressed legally by the local or regional authorities in terms of revising the legislation, but through local action initiatives they may have within their remit the possibility to provide hotlines or other means of reporting. Nevertheless, these measures would not be able to address that there is different in treatment of the sectors and hence can lead to overall creating an environment that does not foster reporting.

Workplace protection: local and regional authorities, have within their remit, many prerogatives that could foster a working environment where individuals are incentivised and trust the protection mechanisms in order to report any suspected wrongdoing. Some of the main challenges within the workplace pertain to knowing the applicable rules and having full clarity of procedures. Local and regional authorities have the opportunity to enhance reporting by providing clear guidance on the specific limits to the type of information that may be disclosed in the public interest. For example, these authorities should have more detailed guidelines in terms of professional secrecy and official secrets, more generally, that are protected under special regimes. Although national security secrets may not be an issue at these levels of governance, guidelines of protected information specific for the country in question, should be provided. Another way of increasing protection at the workplace is by reiterating and formalising prohibitions on “gagging” or interfering in any way with

the right or capacity to report or disclose information in the public interest.

Post-reporting follow up: clear processes of communication and post-reporting follow-up are essential if reporting is to be successful and effective at the local and regional level. Whilst this is equally relevant at the national level, it could be a significant deterrent at the local level due to generating a lack of good faith resolution. Local and regional authorities could even help national level protection if they provide for a post-reporting follow-up that includes setting clear reasons why a report made would or would not be investigated as well as provide an opportunity for the whistle-blower to review and comment on a report and hence provide space for resolving any alleged misconduct or risk to the public interest.

Local vs. Global: a significant challenge is one of context. Many issues in current affairs are not limited to local impact or significance but have broader implications. For example, revelations and reporting for environmental issues may have ramifications in other neighbouring countries. Hence, cooperation among different local and regional authorities could be a possible venue for ensuring more efficient reporting and action.

Résolution 444 (2019)

**The protection
of whistleblowers**

**Challenges and opportunities
for local and regional government**

Debated and adopted by the Congress
on 3 April 2019

1. Aware of the corrosive effect that corruption can have on public trust and the quality and efficiency of government, the Congress adopted a roadmap of activities, at its 31st session in October 2016 to fight corruption and decided to prepare reports on several themes, including the protection of whistleblowers.
2. While there have recently been substantial legislative developments on protecting whistleblowers, most of these are limited in scope to the national level, leaving local and regional authorities with few mechanisms for reporting suspected illegal actions.
3. Whistleblowers have a unique role to play in local and regional governance. At the subnational level, the one closest to the citizens, it is easier to detect alleged violations of law than at the national level. This also means that local and regional authorities are especially vulnerable to various types of corruption, given their responsibility for public service provision, which is increasingly based on public-private partnerships, accompanied by the transfer of public resources to the private sector.
4. The issues of anonymity and confidentiality can pose particular challenges at the local level. The small size of many local authorities limits the choice of reporting channels that an individual would choose to communicate suspected illegal actions. However due to the

limited scope of legislation, which often does not recognise anonymous reporting, individuals in possession of information that could be considered as threatening or harmful to the public interest, often decide not to disclose it, fearing negative personal consequences and possible retaliation at the work place.

5. With regard to the confidentiality issue, local and regional authorities should consider external reporting as a last resort, which can reduce the chances of the identity of a whistle-blower being disclosed.

6. Whistle-blower protection is not just a matter of legislation, there also needs to be a change in social attitudes to the disclosure of information, which often discourage individuals from reporting crucial information, afraid of potential negative consequences that could ensue. Action needs to be taken to make the public aware of the important role of whistleblowers in the fight against corruption.

7. In the light of the above, the Congress, bearing in mind:

- a. the Council of Europe's Programme of Action Against Corruption, the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) and the Council of Europe Civil Law Convention on Corruption (ETS No. 174);

- b. Resolution (97) 24 of the Committee of Ministers on the Twenty Guiding Principles for the fight against corruption;
 - c. Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers;
8. Calls upon local and regional authorities of the Council of Europe member States to:
- a. establish and disseminate a whistleblowing policy, respecting the 20 principles set out in the aforementioned Recommendation CM/Rec(2014)7;
 - b. guarantee the establishment of appropriate internal reporting channels and the possibility for employees to consult confidential advisors within their organisation;
 - c. ensure that independent designated institutions, such as local and regional ombudsmen, exist to oversee and process the disclosure of information, and to act as a place of reporting of last resort, if local and regional employees feel unable to raise their concerns internally;
 - d. ensure that individuals who wish to report cases of misconduct or wrongdoing have access to reporting channels which would allow them to remain

- anonymous or offer a 'pre-emptive protection' option in case of retaliation;
- e. provide information:
 - i. on the circumstances under which a suspicion of wrongdoing can be reported inside and outside the organisation;
 - ii. on the legal protection for whistleblowers;
 - f. ensure that reporting channels, such as information hotlines, also exist for individuals working in the private sector, who are involved in the provision of local and regional public services;
 - g. ensure that individuals disclosing information in the public interest are informed in a timely manner about the follow-up made in response to their reports;
 - h. encourage positive attitudes towards whistleblowing among citizens by promoting whistleblowing policies and publicising post-reporting follow-up;
 - i. ensure that individuals considering reporting suspected cases of wrongdoing have access to advice that is confidential and free of charge, from external bodies such as NGOs and national associations;

- j.* introduce periodic assessments of the effectiveness of rules and regulations on the protection of whistleblowers.
- 9. Calls on national associations of local and regional authorities to:
 - a.* guide and assist local and regional authorities in introducing and implementing whistleblowing policies;
 - b.* assist local and regional authorities in designing and implementing training programmes for officials and employees to raise awareness of the existing rules and procedures and the role of whistleblowing in the fight against corruption;
 - c.* liaise with central anti-corruption agencies to ensure the maximum harmonisation of whistleblower policies.

Recommendation 435 (2019)

**The protection
of whistleblowers**

**Challenges and opportunities for local
and regional government**

Debated and adopted by the Congress
on 3 April 2019

1. Effective whistle-blower protection is one of the key areas that the Congress of Local and Regional Authorities agreed to work on in its roadmap of activities to fight corruption, adopted at its 31st session (October 2016), convinced that corruption poses a threat to good governance at local and regional levels and undermines fundamental democratic values.

2. As whistleblowers often have access to information which sometimes cannot be detected by other integrity mechanisms and institutions, they constitute a unique added value to institutional safeguards, and can make a vital contribution to the fight against corruption, by promoting greater transparency and accountability in local and regional authorities.

3. Local and regional authorities, responsible for delivering public services across many sectors, can be at greater risk of corruption, as there are often fewer safeguards in place than at the national level. Bringing to light activities that are not in the public interest, by means of reporting, is an important weapon in the fight against corruption at this level, which needs to be encouraged through appropriate policies and legal instruments.

4. While legislation on whistle-blower protection is now in place in many member States, it has not always been matched with effective measures for the management of whistleblowing, or adequate measures to protect individuals who decide to report cases of misconduct or wrongdoing.

5. At the same time, legitimate public concern at the manipulation of public opinion in the media through so-called “fake

news”, can make it easier for those accused of misconduct to dismiss those criticisms as being false.

6. Public attitudes to reporting tend to change more slowly than the legislation. Raising awareness of whistle-blower protection can lead to an increase in cases of reporting and in consequence be a valuable tool in the fight against corruption.

7. In the light of the above considerations, the Congress, bearing in mind:

- a. the Council of Europe’s Programme of Action Against Corruption, the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) and the Council of Europe Civil Law Convention on Corruption (ETS No. 174);
- b. Resolution (97) 24 of the Committee of Ministers on the Twenty Guiding Principles for the fight against corruption;
- c. Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers;

8. invites the Committee of Ministers to encourage the governments and parliaments of member States and, where applicable, regions with legislative powers, to:

- a. ensure that national legislation provides for the protection of whistleblowers at the local and regional levels, and in particular:

- i. applies not only to suspected cases of wrongdoing related to corruption, but also to broader public interest issues, such as risks to public health or the environment;
 - ii. includes the possibility for anonymous reporting or grants 'pre-emptive protection' in order to protect individuals exposed to retaliation;
 - iii. ensures post-reporting follow-up of disclosures that are in the public interest;
- b. establish agencies at the national level to monitor the implementation and effectiveness of whistleblowing legislation and to ensure professional training for public officials;
- c. ensure that whistle-blower protection also covers individuals whose employment has already ended, as well as those who disclose information acquired during the recruitment process and who have yet to begin their employment;
- d. extends whistle-blower protection to individuals working in the private sector, who are involved in the provision of local and regional public services, and encourage their employers to introduce internal reporting procedures;
- e. introduce national whistleblowing campaigns to promote its unique added value in the fight against corruption and raise awareness of the issue and challenge social attitudes, which in some countries discourage individuals from reporting public interest concerns;

- f.* encourages initiatives that offer additional reporting channels and support for whistleblowers;
- g.* ensure that any measures put in place to target those who peddle falsehoods or “fake news” do not inadvertently silence people who wish to raise genuine concerns, and are not used as tools to retaliate against them;
- h.* guarantee access to information and confidential advice to individuals considering disclosing information in the public interest;
- i.* introduce periodic assessments of the effectiveness of the national framework to monitor the implementation of the rules and regulations on whistle-blower protection;
- j.* support national associations of local and regional authorities in their work to co-ordinate and harmonise whistle-blower protection among the authorities that they represent.

Corruption, in its many forms, has a destructive effect on public trust and the quality of governance in Europe, including at the local and regional level. Because whistleblowers hold information that only they can detect, they represent a unique added value compared to institutional control mechanisms.

The Congress of Local and Regional Authorities of the Council of Europe has adopted a report on the protection of whistleblowers which highlights the need to adopt national legislation to ensure their protection and to ensure its practical implementation at local and regional level. This includes the establishment of appropriate internal and anonymous reporting channels, as well as independent institutions, such as local and regional ombudsmen, to oversee and deal with the disclosure of information.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. The Congress of Local and Regional Authorities is an institution of the Council of Europe, responsible for strengthening local and regional democracy in its 47 member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees, it brings together 648 elected officials representing more than 150 000 local and regional authorities.