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SARA ABDÜLKERIM-OSMANOVIĆ,
Master of Law,
European Union Forces in Bosnia and Herzegovina;
e-mail: saraabdulkerim01@gmail.com;

ENA KAZIĆ-ÇAKAR,
Ph.D. in Law, Associate Professor,
International University of Sarajevo (Bosnia and Herzegovina);
Faculty of Law;
https://orcid.org/0000-0003-2467-2947,
e-mail: ekazic@ius.edu.ba

UNLOCKING WHISTLEBLOWER PROTECTION: LEGAL BASIS TO BE AWARE OF

Hardly any negative social phenomenon is as specific as corruption, which creates an intriguing paradox in law. In particular, there is no phenomenon that is mentioned more often on a daily basis, even in colloquial speech, than corruption; there is no group of criminal offences (corruption) that the whole society knows more about; there is no legal topic on which legal scholars and practitioners are more in agreement on the criminal law consequences that corruption creates and are not willing to prevent it by creating various models of its prevention; and, again, many countries are constantly failing in the fight against it. Many people improve their perception of corruption only as the situation worsens. This paradox gives rise to a vision of corruption as an intractable, powerful giant, present since ancient times, with obvious obstacles that cannot be removed even in the most developed countries. Against this backdrop, it is important to ask, and this article attempts to answer, what role whistleblowers can play in the fight against corruption and whether their more effective protection can play an important role in protecting society from corruption. This study explores the recognition of whistleblowers' importance in these efforts, including the basis and nature of their legislative protection, through a legal analysis of selected regional and international legal sources that directly or indirectly refer to whistleblowers and their protection. The analysis shows that most of these sources indicate the importance of achieving the three whistleblower protection mechanisms. To achieve the above goals, regulatory and descriptive legal methods will be used.

Key words: *corruption, whistleblowing, whistleblowers, international sources, prevention, criminal offence.*

Original article

INTRODUCTION. E. M is one of the many who performed a heroic act by reporting actions in the company where he worked that he suspected to be a criminal act.[1] Instead of being recognised for his compliance with the law and for the fact that no violation of the law in the company went unnoticed and therefore unpunished, he was first demoted to a lower-paid job, then disciplined three times and finally dismissed. Interestingly, at the moment of all these acts of punishment conducted by his company, he had the status of a protected whistleblower by the Agency on corruption prevention[2]. Currently, his case is handed to the Constitutional Court to inquire about the legality of that kind of outcome. Similarly, S.S. had been conducting a true legal battle against the entire system since he was fired after reporting the potential criminal behaviors he observed in the institution he worked in. He allegedly reported the suspicion to the CEO, and then to the Board of Trustees. However, he was subjected to a series of disciplinary procedures accusing him of not following the whistleblowing procedure and was eventually dismissed. However, he did not give up. He sued the institution for damages compensation. Between the report and judicial decision, his life turned a different point: he was continuously threatened, and without a job, financial instability occurred. Eventually, the State

[1] See: https://6yka.com/.

[2] Agency for the Prevention of Corruption and Coordination of the Fight against Corruption of BH, established in 2009, with the adoption of the same named Law. According to the Law, it is an independent administrative organization, with many corruptions prevention-related jurisdictions.

Court of Bosnia and Herzegovina restored justice and he was returned to his job. While the first whistleblower is still waiting for justice, the second has achieved it almost a decade later. These life situations send a clear signal to others: if the state does not protect the heroic deeds of whistleblowers and their personal lives, then loss of employment, threats to family and health are quite predictable. And then others will certainly ask: is the good deed worth such suffering?

PURPOSE AND OBJECTIVES OF THE RESEARCH. Without the input of whistleblowers, it is very challenging to win the war against corruption. Corruption falls into the dark number of crimes[1], the corruptive acts are very interpersonal, as bribe giver and bribe receiver will rarely speak about it, the knowledge about corruption stays poor. The information that whistleblowers may provide is perceived as a treasure in a prosecution sense. Therefore, these two sad but real stories are more than enough to make it clear that legal protection of whistleblowers is an important part of the fight against corruption. Imagine a society in which people are not afraid to report misconduct or crimes they have witnessed or know are taking place. It would be very hard to commit any corrupt act, as whistleblowers do have a protective impact against corruption. And the story can go in the opposite direction. When one sees the injustice and serious life challenging negative outcomes of trying to do the right thing, who will then dare to whistle blow? Imagine how inciting the ambiance that creates for corrupted individuals. Fearful society feeds the corruption[2]. In environments where reporting wrongdoing is not encouraged or protected, the risk of corruption increases significantly (Kelly, 2021). Having that all in mind, the purpose of this manuscript is to determine international legal protection sources of whistleblowers. Criminal law is primarily national law and it sets grounds for the protection of whistleblowers. However, we wish to determine the international grounds that set obligations toward the national states in the direction of the protection of whistleblowers. The objective is not only to determine the list of those sources but their merit, scope of protection, and mechanisms they set for the purpose of whistleblowers' protection. Thus, the ultimate outcome of this study should be the understanding of whistleblower protection essence.

METHODOLOGY. To achieve the objectives of this research, the relevant international sources, conventions, and treaties will be examined. This will be carried out using both descriptive and normative legal methods. In addition, the comparative legal method will be used to identify and assess potential similarities and differences in the whistleblower protection system in the legal sources under study.

RESULTS AND DISCUSSION. Before moving on to define the sources of their legal protection, it is important to understand the definition of a whistleblower. There are various definitions of whistleblowers, but the most common is that a whistleblower is a person who discloses private or non-public information about an organisation, usually related to wrongdoing or misconduct, without authorisation. Whistleblowers contribute to corporate and public accountability by being the first line of defence against wrongdoing and, as such, are one of the most effective and powerful tools for protecting the public interest (Gold, 2013). According to M. Habazin (2010), whistleblowers are "employees, former employees or members of organizations, who report misconduct to colleagues or institutions". Whistleblowers generally state that such actions are motivated by a commitment to the public interest (Kleining, 2021). According to the United Nations Convention against Corruption, whistleblowers are perceived as "any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention"[3]. The Council of Europe Recommendation on the Protection of Whistleblowers defines a whistleblower as "any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector"[4]. Civil Law Convention on Corruption (European Union Treaty No. 174, 2003) sees them as "employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons

[1] A number of committed but unreported criminal offences.

[2] And the practice shows that they do have fear over achieving and protecting essential rights, such are right to life, right to freedom of expression, etc. That fear prevails in the decision of whether or not to report (see more in Fond za otvoreno društvo, 2010).

[3] United Nations Office on Drugs and Crime. (2004). *United Nations Convention against Corruption*, General Assembly Resolution 58/4 of 31 October 2003 (New York, United Nations).

[4] Council of Europe (2014). *Recommendation CM/Rec (2014)7 Of The Committee of Ministers to Member States on the Protection of Whistleblowers*, EU: European Union.

or authorities"[1]. Legal theory differs between two types of whistleblowing (Kazić, 2018). The first is *internal whistleblowing*[2]. This means that the whistleblower informs another individual within the organization about the malfeasance (Taylor, 2018). The second type is *external whistleblowing*, which covers the situation when the whistleblower informs someone outside the organization, such as law enforcement, agency, or the media, about wrongdoing[3].

As the term *whistleblowers*, the verb *whistleblowing* has its classifications as well. Whistleblowers can report in the internal report channel which is an independent channel that allows its employees, suppliers, and other stakeholders to report any suspected or actual fraud, corruption, illegal acts, or unethical practices by employees and personnel as made in writing and/or orally through telephone lines or other voice messaging systems (Abdulkerim-Osmanović, 2022). The whistleblower can also request to make a report through a physical meeting[4]. As we know many companies and its channels can be corrupted as well so in that case if the whistleblower does not feel safe about reporting to the internal channel, then he or she can report externally as well[5].

The role of Whistleblowers in the fight against corruption

Whistleblowers report any kind of wrongdoing, and most importantly, corruption. They share this information mostly with the public in the interest of society. That is why the Whistleblower Law and anti-corruption instruments could work together. EU gives the legal basis for prevention of corruption, fraud and any other acts which is illegal under the TFEU combating with European Anti-Fraud Office (OLAF) (Article 325, TFEU). Several international organizations have pushed governments to implement limited legislative protection for whistleblowers throughout the years, although this has usually been part of a package of anti-corruption measures (UN Convention on corruption, 33).

In the past six years, Eurojust has registered over 500 corruption cases[6]. Despite the COVID-19 pandemic, the number of cases recorded at the Agency increased from 78 in 2016 to 112 in 2021[7]. This growth underscores the EU's desire to combat corruption, as well as Eurojust's rising role in assisting Member States in combating this specific sort of cross-border crime. Greece, Germany, Romania, Italy, and Spain are the top five Member States engaged in Eurojust corruption cases. Third nations also play an important part in Eurojust's corruption investigations. 42 third nations were implicated in corruption cases between 2016 and 2021[8]. Corruption is by definition performed in secret, crime itself fits into the *dark figure of crime,* it is difficult for authorities to uncover, let alone punish, especially when high-level officials and politically exposed individuals are involved (Abdulkerim-Osmanović, 2022). Eurojust has extensive expertise handling such difficult matters. In that sense we see the importance of the fights against corruption and role of whistleblowers. According with the EUROPOL data, until November 2023, a number of actions were implemented by authorities from Albania, Belgium, France, Greece, Ireland, Netherlands and Portugal. More precisely, "49 cases, 233 persons of interest interviewed, some of whom were arrested, 267 searches conducted and EUR 5.5 million of frozen assets"[9].

Protection of Whistleblowers

In the realm of whistleblower protection, legal provisions are embedded within a variety of legal sources. However, as is often the case, practical application may diverge from theoretical and statutory frameworks. Wistleblower protection indeed fosters the reporting of misbehavior (Mechtenberg, Muehlheusser, Roider, 2020). The extent and nature of protection vary significantly across different jurisdictions. It is of public interest that legal systems safeguard whistleblowers, enabling them to report misconduct within organizations. Generally speaking, whistleblower protection may be governed by specialized legislation, criminal codes, sector-specific regulations (such as anti-corruption laws), statutes pertaining to public servants, codes

[1] Council of Europe. (2003). *Civil Law Convention on Corruption*, European Union Treaty No. 174, entry into force on 1 November 2003.

[2] Interesting is view of Stubben and Welch (2020) who find that "whereas external complaints often reflect a failure of management to address issues internally, internal WB reports may instead reflect open communication channels between stakeholders and management and opportunities to discover and resolve issues before they become increasingly severe and costly".

[3] What Is the Whistleblower Act? – Definition, Rights & Protection, 2021.

[4] Guide to EU Directive on Whistleblower Protection | TendersGuru, 2021

[5] Ibid.

[6] EUROPOL. (2024). *EUR 5.5 million frozen in anti-corruption investigations across Europe*. https://www.europol.europa.eu/media-press/newsroom/news/eur-55-million-frozen-in-anti-corruption-investigations-across-europe.

[7] See: https://www.eurojust.europa.eu/.

[8] Ibid.

[9] See: https://www.europol.europa.eu/.

of ethics and conduct in the public sector, as well as corporate and securities laws, among others (Berceanu, 2020). In a broader sense, according to C. Palicarsky (2011) corruption protection mechanisms consist of judicial reform, action on raising the awareness of the existence of protection, and establishment of practical and accessible methods of reporting corruption. Overall, there are three perspectives (mechanisms) related to the protection of whistleblowers: protection against retaliation, persistent anonymity and confidentiality, and achieving the right to remedies.

a) The first mechanism may be considered under the "protection against retaliation". Whistleblower protection legislation should ensure that whistleblowers are protected from discriminating or retaliatory personnel actions[1]. That means the law for protection against retaliation shall give the right to whistleblowers not to suffer discrimination or dismissal (Abdulkerim-Osmanović, 2022). This statement underscores that whistleblowers should not suffer adverse consequences, such as job loss, as a result of their disclosures. Such provisions are designed to offer protection against retaliation and discrimination. Nonetheless, empirical evidence reveals that both public and private institutions frequently retaliate against, discriminate against, or penalize whistleblowers. To safeguard whistleblowers effectively, robust mechanisms against retaliation are crucial. These mechanisms not only affirm whistleblowers' rights but also ensure their sense of security and legal protection.

Furthermore, both criminal and civil liabilities form integral components of the protective framework for whistleblowers. Whistleblowers often encounter significant challenges when revealing unlawful or unethical conduct. A notable case is that of Edward Snowden, who, after working for Dell and the CIA, was employed by NSA contractor Booz Allen Hamilton in 2013 (Burrough, Ellison, Andrews, 2016). Despite his influential position, Snowden chose to expose wrongdoing, which is the hallmark of a whistleblower. Following his disclosures, Snowden faced numerous criminal charges and sanctions for revealing confidential information. This example highlights the necessity of incorporating criminal and civil liability provisions into the protection mechanism. Whistleblowers typically act in good faith and with reasonable grounds for the public benefit. Thus, considering the waiver of criminal and civil sanctions could enhance the fairness and security of whistleblower protection within legal and regulatory frameworks.

b) Another mechanism is "anonymity and confidentiality" (Abdulkerim-Osmanović, 2022) as the protection of whistleblowers' identity may be their most important right. Whistleblowers can suffer many unfair consequences after reporting. That is why protecting their identity and confidentiality is essential to prevent these consequences and protect the person who reports unlawful and unethical wrongdoings. In that sense, laws should protect the whistleblower's identity, which is kept confidential unless the whistleblower gives his/her consent to disclose it (Banisar, 2009). In some countries, the name of the whistleblower is perceived negatively, and therefore, if the whistleblower does not wish to disclose their name, they can report anonymously. Giving whistleblowers this right can improve the protection mechanism. That is why anonymity or confidentiality is part of the mechanism and plays an important role in whistleblower protection.

The 2019/1937 Directive outlines the reasons for the necessity of enforcement of effective and secure reporting channels. When the whistleblowers do not fear threatened for their life the whistleblowing is more constant and persistent. Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law article 3 states

In certain policy areas, breaches of Union law, regardless of whether they are categorised under national law as administrative, criminal or other types of breaches, may cause serious harm to the public interest, in that they create significant risks for the welfare of society. Where weaknesses of enforcement have been identified in those areas, and whistleblowers are usually in a privileged position to disclose breaches, it is necessary to enhance enforcement by introducing effective, confidential, and secure reporting channels and by ensuring that whistleblowers are protected effectively against retaliation.

In addition to that, Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law article 49 states, emphasizes the importance of anonymity through the following provision

This Directive should be without prejudice to Member States being able to encourage legal entities in the private sector with fewer than 50 workers to establish *internal channels for reporting* and follow-up, including by laying down less prescriptive requirements for those channels than those laid down under this Directive, provided

[1] *Case Heinisch v. Germany (Application no. 28274/08)*. 2011. https://hudoc.echr.coe.int/fre?i=001-105777.

that those requirements guarantee confidentiality and diligent follow-up.

Reporting channels, which are mostly internal, provide confidentiality and the ability to report wrongdoing within a company to those who want to report it, such as employees or contractors. Such a channel can make whistleblowers feel safe and confidential, which increases the number of reports, because when they are not afraid and have a place to report, they have nothing to fear. (Abdulkerim-Osmanović, 2022). Reporting channels provide that right and confidentiality and help the protection mechanism. Also, with the reporting channel employees can report the wrongdoings within the workplace instead of reporting externally. According to Article 49 of the Directive (EU) 2019/1937 every company in the European Union that fulfills the following requirements shall have channels of reporting otherwise they might face sanctions.

From the judicial view of whistleblower protection mechanism must be fair as much as any other cases. The classic and necessary rules such as fair trial, fair hearing, right to appeal and so on shall apply to whistleblowers too. Without any discrimination and regardless of what and who reports the wrongdoings, enforcement and judicial review should be fair and based on law and reasonable grounds (Abdulkerim-Osmanović, 2022).

In examining whistleblower protection mechanisms, it is essential to consider both sanctions and remedies. A thorough understanding of these aspects can be obtained through an analysis of relevant laws, regulations, directives, recommendations, and other pertinent sources related to whistleblower protection. Typically, legislation designed to protect whistleblowers also encompasses provisions for remedies and sanctions. The Council of Europe's Parliamentary Assembly Resolution on Whistleblower Protection underscores the significance of these provisions, asserting that "relevant legislation should … seek corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone". This perspective, as outlined in Article 6.2.5 of the Protection of Whistleblowers, highlights that whistleblowers are entitled to remedies for any damages and suffering resulting from their disclosures.

Legal Sources of Whistleblower Protection

Whistleblowers expose wrongdoing at tremendous personal and professional risk. For revealing misconduct, they are often subjected to harassment, job loss, arrest, and even violent violence. Whistleblowers require robust legal safeguards to protect them from reprisal and to allow them to report crimes securely and openly. Whistleblower protection sources exist at the international, regional, and national levels.

Corruption is a worldwide problem and may cause many consequences, including economic, legal, and political ones (Korunić Križarić, Kolednjak, Patričević, 2011). D. Kreutzer (2016) defines it as "the abuse of entrusted power for private gain". Consequently, all major international accords that at deal with corruption recognize whistleblower protection. The international legal framework against corruption requires countries to include – or consider including – suitable mechanisms in their domestic legal systems to protect those who report any facts about acts of corruption to competent authorities in good faith and on reasonable grounds (UNCAC). Since criminal law is dominantly national law, positive domestic law is the other main categorization for the whistleblower's protection. As much as the international level provides regulations and recommendations to the national states, there is a persistent interest of national states to regulate this topic most effectively. However, since each national criminal law is different, regardless whether special or general laws deal with whistleblowers, mechanisms, width and in the general approach to this topic may differ from country to country. It depends on the regulations and constitution of the country, specific rules and norms might be different.

International Documents

There are different international documents that directly or indirectly refer to whistleblowers. They are *legi generali* when it comes to corruption in correlation to whistleblowers and directly or indirectly may refer to whistleblowers and their legal status. We will analyze the most relevant ones.

UN Convention against Corruption (2004)

The first one mentioned is a special, worldwide well-known anti-corruption instrument. The far-reaching perspective of the Convention, as well as the required nature of many of its provisions, make it a unique tool for crafting a comprehensive solution to a global problem. The Convention is signed by the great majority of United Nations Member States. The United Nations Convention against Corruption was negotiated between 21 January 2002 and 1 October 2003 by the Ad Hoc Committee for the Negotiation of the Convention against Corruption[1]. Under Article 8, paragraph 4 of United Nations Convention against Corruption states that states have obligation to

[1] See: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

establish measures and systems to facilitate reporting of corruption by public officials.

The same idea is visible in Article 13 of the Convention in paragraph 2, and it additionally covers the mechanisms of anonymity, obliging member states to provide anonymity in the process of reporting. Moreover, especially in Article 33 named *Protection of Reporting Persons of UN Convention against Corruption* additionally covers the protection of whistleblowers and obliging member states to provide protection of reporters against any *unjustified treatment "who reports in good faith and on reasonable grounds…".*

Inter-American Convention Against Corruption

The Inter-American Convention which was signed in March 1996 was created to find and resolve corruption between states. It was the first international convention in the world that mentioned a *fight against corruption*[1]. This convention deals with what corruption is in detail (Abdulkerim-Osmanović, 2022). Explaining what action can be considered as corrupted, it also mentions the mechanisms that must be put into place for people, who in good faith, report these wrongdoings. According to Article III of the Inter-American Convention Against Corruption, whistleblowers requests protective mechanisms for corruption reporters, expecting that such "measures should help preserve the public's confidence in the integrity of public servants and government processes". It also emphasizes *bona fides as a precondition for whistleblowers' protection and refers on the importance of protecting their identity.*

a) Civil Law Convention on Corruption

This convention deals with corruption within the scope of Civil Law. It forces the member states to find remedies for people who face corruption within the Civil Law scope. It is directly related to the third mechanism of protection of whistleblowers, which deals with remediation/compensation as it is visible in Article 1 which reads *"… for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage".*

The Civil Law Convention on Corruption also briefly mentions whistleblowers in Chapter 1, article 9 called Protection of Employees. It says: *"Each Party 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 their suspicion to responsible persons or authorities"*[2]. Obviously, the scope of protection is quite narrow, as it refers only to employees who can be reporters. However, it is of the essence the second part of the provisions which mentions the «good faith» of the whistleblowers, as it is that what makes them the system keepers.

Criminal Law Convention on Corruption

The Criminal Law Convention on Corruption is the ambitious attempt to unify the Criminal consequences for the people actively involved in corruption (Abdulkerim-Osmanović, 2022). It was signed in 1999. The aim of the convention is to specify which act of corruption is considered a criminal offence and also it provides the mechanisms in the ways that the states can deal with when corruption has been penalized (Preamble of the Convention, 1999). It also broadens the scope by mentioning in detail that not only one party but everyone involved (Council of Europe, 1999). Of particular significance is Article 22 in Chapter 2, which is named *Measures to be taken at national level mentions whistleblowers, – "those who report the criminal offenses established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities"*[3]*.*

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The OECD Conventions aim is to stop the bribery of international of foreign public officials in international business transactions. The goal of the convention is to create an even playing field for all the parties involved (Abdulkerim-Osmanović, 2022). According to a study done in 2017, the countries that have ratified the OECD convention into their own national laws are actually less likely to bribe Public Officials (Jensen, Malesky, 2018). There are 44 countries currently that have ratified the Convention and implemented it into their laws, 38 of them being OECD countries and 6 others are non-OECD countries[4].

This convention has a specialized part that mentions the role of whistleblowers when it comes to reporting of foreign bribery. It also advises on reporting mechanisms for whistleblowers, making sure they are encouraged to report. Those mechanisms include financial rewards, secure channels, anonymity enforcement etc.[5]

[1] See: https://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp.

[2] *Civil Law Convention on Corruption*. Strasbourg, 4.XI.1999. https://rm.coe.int/168007f3f6.

[3] Ibid.

[4] *Country reports on the implementation of the OECD Anti-Bribery Convention – OECD, 2022*. http://mj.go.cr/Documento/DescargaDIR/14627.

[5] See: https://www.oecd.org/.

b) United Nations Declaration Against Corruption and Bribery in International Commercial Transactions

It is created to turn off the practice of years of practice of turning a blind eye of the states to combat the corruption of Commercial Transactions and the bribery of Public Officials involved in the same (United Nations, 2002). Although it does not mention whistleblowers specifically, or the mechanisms of their protection it acknowledges the important role whistleblowing has in fighting the corruption in that sense, the Chapter II article 14. sets the obligation on the tax authorities *"to report any evidence of bribery to law enforcement bodies"*[1].

Regional Sources – EU Sources

European Union has regional sources that protect whistleblowers. EU sources related with this topic are mostly directives and recommendations. We will observe the most relevant ones:

a) EU Convention on fight against corruption among officials of the EU committee.

This EU convention came into force in 2005 and all EU member states have ratified it. The aim of this convention is to prevent active and passive corruption[2] Anyone who participated in corruption or even instigated it can be liable. The conventions' aim is also to allow all EU member states to hold business owners and people in power criminally liable for corruption[3]. This convention does not specifically mention whistleblowers or reporting of any kind. It mentions just that the Member States have to make the corrupt officials criminally liable[4], prescribing substantive and procedural law in this regards, and with that can be counted as a source which indirectly deals with whistleblowers.

b) Recommendation CM/Rec (2014)7 of the Committee of Ministers to Member States on the Protection of Whistleblowers

Recommendations allow an EU agency or entity to articulate its perspective and suggest a course of action without imposing binding legal obligations on the recipients, which may include member states, other institutions, or individuals[5]. Although recommendations do not carry legal enforceability for EU member states, their adoption is both significant and customary. Compliance with recommendations can offer political and legal benefits to member states. Ultimately, it is in the best interest of member states to incorporate and adhere to these recommendations within their national legal frameworks.

Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers has been adopted by the Committee of Ministers on 30 April 2014, at the 1198th meeting of the Ministers' Deputies. This recommendation reaffirmed that freedom of expression and the right to seek and receive information are essential for the functioning of a healthy democracy. It is recognized that whistleblowers – individuals who disclose information regarding threats or harm to the public interest – can significantly enhance transparency and democratic accountability. Proper handling of public interest disclosures by employers and public entities is crucial, as it fosters a proactive response to the identified risks or damages. The initial section, "Principles", provides essential definitions and outlines the guiding principles related to whistleblowers[6]. It defines whistleblowers as "any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector". Additionally, it defines the "Public interest report or disclosure", as a "means the reporting or disclosing of information on acts and omissions that represent a threat or harm to the public interest" (Council of Europe, 2014), while differing external or internal reporting, under the term "report"[7].

Recommendation also mentioned the material and personal scope of whistleblower so we can know which field and scope those rules can apply by EU member states. Firstly, the material scope of whistleblower protection involves the development of national normative, institutional, and judicial frameworks, including collective labor agreements when appropriate, to promote and support public interest disclosures.

Apart from defining their legal status, it is important to establish what are the channels of reporting, as well. So, basically channel for reporting

[1] *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 2002.* https://www.oecd.org/en/topics/sub-issues/fighting-foreign-bribery.html.

[2] *EU Convention on fight against corruption among officials of the EU committee, 1997*. https://eur-lex.europa.eu/EN/legal-content/summary/convention-against-corruption-involving-public-officials.html.

[3] Ibid.

[4] Ibid.

[5] Thomson Reuters Practical Law, 2022.

[6] Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers has been adopted by the Committee of Ministers on 30 April 2014.

[7] Ibid.

and disclosures means a channel which provides a chance for a whistleblower to report (Abdulkerim-Osmanović, 2022). From the recommendation it is visible that the national framework should develop an atmosphere that fosters open reporting or disclosure. Individuals must feel comfortable in raising public interest issues[1].

Additionally, Article 14th of the Recommendation CM/Rec (2014)7 of the whistleblower protection comprises these reporting and disclosure channels:

– reports within an organization or enterprise (including to persons designated to receive reports in confidence);

– reports to relevant public regulatory bodies, law enforcement agencies and supervisory bodies;

– disclosures to the public, for example to a journalist or a member of parliament.

If analyzed, it is visible that this article sets grounds for internal and external whistleblowing, and encompasses width in subjects who report (from employees to journals or parliament members).

When it comes to reporting, as we previously mentioned, the importance and necessity of confidentiality can't be understated. The Recommendation covers that issue as well. In part V of the Recommendation, article 18 states that "Whistleblowers should be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees". Once again, the importance of confidentiality was emphasized. Additionally, it refers to the first mechanism of whistleblowers' protection: "Protection against retaliation» and sets grounds for the prevention of whistleblowers against any form, direct or indirect, retaliation. It exemplifies forms, such are «dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers and reductions in or deductions of wages, harassment or other punitive or discriminatory treatment"[2].

c) Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 On The Protection of Persons Who Report Breaches of Union Law

This Directive was brought in 2019, with the obligation of the members states to implement it in their national laws by December 17, 2021. Private sector businesses with 50-249 employees had to establish internal reporting channels, until December 17, 2023. According to (Baljija, Min, 2023) it "constituted a new opportunity to harmonize whistleblower legislation among member states". Internal reporting channel is the one platform that companies suppose have in order to provide safe and secure reporting system for the whistleblowers withing the country[3]. This directive provides minimum standards of protection of whistleblowers in the EU member states. According to the EU Directive 2019/1937, if a whistleblower is subjected to such retaliation after filing a report that is covered by the directive's scope, it will be considered that the retaliation was launched as a result of the report, and the employer must prove that the retaliation was not initiated as a result of the report. This will be a significant responsibility for the employer to bear, and it is believed to be akin to the protection already found in EU-based anti-discrimination and equal treatment legislation (Abdulkerim-Osmanović, 2022). Another important element in the directive, as we mentioned previously, is the whistleblowers' channel. The EU Whistleblower Directive actually gives right to member states to decide about how to create this channel, the main idea in here is creating confidentiality (Abdulkerim-Osmanović, 2022). On the other hand, the directive gives minimum and basic requirements for the member states on how to make whistleblowers channels for a confidential report system for the sake of whistleblowers' protection. The Directive EU 2019/1937 of the European Parliament thoroughly explains the meaning of channel. The channel offers clear and easily accessible information about the procedures for reporting to external competent authorities. It is designed, built, and managed securely to ensure the confidentiality of the reporting individual's identity and to protect any third parties mentioned in the report, while also preventing unauthorized access by individuals. According to this Directive, the person making the report receives confirmation that their report has been received within seven days. A qualified and impartial person or department is appointed to handle the follow-up on reports. This person or department must stay in contact with the reporter, gather additional information if needed, and provide updates to the reporter. A comprehensive investigation is carried out concerning the reported individual or department. Feedback is provided within a reasonable timeframe of three months from the receipt confirmation or, if no confirmation was sent, three months from the end of the seven days following the report[4].

[1] Ibid.

[2] See: https://rm.coe.int/16807096c7.

[3] *Directive (EU) 2019/1937, 2019*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1937.

[4] *External Reporting Whistleblowing*. (2021). https://www.whistlelink.com/external-reporting-whistleblowing/.

As we previously indicated, another very important element and part of the protection mechanism for whistleblowers is privacy and data protection. This Directive in Article 14 refers to respecting privacy and protecting personal data, which are fundamental rights, as crucial. Whistleblowers play a vital role in exposing violations that could harm the public interest. They can also reveal breaches of Directive (EU) 2016/1148 on the security of network and information systems, which requires incident notifications – even those that don't involve personal data – and sets security standards for entities providing essential services in various sectors. Whistleblowers' reports are especially important for preventing security incidents that could impact key economic and social activities and widely used digital services. They also help prevent violations of EU data protection rules, thus supporting the continuity of services critical for the internal market and societal wellbeing (Article 14, Directive). The directive's goal is to provide individual employees with broader and greater protection. The directive in article 19, provides protection for whistleblowers and demands that member states take the necessary steps to prevent any form of retaliation against whistleblowers, including threats and attempts to retaliate, such as suspension, dismissal, demotion, transfer of duties, withholding of training, disciplinary action, intimidation, harassment, discrimination, or unfair treatment. In addition to that, the new Directive assures that the directive applies to all sorts of enterprises with 50 or more employees, not only selected companies within certain industries. In this regard, it will be interesting to watch if and to what extent the directive's implementation will result in an expanded material area of coverage in the Member States.

CONCLUSIONS. The fact that there are a number of international and regional general and specific legal sources that directly or indirectly address whistleblower protection confirms that states understand that whistleblowers are a key element in the fight against corruption and that their protection is vital to ensure that they remain a source of information about corruption. Any one of the three important whistleblower protection mechanisms is recognised in most of the sources analysed, which confirms their value. It is now essential that these provisions are correctly applied in national legislation and implemented, as without their true and consistent application, all norms lose their value and whistleblowers are at risk. The example of practical cases from Bosnia and Herzegovina confirms that.

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САРА АБДУЛКЕРІМ-ОСМАНОВИЧ,
магістр права,
Сили Європейського Союзу в Боснії та Герцеговині;
e-mail: saraabdulkerim01@gmail.com;

ЕНА КАЗІЧ-ЗАКАР,
кандидат юридичних наук, доцент,
Міжнародний університет Сараєво (Боснія і Герцеговина);
юридичний факультет;
ORCID: https://orcid.org/0000-0003-2467-2947,
e-mail: ekazic@ius.edu.ba

ЗАБЕЗПЕЧЕННЯ ЗАХИСТУ ІНФОРМАТОРІВ: ПРАВОВІ ЗАСАДИ ДЛЯ РОЗУМІННЯ

Жодне негативне соціальне явище не є настільки специфічним, як корупція, що створює інтригуючий парадокс у праві. Зокрема, немає такого явища, про яке б частіше згадували щодня, навіть у розмовній мові, ніж про корупцію; немає такої групи кримінальних правопорушень (корупційних), про яку більше знало б усе суспільство; немає такої правової теми, щодо якої вчені-юристи та практики були б більш одностайними стосовно кримінально-правових наслідків, які створює корупція, і не бажали б запобігати їй, створюючи різноманітні моделі для цього; і, знову ж таки, багато країн постійно зазнають невдач у боротьбі з корупцією. Багато людей поліпшують своє сприйняття корупції лише через погіршення ситуації. Цей парадокс породжує бачення корупції як нездоланного, потужного гіганта, присутнього з давніх часів, з очевидними перешкодами, які не можуть бути усунені навіть у найрозвиненіших країнах. На цьому тлі важливо запитати, і ця стаття намагається дати відповідь на це питання, яку роль можуть відігравати інформатори у боротьбі з корупцією і чи може їх більш ефективний захист відіграти важливу роль у захисті суспільства від корупції. У дослідженні розглянуто визнання важливості ролі інформаторів у цих зусиллях, включаючи основи та характер їх законодавчого захисту, шляхом правового аналізу окремих регіональних та міжнародних правових джерел, які прямо чи опосередковано стосуються інформаторів та їхнього захисту. Аналіз показує, що більшість із цих джерел вказують на важливість досягнення трьох механізмів захисту прав викривачів. Для досягнення вищезазначених цілей будуть використані нормативно-правові та дескриптивні методи.

Ключові слова: *корупція, викривання, інформатори, міжнародні джерела, запобігання, кримінальне правопорушення.*

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