

JELENA KOSTIĆ

THE WHISTLEBLOWERS' PROTECTION

MONOGRAPH 189

AN ANALYSIS OF THE REGULATORY
FRAMEWORKS IN SELECTED
WESTERN BALKAN COUNTRIES

INSTITUTE OF COMPARATIVE LAW



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in Selected Western Balkan Countries**

Jelena Kostić, PhD

Belgrade, 2022

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GLOSSARY

Critical infrastructure is defined by the Global Principles of National Security and the Right to Information (The Tshwane Principles). Critical infrastructure refers to strategic resources, assets and systems, whether physical or virtual, that are so important to a country that their destruction would have a disabling effect on national security.

Critical national institutions (*institutions essentielles*) are defined by the Global Principles of National Security and the Right to Information (The Tshwane Principles). That means that the strategic institutions that are so important to the state and their destruction would have a disabling effect on national security.

PIDA is the Public Interest Disclosure Act 1998 (PIDA). This law passed in the United Kingdom was the first act passed at the level of the European Union which guaranteed protection to whistleblowers. However, despite this, the mentioned Act has certain weaknesses. According to its provisions, e.g. no protection is prescribed for persons who report irregularities to the employer where they are or were engaged as volunteers. Considering that the United Kingdom is no longer a member of the European Union, there is no obligation to harmonize the regulations of the said country with the provisions of Directive 2019/1937 on the protection of persons who reporting violations on Union law.

Public interest report or disclosure means the reporting or disclosing of information about acts and omissions that represent a threat or harm to the public interest. Public interest is not legal, but it is a legal category. There is no unique definition of public interest, but could be defined as interests concerning the protection of the rule of law.

Qui tam lawsuit is a lawsuit that is provided by the Law of the United States of America (The False Claims Act). The mentioned act provides a possibility for the whistleblower to file a *qui tam* lawsuit on behalf of the Government. If the case is successfully resolved based

on the lawsuit, the whistleblower has the right to a monetary reward. The False Claims Act is enacted at the federal level, but most states also provide the in their legislation the possibility of filing a *qui tam* lawsuit.

Reasonable believe institute established by EU Directive 2019/1937. Art. 13, paragraph 1, point 1 of the said Directive stipulates that a person meets the requirement for protection if, at the time of submitting the application, he had justified reasons to believe that the reported information is accurate and covered by the scope of application of the Directive.

The Global Principles of National Security and the Right to Information (The Tshwane Principles) are international principles drafted by 22 organizations and academic centres in consultation with more than 500 experts from more than 70 countries at 14 meetings held around the world, facilitated by the Open Society Justice Initiative. These Principles were adopted in a meeting in Tshwane, South Africa. The Tshwane Principles were developed in order to provide guidance to those engaged in drafting, revising, or implementing laws or provisions relating to the state's authority to withhold information on national security grounds or to punish the disclosure of such information.

Whistleblowing in the public sector is informing the public in accordance with regulations governing the area of the protection of whistleblowers about irregularities and illegalities in the public service and public enterprises that threaten or may threaten the public interests.

1. INTRODUCTORY REMARKS

The protection of whistleblowers is primarily necessary for the protection of basic human rights. It derives from Article 10 of the Convention for the Protection on Human Rights and Fundamental Freedoms. According to that provision, everyone has the right to freedom of expression, which means the freedom to have one's own opinion, receive and communicate information and ideas without the interference of public authorities and regardless of borders.¹ The use of these freedoms also implies certain responsibilities, so it can be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, protection of health or morals, protection of reputation or the rights of others, to prevent disclosure of information received in confidence, or to preserve the authority and impartiality of the courts.² Whistleblowers exercise their right to freedom of expression by communicating information about irregularities and illegalities that threaten or may threaten the public interest. In addition, the receipt of such information by the public represents the realization of their right to information. Whistleblowers also help in the protection of human rights by publishing information that is of public interest, and which can prevent the occurrence

¹ Although these are norms of international law, the provisions guaranteeing human rights in the Convention on Human Rights and Fundamental Freedoms are directly applied at the national level. In accordance with that, the individual is allowed to refer to the norm of international law before national judicial authorities, which has priority over the provisions of national law. Stated according to: V. Ćorić (2013) *Relation between the Court of Justice and the European Court of Human Rights*, doctoral thesis, Belgrade: Faculty of Law, University of Belgrade, 76. Available at: <https://nardus.mpn.gov.rs/handle/123456789/2642> [19.12.2022.]. See also: V. Ćorić-Erić, A. Rabrenović, „Utvrdjivanje oblasti primene osnovnih prava u Evropskoj Uniji”, *Revija za evropsko pravo*, XIV, 2-3/2012, 117-135.

² Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950. The text is available at: https://www.echr.coe.int/Documents/Convention_MNE.pdf [13.12.2022.].

of consequences that can have a negative impact on human rights, such as, for example, prevention of pollution, prevention of illegal consumption of public funds, protection of physical integrity, etc. For this reason, all institutions at the national level are obliged to provide a certain level of protection against retaliation to persons who report irregularities in the public interest and persons connected with them. The rule of law is a value on which the European Union rests. Therefore, the protection of whistleblowers at the level of the Western Balkan countries could also be viewed through the prism of fulfilling the conditions for membership in the European Union.

The preamble to the Charter of Fundamental Rights of the European Union speaks of the rule of law, while the existence of the Union is based on the indivisible universal values of human dignity, freedom, equality, solidarity and the principles of democracy and the rule of law.³ To enable adequate protection of human rights and social progress, it is necessary to establish and improve the work of institutions important for maintaining and improving the rule of law not only in the member states, but also in the states aspiring to the European Union membership. The rule of law is of great importance for peace, security, prosperity, social and economic progress.⁴ These values are common to each Member State and to societies ruled by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.⁵ The preamble to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Economic Community from 2007 states that universal values of the inviolable and inalienable human rights, freedom, democracy and the rule of law have developed from the cultural, religious and humanistic heritage of Europe.

To ensure that candidate countries are sharing the same values as the EU member states, the rule of law as an accession requirement was incorporated already in the Copenhagen accession criteria adopted in 1993. The new approach puts rule of law at the heart of the accession

³ The Charter of Fundamental Rights of the European Union, 2007/C 303/01.

⁴ M. Matić Bošković, J. Kostić, „New enlargement strategy towards the Western Balkans and its impact on Rule or Law, *Slovak Yearbook of European Union Law*, 1/2021, 38, <https://doi.org/10.54869/syeul.2021.1.248>.

⁵ Article 1 of the Treaty of the Lisbon amending the Treaty on European Union and the Treaty establishing the European Community 2007/C 306/1.

process and implies reforms in the accession states with the aim to improve the rule of law and fundamental freedoms.⁶ The rule of law was mentioned as a key condition for EU accession in 2004, when Romania and Bulgaria accession was postponed due to the challenges in the rule of law area, specifically the reform of judiciary and fight against corruption.⁷

The Commission is of the opinion that strengthening the rule of law and democratic administration are crucial for the enlargement process and the fulfilment of conditions in the area of justice, freedoms and security of the rule of law, including the fight against organized crime and corruption, will be assessed at an early stage. Negotiation process on Chapters 23 and 24 should be close only at the end of the process to enable the countries aspiring to EU membership to adopt adequate regulations and improve the work of institutions at the national level within a reasonable period of time.⁸

Despite the need and European standards in the area of whistleblower protection, it seems that in the countries of Southeast Europe there is not an overly high consensus on the need for whistleblower protection. Bearing in mind that the subject of analysis in this monograph are the regulations regulating the protection of whistleblowers in Bosnia and Herzegovina and its entities, the Republic of North Macedonia, Montenegro and the Republic of Serbia, we will refer exclusively to the views of citizens in the aforementioned countries. The data was obtained on the basis of a survey of public attitudes on whistleblowing and protection of whistleblowers at the level of Southeastern European countries,

⁶ In March 2020 the Council of European Union adopted the European Commission proposal for the new enlargement methodology with more focus on fundamental reforms to ensure improvement of the effectiveness of the accession process. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Enhancing the Accession Process – A Credible EU Perspective for the Western Balkans of the Regions, Enhancing the Accession for the Western Balkans, COM (2020) 57 final Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0057&from=EN>, [12.12.2022].

⁷ A. A. Pejović (2016) „Vladavina prava u politici prijema u Evropsku uniju“, *Matica Crnogorska*, no. 66. 14-15.

⁸ M. Matić Bošković, J. Kostić, „New enlargement strategy towards the Western Balkans and its impact on Rule of Law“, *Op. cit.* 51.

conducted by the Regional Centre for Cooperation in 2017. On that occasion, it was determined that only three out of ten people in Bosnia and Herzegovina, the Republic of North Macedonia and Montenegro believe that it is acceptable to report improper and illegal behaviour of managers and employees. In addition, as many as three out of ten respondents in the Republic of North Macedonia believe that whistleblowers should be punished for their actions.⁹

In Montenegro, only four out of ten respondents believe that whistleblowers should be supported. According to the results of the research, only three out of ten people in the mentioned country believe that it is generally acceptable to report misconduct by revealing insider information, while in the Republic of North Macedonia only one out of three people would feel obliged to report misconduct that occurs at the level of their organization. More than half of the respondents in Bosnia and Herzegovina and the Republic of Serbia could not say what they consider to be the most effective way to prevent illegality or believe that there is no effective way. However, this very willingness of citizens to report irregular and illegal behaviour testifies to the public's trust in the work of state institutions.¹⁰

In this monograph, we will first point out the importance of whistleblower protection and whistleblowing in both the public and private sectors. Although the subject of the analysis is the compliance of the national legislation of Bosnia and Herzegovina, the Republic of North Macedonia, Montenegro and the Republic of Serbia with international, and above all European standards in this area, we will briefly refer to the protection of whistleblowers in the United Kingdom and the United States of America, having we see that the institution of whistleblowing is characteristic of Anglo-Saxon law. In the following chapter, we will point out the problems in practice that exist in connection with the protection of whistleblowers. In that part, we did not limit ourselves exclusively to the countries whose regulations were the subject of this analysis, but also to other European countries. In the next part of the paper, we will point out the international and European standards in the field of

⁹ M. Worth *et al.* (2017) Public Attitudes to Whistleblowing in South East Europe Data, Analysis of Opinion Survey about Whistleblowing and the Protection of Whistleblowers, Sarajevo: Regional Cooperation Council, 8.

¹⁰ *Ibidem.*

whistleblower protection, and then present the results of the analysis of compliance of national regulations with the mentioned standards. Based on the analysis, we tried not only to point out the problems, but also to give recommendations for improving the regulations in order to improve the protection of whistleblowers in practice and to encourage whistleblowers in both the public and private sectors.

2. THE SIGNIFICANCE OF WHISTLEBLOWING AND THE PROTECTION OF WHISTLEBLOWERS

The protection of whistleblowers is important both for the reduction of corruption and for the transparency of public spending.¹¹ The fight against corruption and other illegalities that can have a negative impact on the public interest should be imperative for every member of a society. However, the role of a whistleblower is most often associated with the fight against corruption and the public sector. However, it should be borne in mind that the importance and role of whistleblowers is much broader. Their activity should benefit the entire community. First of all, looking through the need to protect human rights, which can be threatened in different ways, not only by the activities of public sector institutions, but also by legal entities in the private sector. By preventing irregularities and endangering human rights, a benefit is achieved not only for individuals, but also for the entire society. This was also proven in the research contained in the Study on the assessment of the economic benefit from the protection of whistleblowers in the field of public procurement, which was carried out by the Directorate General for the Internal Market, Industry and Entrepreneurship of the European Commission.¹² During the research, a quantitative assessment of the costs of establishing and maintaining a whistleblower protection system was used in the following countries: France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic and the United Kingdom. According to the results of the

¹¹ More about the transparency of public sector institutions in: J. Kostić, M. Matić Bošković (2022), "Financial accountability and transparency of public sector institutions in the Republic of Serbia", *Accountability and the Law, Rights, Authority and Transparency of Public Sector* (P. Mikuli, Gregorz Kuca, eds.), London and New York: Routledge, 46-60.

¹² The role of the whistleblowers is also of great importance in public procurement procedures that are financed from European Union funds. In this way, its financial interests are protected. About the protection of financial interests in: J. Kostić, (2018) *Krivičnopravna zaštita finansijskih interesa Evropske unije*, Belgrade: Institute of Comparative Law and J. Šuput, *Zaštita finansijskih interesa Evropske unije*, Uspostavljanje AFCOS sistema u Republici Srbiji, *Pravni život*, no. 7-8/2014, 19-30.

research, the costs of establishing and implementing public information about irregularities are quite low compared to the potential benefit. Of importance for improving the functioning of the Whistleblower Institute is, first of all, raising awareness among employees about the existing procedure and method of disclosing information important for the protection of the public interest, as well as promoting internal channels of information. This can increase the likelihood of detection of irregularities and encourage whistleblowing. A large number of European countries have a special law on the protection of whistleblowers. However, the problem in practice is not its provisions, but mostly poor implementation in practice, which demotivates potential whistleblowers.¹³ Both court practice and high court costs can act as a demotivation for whistleblowers.

The United Kingdom's Public Interest Disclosure Act was the first specific piece of legislation to protect whistleblowers. It was adopted in 1998 and was used as a model for drafting laws in other European Union countries. In relation to its implementation, there are weaknesses in practice. Namely, they concern high court costs when whistleblowers go to court to obtain protection from retaliation by their employer. It acts as a deterrent to potential whistleblowers.¹⁴ This testifies to the fact that at the national level it is not enough to provide an adequate level of protection through special laws, but it is necessary to act systematically on the national level through the strengthening of institutional support for whistleblowers.

When it comes to the return of illegally spent funds, it should be emphasized that a more precise amount can be identified if the corruption was detected earlier...¹⁵ This is precisely where the weaknesses of internal control mechanisms, as well as external audits, lie. The internal audit is generally carried out in accordance with the annual plan and informs the head of the institution about irregularities in the work.¹⁶ The question

¹³ Estimating the economic benefits of whistleblower protection in public procurement, Final Report (2017), Luxembourg: Publications Office of the European Union, 10 and 13. <https://op.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en>, [16.12.2022.].

¹⁴ *Ibid.* 24 and 25.

¹⁵ *Ibid.* 38.

¹⁶ The findings and opinions presented in the internal audit reports should serve as instructions for the further actions of the management at the level of the subject of the audit in order to conduct legal business and prevent irregularities. See: J. Šuput, „Interna finansijska kontrola u prevenciji krivičnog dela nenamenskog trošenja

arises in such situations, how to act if the top management participated in illegal actions. In addition, internal auditors are also employed in certain institutions, so they are often afraid of revenge by powerful and influential perpetrators of criminal acts to independently report criminal acts committed by their superiors.¹⁷ In addition, some facts can be established if certain information is collected in a timely manner. It is precisely in these situations that whistleblower action is of particular importance.¹⁸ Given the fact that during the Covid-19 virus pandemic, it was not possible to implement external and internal control procedures in a timely manner, in such situations the roles of whistleblowers would be of particular importance, especially when it comes to public procurements that are carried out under emergency procedures.¹⁹ The absence of financial control, as well as discretion in procedures and decision-making, contributed to growing irregularities during the pandemic.²⁰ During the Covid-19 virus

budžetskih sredstava“, *Nauka, bezbednost, policija*, 1/2012, 160. Establishing financial discipline in the public sector is one of the economic conditions for the accession of the Republic of Serbia to the European Union. More about that in: J. Šuput, (2012) „Interna finansijska kontrola u javnom sektoru“, *Usklađivanje prava Republike Srbije sa pravnim tekovinama EU, prioriteti, problem i perspektive*, (Aleksandra Rabrenović, Jelena Čeranić, eds.), Belgrade: Institute of Comparative Law, 247 and J. Šuput (2012) „Usaglašenost propisa koji uređuju internu reviziju sa međunarodnim standardima – primer Makedonije, Crne Gore i Srbije“, in: *Dobra uprava i interna revizija*, (Dejan Šuput, ed.), Belgrade: Institute of Comparative Law, Association of authorized internal auditors of Serbia in the public sector, 96-110.

¹⁷ J. Šuput, „Državna revizorska institucija i prevencija kriminaliteta belog okovratnika u javnom sektoru“, *Collection of Papers of the Faculty of Law, Niš*, no. 67/2014, 332.

¹⁸ J. Kostić. M. Matić Bošković, (2022) „Recommendations for Overcoming Challenges of Whistleblowing in Public Procurement“, *Journal of the University of Latvia, Law*, no. 15. 58. <https://doi.org/10.22364/jull.15.05>.

¹⁹ *Ibid.* 59.

²⁰ F. Teichmann, M. C. Falker (2021) „Public procurement and corruption during Covid-19; self monitoring and whistleblowing incentives after Srebrena Malina“, *SEER Journal for Labour and Social Affairs in Eastern Europe*, Vol. 24, issue 2, doi: [org/10.5771/1435-2869-2021-2-181](https://doi.org/10.5771/1435-2869-2021-2-181). About the necessity of improving transparency in urgent public procurement procedures, see: J. Kostić, M. Matić Bošković (2021) „Public Procurements during the COVID-19 Pandemic Time – Lessons for the Republic of Serbia“, in: *International Organizations and States' Response to COVID-19*, (Sanja Jelisavac Trošić, Jelica Gordanić, eds.), Belgrade: Institute of International Politics and Economics, 339-359, https://doi.org/10.18485/iipe_response2covid19.2021.ch20

pandemic in Bosnia and Herzegovina, an affair was recorded regarding corruption in public procurement procedures. In these case, for the needs of treating patients infected with the virus, 100 ventilators were procured from China from the company “Silver Raspberry”. Mentioned company is engaged in the production of raspberries and had no previous experience of a licence to trade in medical products.²¹ In addition, ventilators other than those specified in the contract were delivered. In this type of irregularities is observed, the whistleblowers should inform the public to prevent such actions.²² Very significant role in public procurement procedures in the Republic of Serbia had civil sector. These institute was established in the Republic of Serbia in 2012 by the Law on Public Procurement for procurements whose estimated value exceed one billion dinars (about 10 million euros).²³ All documents in the public procurement procedure were available to him and he was able to publicly present opinion and make recommendations to the contracting authority. He had to important roles: oversing and analysing the procedure and pointing out the relevance, which could consist of submitting request for protection of rights in public procurement procedures or reporting on corruption.²⁴ Civic supervisor's role also included informing on irregularities in public procurement procedure. Therefore, it could be said that he in some way had the role of an authorized whistleblower, who acted on the basis of an employment contract. One of the differences in relation to the classic role of whistleblower was that the civic supervisor could be a legal entity (non-governmental organization), in whose name its members acted. However, the institute of civic supervisor itself has not, in practice, been fully set in motion.²⁵

However, whistleblowing protection should be present not only in law, but also in practice. Taking into account the connection of the

²¹ *Ibid.* 18.

²² Stated according to: J. Kostić, M. Matić Bošković (2022) „Recommendations for Overcoming Challenges of Whistleblowing in Public Procurement“, *Op. cit.* 60.

²³ The Law on Public Procurement, *Official Gazette of the Republic of Serbia*, no. 124/12.

²⁴ M. Matić Bošković, J. Kostić, “The Legislation of the Republic of Serbia in the Field of Prevention of Corruption on Public Procurement”, *Bratislava Law Review*, Vol. 5. no. 1/2021, 151, <https://doi.org/10.46282/blr.2021.5.1.234>.

²⁵ See: M. Šarić, M. Stojanović, *Nadzornici odustaju od kontrole najskupljih javnih nabavki*, Center for Investigative Journalism of Serbia, 2018, Available: <https://www.cins.rs/nadzornici-odustaju-od-kontrole-najskupljih-javnih-nabavki/>. [19.12.2022.].

whistleblower with the organization, there is a greater possibility of his vulnerability and susceptibility to various harmful consequences that can be produced by retaliation by superiors in the institution where he is employed or with which he is professionally connected.²⁶ Employees have an internal conflict that often prevents them from reporting irregularities. It contains a moral and practical component. Moral implies loyalty to the employer and the collective, and practical fear for job security.²⁷

During 2019, Transparency International, based on an analysis of European standards in the area of whistleblower protection, made recommendations for improving their position at the national level, referring to the current standards of the European Union in that area.²⁸ The scope of application of the Whistleblower Protection Directive is limited²⁹, because it only protects whistleblowers who report violations of European Union law in precisely defined areas, while whistleblowers who report violations of Union law in other areas or violations of national regulations would remain unprotected under the provisions of the Directive. If, at the national level, they were to limit themselves only to harmonizing the legislation in the area of whistleblower protection with the provisions of the Directive, great legal uncertainty would be created. Persons who report irregularities could mistakenly understand that they are protected, but would remain without adequate legal protection. In addition, the limited scope of situations in which they are protected would contribute to individuals choosing not to report irregularities due to fear of reprisals and lack of protection.³⁰ Although the Directive on the Protection of Whistleblowers largely regulates their position, care should be taken to prescribe at the national level a wider scope of information that can be the subject of whistleblowers in order to provide adequate protection to whistleblowers.

²⁶ M. Martić, „Uporednopravni aspekti pojma uzbunjivača”, *Strani pravni život*, 60(1)/2016, 210.

²⁷ A. Višekruna, „Modeli podsticanja aktivnosti uzbunjivanja na finansijskom tržištu”, *Pravo i privreda*, no. 4-6/2016, 370.

²⁸ About European standards more will be said in the following chapters.

²⁹ Directive (EU) 2019/1937 on the protection of persons who report breaches on Union law, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>, [18.12.2022.].

³⁰ Building on the EU Directive for Whistleblower protection, Analysis and Recommendations, Position Paper 1/2019, Transparency International, 4. https://images.transparencycdn.org/images/2019_EU_whistleblowing_EN.pdf, [19.12.2022.].

A special problem at the national level can be the fact that the provisions of the Directive exclude the protection of whistleblowers for reporting and revealing violations of public procurement rules, which include aspects of defense and security. According to Transparency International, this should not be seen as an exception given the high level of funds spent on public procurement in that area. In addition, the Directive allows member states of the European Union to exclude whistleblower protection in the case of reporting related to confidential information. According to Transparency International, this is worrisome because whistleblowers in the field of national security often suffer retaliation, losing their jobs and criminal proceedings against them. Although according to Article 10, paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it is possible to limit freedom of expression for the purpose of protecting national security or public order, these restrictions should not be too broad. According to Transparency International's 2019 document, restrictions should not make it impossible or difficult to detect crimes. Therefore, a special system for reporting information of public importance should be prescribed for such information, which is related to national security, defense, intelligence services, public order or international relations. Should the whistleblower disclose information relevant to the protection of the public interest, he or she could also receive the full protections guaranteed to whistleblowers.³¹

Although the protection of whistleblowers from retaliation, as well as the persons associated with them, is guaranteed by European standards, it does not cover certain categories of whistleblowers, such as e.g. non-governmental organizations that, because of their assistance to persons who report irregularities, could also suffer retaliation or pressure.³² Until now, various organizations in the Republic of Serbia have provided support to whistleblowers, such as, for example, "Pištaljaka" or

³¹ United Nations, Report of the Special Rapporteur on the Promotion of the Right to Freedom of Opinion and Expression (2015), 27-28 i Building on the EU Directive for Whistleblower protection, Analysis and Recommendations, *Op. cit.* 5. About the protection of whistleblowers see also: I. Dussuyer, Armstrong, A. and R. Smith (2015) „Research into whistleblowing: Protection against victimisation”, *Journal of Law and Governance*, 10(3), 34-42.

³² Building on the EU Directive for Whistleblower protection, Analysis and Recommendations, *Op. cit.* 5.

YUKOM (Committee of Lawyers for Human Rights). Taking into account the results regarding the protection of whistleblowers that were realized with their help, it can be concluded that it is very significant.³³

National legislation should not prescribe specific or additional penalties for knowingly false reporting or disclosure of irregularities or illegalities. Such opportunities could be used to initiate disciplinary proceedings against whistleblowers for damaging their employer's reputation, and to justify retaliatory measures taken against the whistleblower. Therefore, such a provision in national legislation may deter potential whistleblowers, considering that they may decide to report an irregularity on the basis of partial information that they have learned from conversations or on the basis of inspection of documentation that they do not have in their possession.³⁴

Retaliation can unfairly expose whistleblowers to financial loss, loss of status, and emotional suffering. Therefore, national legislation should provide for various reliefs and compensations that would help whistleblowers to prevent their position from being further jeopardized (eg exemption from court fees). All losses should be covered including primarily financial losses.³⁵ Bearing in mind the fact that due to retaliation by the employer, whistleblowers remain without a job until it is proven in the court proceedings that the measures of retaliation against them were unjustified, as well as the impossibility of finding a new job, it would be useful to establish a special fund at the national level from which would provide assistance to whistleblowers who, due to the reporting of irregularities of importance for the protection of the public interest, lose their jobs and, therefore, their financial resources.

In order to ensure effective protection of whistleblowers at the internal level, there should be mechanisms for reporting whistleblowers. They should provide transparent, enforceable and timely procedures for following up on whistleblower complaints about whistleblower retaliatory actions. This should also include the existence of measures for sanctioning persons responsible for retaliation and establishing the previous

³³ This is discussed in a separate chapter of this monograph, which discusses whistleblowing cases in the Republic of Serbia.

³⁴ Building on the EU Directive for Whistleblower protection, Analysis and Recommendations, Op.cit. 6 and 7.

³⁵ *Ibidem*.

status of whistleblowers that they had before the application of such unfair treatment. It is very important that the organization supports the whistleblower. The absence of support can also be caused by carelessness, so such behaviour should be prevented at the level of the institution. The Directive should clearly define the obligation of organizations to protect whistleblowers. Receipt and monitoring of reports should also be an obligation for responsible persons at the institution level.³⁶ In addition, it would be very useful if the national legislation stipulated an obligation for public entities and competent institutions to collect data on internal and external whistleblowing, as well as whistleblower complaints about retaliation, on an annual basis from organizations where whistleblowing occurred. It would also have a preventive effect both on persons who would undertake illegal activities that may harm the public interest, as well as on persons who would take retaliatory measures against whistleblowers.³⁷ It is precisely for this reason that care should be taken to prescribe a possibly higher level of whistleblower protection at the national level compared to European standards that guarantee a minimum level of protection. The more specific the national legislation, the more likely it is that whistleblowers will be protected.

³⁶ Building on the EU Directive for Whistleblower protection, Analysis and Recommendations, *Op. cit.* 9.

³⁷ *Ibid.* 11.

3. WHISTLEBLOWER PROTECTION IN ANGLO-SAXON LAW

Although in this monograph we do not deal with the protection of whistleblowers in other countries outside of the selected countries of the Western Balkans, bearing in mind that the concept of whistleblower is related to Anglo-Saxon law, in this part we will point out the way in which this area is regulated in the United Kingdom and the United States American States. The United Kingdom is an interesting example, because its law regulated the protection of whistleblowers for the first time at the level of European countries. Whistleblower protection in the United States is specific, as it is regulated by special rules in the public versus the private sector. In addition, there are also differences according to the areas in which whistleblowing is carried out and protection provided to whistleblowers.³⁸

In the United Kingdom, whistleblowers are protected by the Public Interest Disclosure Act 1998. This act was passed to supplement the Employment Rights Act 1996. It protects employees who report corporate wrongdoing from employer retaliation. According to that Law, all employees have the right to report from the first day of employment with the employer, and therefore from that moment they have the right to protection from retaliation. The law protects all employees and employed persons in accordance with Article 43 K of the Law on Employment Rights. According to its provisions, whistleblowers also have agency employees, persons engaged on the basis of work contracts, nurses and persons in training, trainees, police officers and employees in the public sector. However, certain categories of employees are exempt from its protection, such as self-employed persons, volunteers and persons applying for employment.³⁹

And in UK law, the person reporting the wrongdoing must have a reasonable belief that the activity they are reporting is illegal behaviour.

³⁸ See: N. Jerinić, (2020) *Zaštita uzbunjivača u cilju borbe protiv korupcije*, doctoral thesis, Belgrade, Faculty of Law of the Union Universtiy, 59.

³⁹ <https://protect-advice.org.uk/pida/> [19.12.2022.].

However, it is not necessary for him to prove that the information is true. It is only necessary that the whistleblower at the time of communication had reasonable grounds to believe that it is true information, that is, an activity that represents illegal behaviour. In addition, the employee must consider that the announcement of the institution is important for the public interest, e.g. for a wider circle of people. Information can be provided both internally and externally by contacting a body authorized by law.⁴⁰

However, although the United Kingdom Act was the first to introduce whistleblower protection at the European level, it also has certain shortcomings. The problem is primarily that it does not prevent organizations from refusing to hire people who were whistleblowers in their previous jobs. In addition, it can be criticized for not protecting volunteers and self-employed persons. The deficiency of the Law consists in the fact that it does not provide for compensation for non-material damage due to mental pain suffered as a result of the employer's retaliation.⁴¹ This is precisely in support of the position that the scope of the law in the area of whistleblower protection must be continuously reviewed. Although at first glance it seems that they establish an adequate level of protection, it does not mean that it really exists in practice.

An interesting approach to the protection of whistleblowers is contained in the legislation of the United States of America, where most states have their own acts regulating the protection of whistleblowers according to the areas.⁴² In 1912, The Lloyd-La Follete Act was adopted, which protected public employees at the federal level from illegal dismissal.⁴³

The False Claims Act of 1863 is of particular importance for the protection of whistleblowers in the United States of America. Also known as the Lincoln Act, it was enacted to prevent suppliers from supplying the military with less than contracted quantities of goods and services.

⁴⁰ Article 43 B of the Public Interest Disclosure Act 1998 (PIDA): Text is available at: <https://www.legislation.gov.uk/ukpga/1998/23/section/1>, [19.12.2022.].

⁴¹ A. Breakwell, *Spotlight on PIDA and Whistleblowing in the UK*, 13.09.2022. Available at: <https://www.integrityline.com/expertise/blog/pida-and-uk-whistleblowing/>, [19.12.2022.].

⁴² M. Martić (2020) *Položaj uzbunjivača u krivičnom postupku*, doctoral thesis, Belgrade, Faculty of Law of the University of Belgrade, 56.

⁴³ More information is available at: <https://whistleblowerjustice.net/u-s-federal-false-claims-act-statute-31-usc-%c2%a7-3729-3733/>, [19.12.2022.].

In the following period, the law was often changed. As the most significant, the 1986 amendment is cited, which stipulated a monetary reward for whistleblowers who would bring irregularities to the attention of the US government. The False Claims Act provided for the possibility of a whistleblower filing a qui tam lawsuit on behalf of the Government. If the case is successfully resolved based on the lawsuit, the whistleblower has the right to a monetary reward. Companies found liable for defrauding the government can be ordered to pay up to three times the actual damages, and face very severe penalties. The False Claims Act is enacted at the federal level, and many states have their own version of the law. Of course, most states provide for the possibility of filing a qui tam lawsuit. Some states enact additional provisions that may offer whistleblower protection. The State of New York prescribes these provisions in the Labor Law⁴⁴, and California by the Insurance Act.⁴⁵

The reward for corporate whistleblowers who discover irregularities is also prescribed by the provisions of the Consumer Protection Act of 2010, while the provisions on the protection of whistleblowers in the field of environmental protection are contained in the Clean Water Act of 1972. The obligation to establish internal whistleblowing protection at the level of public companies is also prescribed by the Sarbane-Oxely Act of 2002 (SOX).⁴⁶

⁴⁴ New York State Labor Law §740, 741, Available at: <https://whistleblowerjustice.net/new-york-state-labor-law-%c2%a7740-741/>, [19.12.2022.].

⁴⁵ More about that in: <https://whistleblowerjustice.net/whistleblower-info/whistleblower-programs/false-claims-act/>, [19.12.2022.]. Among the thirty states whose laws prescribe the possibility of filing a qui tam lawsuit are: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, New Jersey, New Mexico, New York, Texas, etc. More information about whistleblower protection in the California Insurance Code is available on the website: <https://whistleblowerjustice.net/california-insurance-code-section-1871-1871-9/>, [19.12.2022.].

⁴⁶ Consumer Protection Act of 2010, 12 U.S.C. § 5567. More information about protection of whistleblowers by this act is available at: https://www.whistleblowers.gov/statutes/dfa_1057, [19.12.2022.]. About mentioned legislation see: M. Martić, *Položaj zabunjivača u krivičnom postupku Op. cit.* 57.

4. CASES OF WHISTLEBLOWING AND WEAKNESSES OF THE PROTECTION SYSTEM

Whistleblowers can often have trouble proving that they were retaliated against for disclosing information. Therefore, any national legislation should comply with international standards⁴⁷ should have stipulated that the burden of proving that no retaliatory measures have been taken against a certain person due to the disclosure of information is on the employer, not the employee. In this part, we will first look at the weaknesses of the whistleblower protection system in the United Kingdom, even though it is the country that was the first on the European level to establish a whistleblower protection system in 1998 by passing the Whistleblower Protection Act (PIDA). In this part, we will refer to the case from Slovakia, which also speaks in favour of the position that at the national level it is necessary to prescribe an adequate level of protection, which implies an even higher level of protection than that guaranteed by international standards. Then we will look at the weaknesses of the whistleblower protection system in the countries of the Western Balkans: Bosnia and Herzegovina, Montenegro and the Republic of Serbia. It is also important to note that, due to Brexit, the United Kingdom is not obliged to harmonize its national legislation with Directive 2019/1937 on the protection of persons who report violations of the rights of the European Union.⁴⁸ However, countries that aspire to membership in the Union have the obligation to harmonize their national legislation with the aforementioned Directive in the context of fulfilling the conditions regarding the rule of law.

⁴⁷ More about international and European standards on the protection of whistleblowers will be said in the following chapters.

⁴⁸ The Directive (EU) 2019/1937. From 2020, the United Kingdom is no longer a member of the European Union, and therefore has no obligation to harmonize its national legislation in the area of whistleblower protection with the aforementioned Directive.

4.1. Cases of whistleblowing in the United Kingdom

Due to the lack of adequate protection, whistleblowers often give up reporting irregularities. As an example, the case of a worker who was an exemplary employee in a children's home in the Leeds area, where she worked since 2008, can be cited. During September 2011, she suspected that two of her colleagues were abusing children. She reported this to the assistant director. However, since she was not informed about the measures taken within two weeks, she turned to the manager of the home. Two colleagues were suspended, but were later cleared of responsibility in a disciplinary procedure and reinstated. Subsequently, the employee who reported the case was disciplined and disciplined for several minor issues including using a household cleaning product to remove hair dye from the hair of a teenage resident. After a disciplinary procedure, she was fired in February 2012. She then appealed to Leeds Employment Tribunal, which ruled in March that she had been dismissed for reporting the case and was entitled to whistleblower protection. In addition, the Tribunal ordered the home to pay the whistleblower compensation for unfair dismissal, but reduced that compensation by 25% for the cleaning agent incident, arguing that it also contributed to the employer's decision. However, the tribunal did not award her compensation for lost wages even though it found that she had suffered serious damages.⁴⁹

The person who reported the irregularity in this case waited thirteen months for the court's decision. In making its decision, the tribunal referred to the Law on Employment Rights, the decisions of which were not in favour of the person who submitted the request. The aforementioned Law prescribes that the court should reduce compensation for damages due to dismissal if it considers that the employee is partly to blame for the dismissals, while it is up to the judge to decide on a fair amount for the reduction. However, the same Law does not provide an instruction for how much this fee is reduced, so it depends on the subjective assessment of the court.⁵⁰ The weaknesses of the whistleblower

⁴⁹ Wolfe, S., Worth, M., Dreyfus, S. *Protecting Whistleblowers in the UK: A New Blueprint*, Thompson Reuters Foundation, Blueprint for Free Speech, 35 i 36. Available at: <https://www.trust.org/contentAsset/raw-data/7161e13d-2755-4e76-9ee7-fff02f6584db/file>, [19.12.2022.].

⁵⁰ *Ibidem*.

protection system in the United Kingdom are also present at the level of judicial protection. This is evidenced not only by the above, but also by numerous other cases. The shortfalls mainly relate to the amount of funds awarded to whistleblowers for damages suffered.

This was also present in the case of an employee who worked in a facility outside London and cared for people with developmental and learning disabilities. In 2010, she reported that the rules for controlling embezzlement by employees were not followed at the level of the institution where she was employed. When she reported this to the manager, he questioned whether she really wanted to work at the facility and warned her that she was obligated to follow adequate reporting procedures. Due to such behaviour of the manager, the employee filed a complaint and turned to lawyers. However, the institution did not respond to her complaint, and her desk was cleaned and she was denied access to the computer system. During the same year, within three months of notifying the manager, she was charged and told that her workplace would be staffed by a person who had been recruited through the state employment program. She then appealed to the Labour Relations Tribunal, which ruled in 2012 that the warning she received from her employer was unfair and that her dismissal was due to her intention to inform her supervisors of the irregularities. She was awarded compensation for hurt feelings, lost earnings and denial of the right to work, but not for lost future earnings while she looks for a new job.⁵¹

Another example shows the weakness of judicial protection of whistleblowers in the United Kingdom. During 2006, an employee who worked as a business manager at the school made allegations to the employer about financial fraud and favouritism in travel. After that, the employer declared that the accusations were unfounded, and a disciplinary procedure was initiated against the person who reported the irregularities and she was fired. After making the decision, the employer decided that the dismissed employee should leave the premises immediately, and at her request, she was given an hour to collect her belongings from the office. The judge of the Labour Tribunal then determined that the employee was humiliated and undermined, that the situation was extremely disturbing, which hurt her feelings and contributed to the appearance of

⁵¹ Wolfe, S., Worth, M., Dreyfus, S. *Protecting Whistleblowers in the UK: A New Blueprint*, *Op. cit.* 37.

insomnia, stress, anxiety and depression. In the same decision, the judge found that the employee was unfairly dismissed, but still reduced her part of the compensation by 90% because he found that she herself contributed to the loss of her job in that percentage. She waited 30 months for a court decision.⁵²

4.2. The case of whistleblowing in the Slovak Republic

Similar actions of judicial authorities that do not support the affirmation of the whistleblower role are present in other countries, except in the United Kingdom. As an example, we can cite the case of Ľubica Lapinová, who was employed in the public sector of the Slovak Republic (National Forestry Centre) during 2010, working on tenders for large projects whose value is over 700,000 euros, e.g. reported irregularities in the control of legal spending of allocated funds. After discovering the irregularities, she refused to sign the document approving the financing of the project. This resulted in her dismissal in 2012, which the employer justified by a reduction in funds. In addition, the employer filed two criminal charges against Lapinová, which were rejected as unfounded. In 2016, the Regional Court confirmed the decision of the municipal court that the dismissal of the whistleblower was illegal. However, Lapinová could not get a job for several years after her dismissal, and she waited for three years for the Supreme Court to issue a decision that the employer was obliged to compensate her for her lost earnings. However, her endeavour was rewarded by non-governmental organizations in Slovakia, and in 2014 she was awarded the award for civic courage.⁵³ This kind of practice, not only by the institution where they are employed, but also by the judiciary, can lead to long-term consequences for the whistleblower, such as a lack of means of support. Precisely because of the fear of such consequences, people refrain from reporting irregularities and irregularities

⁵² *Ibid.* 42.

⁵³ Whistleblower gets justice after 7 years, 26.06.2019. Available at: <https://spectator.sme.sk/c/22154429/it.took.lubica-lapinova-7-years-to-get-justice-done-white-crow.html> [13.12.2022.]; Estimating the Economic Benefits of Whistleblower Protection in Public Procurement, Final Report, Luxembourg: European Commission, 2017, 87. Available at: <https://op.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en> [13.12.2022].

and decide not to react in such situations. Therefore, it seems that it is not enough for national legislation to prescribe only protection measures for whistleblowers, but relevant institutions and courts at the national level must also comply with them. This indicates the need for national legislation to prescribe appropriate sanctions against employers who take retaliatory measures against employees who report irregularities and illegalities in the public interest.⁵⁴ Although a monetary reward that would be awarded to whistleblowers can be considered a very questionable measure due to the possibility of possible abuses, it seems that some kind of compensation would still be acceptable.⁵⁵ Even the establishment of a cash fund could be considered very useful to overcome the material problems that whistleblowers may face during the implementation of retaliatory measures until they find a new job. Of course, this should not preclude the application of a sanction against an employer who takes retaliatory measures against a whistleblower.

4.3. Cases of whistleblowing in Bosnia and Herzegovina

Retaliatory measures by employers against persons who report irregularities are also present in the countries of the Western Balkans, whose regulations are the subject of analysis in a separate chapter of this monograph. One of such cases was the case of Emir Mešić, who worked in the Indirect Taxation Administration of Bosnia and Herzegovina. During his work, he reported irregularities in the work of the institution when charging private companies for parking at customs terminals. That irregularity was reported to the Prosecutor's Office of Bosnia and Herzegovina, and he was not heard about his allegations for more than a year. Although he was granted the status of a protected whistleblower by the Agency for the Prevention and Coordination of the Fight Against Corruption of Bosnia and Herzegovina, retaliation followed at the level of the institution where he was employed. He was transferred to a position

⁵⁴ Article 23 of the Directive (EU) 2019/1937 stipulates that Member States should take all measures to protect a person who reports irregularities from retaliation, including the imposition of effective, proportionate and dissuasive penalties for natural or legal persons who prevent, attempt to obstruct or retaliate against a whistleblower.

⁵⁵ Article 20, paragraph 2 of the Directive provides for the possibility for Member States to prescribe financial support for persons who report irregularities.

with a lower salary based on the decision of the disciplinary commission for a period of twelve months. The reasoning behind such a decision was that he misled the interested public and caused damage to the reputation of the Indirect Tax Administration through his media appearance.⁵⁶

Retaliation by the employer is also present in the case of Sabahudin Mujičić, who was employed by a company whose majority owner is Elektroprivreda BiH. He pointed out the irregularities and illegalities in the meter measurement procedures to the managers, but without effect. An irregularity was noticed in the preparation process for the public procurement of benchmarks from the funds of the European Investment Bank. He noted that the prices of the offered instruments have increased three to four times compared to the previous ones. In 2020, disciplinary proceedings were initiated against him, and he was handed a one-month suspension. The federal inspection found irregularities in his company, but an appeal was filed against the decision of the inspection, so his case has not yet received a final epilogue.⁵⁷

4.4. The case of whistleblowing in Montenegro

In the company “Railway Transport” from Montenegro, disciplinary proceedings were initiated in 2013 against engineer Milisav Dragojević who, as an expert with 40 years of experience, publicly presented information about a failure in the training of drivers of new trains imported from Spain. He stated that at that time the necessary practical training was not carried out with the supervision of the persons who have attendance on the series of the mentioned trains, which is a common practice in railway transport.⁵⁸ The person who pointed out the irregularities was

⁵⁶ Zviždač Emir Mešić prijavio korupciju i dobio disciplinsku prijavu (slobodnaevropa.org). Available at: <https://www.slobodnaevropa.org/a/intervju-zvi%C5%BE-da%C4%8D-emir-mesic/30909064.html> and <https://see-whistleblowing.org/whistleblower-protection-in-southeast-europe-moving-to-the-next-step-report/>, 16. [19.12.2022.].

⁵⁷ Zviždači protiv korupcije: Uzaludna borba u zemlji lopova, available at: <https://analiziraj.ba/zvizardaci-protiv-korupcije-uzaludna-borba-u-zemlji-lopova/> and <https://see-whistleblowing.org/whistleblower-protection-in-southeast-europe-moving-to-the-next-step-report/>, 17. [19.12.2022.].

⁵⁸ <https://www.vijesti.me/vijesti/drustvo/261971/od-inzenjera-traze-da-cuti-u-zp-cg-poceo-postupak-protiv-milisava-dragojevica>, [19.12.2022.].

still temporarily removed from work and disciplined by refusing 20% of the salary for three months for making untrue and harmful allegations for the company's business and reputation. That decision was annulled by a final judgment of the Basic Court in Podgorica, and in 2016 he was granted the status of a whistleblower.⁵⁹

4.5. Cases of whistleblowing in the Republic of Serbia

At the beginning of the application of the Whistleblower Protection Act⁶⁰ employed in the city administration of Novi Sad, Marija Beretka reported to the Novi Sad police that her authorities in the administration for inspection affairs were concealing data on illegally parked vehicles. Due to the disclosure of that information, she was forced to request judicial protection. Since the beginning of 2015, Beretka first warned the managers of the institution where she was employed about irregularities, and as a result she was transferred to a new workplace twice. In the meantime, several court decisions have been made, and the explanations of some of them are very illogical. Thus, it is stated that in one of them it was stated that it was not possible to determine from which moment she had the right to protection, and therefore it is not possible to determine the connection between her application and retaliation. Some judgments even stated that she did not prove that she had made an internal whistleblower, and one of the courts stated that the police is not an authorized authority to whom the whistleblower can report illegality. It is precisely this attitude that points to ignorance of the regulations on the part of holders of judicial functions, so it seems that training on the protection of whistleblowers is more than necessary when it comes to holders of judicial functions. During 2015, Beretka filed a lawsuit to assess the legality of the decision to change the workplace. The court ruled in her favour and ordered the City Administration to reinstate her, which was confirmed by the Court of Appeal.⁶¹

⁵⁹ <https://www.vijesti.me/vijesti/drustvo/403699/inzenjer-dragojevic-je-trpio-mob-ing>, [19.12.2022.].

⁶⁰ Whistleblower Protection Law, *Official Gazette of the Republic of Serbia*, no. 128/2014.

⁶¹ https://www.b92.net/info/vesti/pregled_stampe.php?nav_id=1223131 i <https://www.cins.rs/tri-sudska-procesa-za-zastitu-jednog-uzbunjivaca/>, [19.12.2022.].

The police inspector from Novi Sad, Duško Kovačević, received judicial protection for whistleblowers, who pointed out the illegal behaviour of the highest officials of the Novi Sad police. He received such protection after four and a half years. In the dispute, the whistleblower was represented by the lawyers of the non-governmental organization “Pištaljka”. In that ruling, the court obliged the Ministry of the Interior to stop retaliating against the person who reported the irregularities and to stop ignoring, refusing to communicate and avoiding assigning work tasks. In addition, the court ruled that the whistleblower should be paid 200,000 dinars by the employer for the damage and mental pain suffered, and that the employer should publish the verdict in the daily newspaper “Politika” at its own expense. However, judicial protection was absent in the earlier period. The courts refused to provide protection to the whistleblower, with the explanation that the lawsuit was not filed in a timely manner. The Supreme Court of Cassation annulled the aforementioned verdicts, and the judge assessed that he made it likely that harmful actions were taken against him due to the provision of information, while the Ministry of Internal Affairs, as an employer, did not prove that the harmful actions were not causally related to the act of whistleblowing. The verdict is not final, as the Ministry has the right to appeal. Despite the verdict in favour of the whistleblower, pending its adoption, the employer continued to retaliate, but in a different way. Bearing in mind that in previous years he was not given work assignments, during that period he was ordered to work overtime with additional night hours even though the person is a heart patient. In addition, he was invited to shooting exercises even though it was known about his health problem and despite the fact that according to the doctor’s decision, he must not go to such exercises.⁶² This case shows the importance of the help that whistleblowers can get from NGOs. In this particular case, the person who reported the irregularities received help from the “Pištaljka” organization, because he and his family received threats because of the submitted report. This is precisely what he says in support of the position that, in addition to the whistleblower and his family, the law also recognizes legal entities (non-governmental organizations) that provide assistance in exercising the right to legal protection as persons related to the whistleblower.

⁶² <https://Pištaljka.rs/home/read/1031>, [19.12.2022.].

An example of retaliation against whistleblowers is also illustrated by the case of Predrag Simonović, a multiple-awarded police officer who was a member of the Ministry of Internal Affairs' working group investigating the murder of a journalist. In 2016, he was dismissed from membership in the working group without any explanation. He was warned not to tell anyone about the dismissal because he would be criminally responsible, given that the affairs of the group he was a member of were strictly confidential. He believed that this was a measure of retaliation against him, because he repeatedly pointed out to the Department of Internal Control illegalities in the work of the Ministry of Internal Affairs. Bearing in mind that he already knew about the irregularities, he decided to check whether the persons who handed him the decision had the right to access the document, which was considered strictly confidential. It turned out that they did not have the right, because according to the official information that he obtained, they did not have a certificate for access to classified information. Two disciplinary proceedings were initiated against him, and the mobbing council initiated court proceedings against him. In this particular case, he first submitted information about irregularities to the competent institutions in accordance with the Law on the Protection of Whistleblowers. However, there was no reaction, so he decided to address the media. After a six-year trial in 2018, the High Court issued a verdict in which it confirmed that Simonović suffered from mobbing by his superiors and awarded him monetary compensation in the name of non-material damages due to mental pain due to injury to his honor and reputation.⁶³

⁶³ <https://insajder.net/arhiva/tema/sest-godina-sudenja-do-prvostepene-presude-vi-si-sud-utvrdio-da-je-policijski-inspektor-trpeo-mobing-nadredenih-u-mup-u-g1l-jfv7d>, [19.12.2022.].

5. DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN PROCEEDINGS INITIATED ON THE BASIS OF WHISTLEBLOWER APPLICATIONS

Judgments of the European Court of Human Rights have a great influence on the practice of national courts. Given that at the national level, there are often doubts in practice when it comes to the protection of whistleblowers, it is very likely that the decision of the aforementioned court will have a significant impact on the position of judicial practice. However, it sometimes happens that the positions taken in judgments can create new dilemmas. In our opinion, such is the case with the judgment of the European Court of Human Rights in the case of *Hallet v. Luxembourg*.⁶⁴ In the mentioned judgement, the interpretation and application of international standards in the field of whistleblower protection is questioned. Based on the position expressed in the aforementioned judgment, a dilemma arises as to which is more important: the protection of the public interest or the employer's private interest. Therefore, it seems that although it is not explicitly stated in the European standards, when protecting whistleblowers in the private sector, different criteria should be taken into account compared to the public sector.

In the aforementioned case, the applicant was employed by a company that provides auditing, tax consulting and business management services in Luxembourg. During 2012 and 2014, his company made several hundred advance tax rulings and tax returns, and the case was covered in various media and known as the LuxLeaks affair.⁶⁵ The applicant previously disclosed to journalists the information that his company has concluded tax agreements for several years acting on behalf of multinational companies and the tax authorities of Luxembourg. The person

⁶⁴ ECHR, *Halet v. Luxembourg*, Application no. 21884/18, Judgment, 11. 5. 2021. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-210131%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-210131%22]}), [19.12.2022.].

⁶⁵ Information about the LuxLeaks affair is available on the website: <https://www.transparency.org/en/news/antoine-deltour-luxleaks-whistleblowers-long-legal-battle-continues> [16.12.2022.].

who published the information was convicted of a criminal offense by a national court and was denied the protection that is provided to whistleblowers in accordance with European standards. After that, the applicant appealed to the Court of Appeals, which ruled that he could not invoke the justification of whistleblowing in accordance with national legislation, because there was a hierarchical relationship between the employer and the applicant, which implied that he had an obligation of loyalty and discretion in relation to the employer. However, the employee contacted the journalist in order to reveal confidential information he had received during his employment with the employer. Bearing in mind that the decision of the Court of Appeal was negative for the applicant, he turned to the European Court of Human Rights, which decided whether the judgment of the court in Luxembourg was in line with measures for the protection of whistleblowers. The European Court referred to Article 10, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention for the Protection of Human Rights and Fundamental Freedoms),⁶⁶ and which also prescribes the possibility of limiting freedom of expression. In its ruling, the aforementioned court took the position that the decision of the first instance court in Luxembourg was justified, because informing the public in the specific case should have been limited in order to protect shareholders, employees and the wider economic community.⁶⁷ The European Court of Human Rights considered that the employee's right to freedom of expression about the employer's illegal or improper behaviour must be weighed against the employee's obligation to take care of the employer's

⁶⁶ According to that provision, everyone has the freedom of expression, and therefore the freedom to receive and communicate information and ideas without government interference and regardless of borders. This freedom cannot be limited by formalities, conditions or penalties prescribed by law, which are considered necessary in a democratic society and in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, protection of health or morals, protection of reputation or rights others, preventing the disclosure of information received in confidence or in order to preserve the authority and impartiality of the judiciary.

⁶⁷ Bearing in mind that according to article 10, paragraph 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms, freedom of information may be limited to protect the reputation or rights of others. In this particular case, according to the position of the European Court of Human Rights, freedom of information had to be limited in order to protect the rights of shareholders, employees and the wider economic community.

commercial interests and reputation. Therefore, in that case, according to the court's opinion, the ratio of damage that can occur to the public interest should be balanced against the employer's private interests. The same position was taken by the Appellate Court in Luxembourg when it concluded that the value of the information contained in the documents disclosed by the applicant was not essential, new and unknown until then. According to the judgment of the European Court of Human Rights, the damage that could occur to the public interest would be less than the damage that could be suffered by a private employer.

In its verdict, the European Court took the position that Hallett's criminal liability does not constitute a violation of the right to freedom of expression, which is stipulated in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and which he referred to when submitting the petition. Nevertheless, one can justifiably ask the question of how far the whistleblowers are able to make an adequate assessment of the degree of threat to those interests. That is why the institute of good faith, and later of mutual assurance, was initially introduced according to European standards.⁶⁸ In accordance with them, protection is provided to the whistleblower who was convinced that he disclosed the information in the public interest, and not for any other reason, such as, for example, the desire to take re-venge on the employer or to gain some greater material benefit. In the said judgment, the fulfilment of an additional criterion in relation to the public sector was also required, which is balancing between damage to the public interest and the commercial interests of the employer where the whistleblower was employed.

The judgment in *Hallett v. Luxembourg* was also influenced by earlier case law. Thus, in the case of *Hajniš v. Germany* from 2011, the position was taken that the commercial success and viability of private companies must be protected for the benefit of shareholders, employees and the wider economic community. Accordingly, freedom of expression should be limited by the rights of shareholders, employees and the wider

⁶⁸ The Institute of Reasonable Assurance was established by EU Directive 2019/1937. Art. 13, paragraph 1, point 1 of the said Directive stipulates that a person meets the requirement for protection if, at the time of submitting the application, he had justified reasons to believe that the reported information is accurate and covered by the scope of application of the Directive. Stated according to: J. Kostić, "Zaštita uzbunjivača: Između javnog i privatnog interesa", *Strani pravni život*, no. 2/2022, 208.

economic community. Therefore, the ratio of damage that could occur to the public interest and damage to the reputation of the legal entity and commercial interests should be assessed.⁶⁹ Taking into account the above, the court concludes that employees have an obligation of loyalty and discretion towards the employer. It seems that the obligation of loyalty to the employer is something that can be characteristic of the public sector as well, e.g. the defense sector, so it should not be the decisive criterion when providing protection to a whistleblower. In the judgment of *Heinisch v. Germany*, the European Court of Human Rights took the position that the court must take into account the damage suffered by the employer as a result of the disclosure of information by the whistleblower, as well as assess whether the damage outweighed the public interest.⁷⁰

The European Court of Justice seems to have taken a somewhat different position in the case of *Guja v. Moldova*. Namely, the applicant turned to the European Court of Human Rights, because he was fired from the position of head of the press department. Chief Prosecutor's Office of Moldova. He submitted two letters to the newspaper that were received by the public prosecutor's office, one of which was not marked as a confidential document. Those two letters were sent by the Speaker of the Parliament on letterhead. In them, the General Prosecutor of Moldova was asked to get personally involved in the case of four police officers who were convicted of illegal imprisonment and abuse of detainees. During the period in which the letter was sent, the President of Moldova led a campaign against political interference in the criminal justice system, and the Moldovan media followed that campaign. Taking this circumstance into account, the court accepted that the motive for such an address was pressure exerted by the Speaker of the Parliament on the Office of the Chief Prosecutor. In addition, the position of the court was that the applicant, in order to protect the public interest, informed the media about inappropriate pressures and unjustified activities within the prosecutor's office, which was very important in a democratic society. Therefore, in that case, the public interest in providing information about inappropriate pressures and unjustified actions

⁶⁹ ECHR, *Heinisch v. Germany*, Application no. 28274/04, Judgment, 21.7.2011. Available at: <https://www.servat.unibe.ch/dfr/em282740.html> <https://www.servat.unibe.ch/dfr/em282740.html>, Paragraph 64. [19.12.2022.].

⁷⁰ *Ibid.* Paragraph 68.

in the prosecutor's office prevailed over the interest of maintaining public trust in the public prosecutor's office. In the specific case, the court was guided by the idea that it is necessary to encourage citizens to freely express an opinion that harms the public interest. In addition, it was assessed that the applicant did not have a motive to gain a property benefit by reporting irregularities, as well as that there were no personal disagreements with persons whose irregular and illegal activities the public was informed about, that there was no other hidden motive and that the person who reported irregularities, acted in good faith. The European Court of Human Rights concluded that despite this, at the national level, the applicant was unjustifiably punished by dismissal, and which could act as a deterrent to other employees who want to report irregularities in the public sector and made a decision that in this particular case there was no whistleblower protection at the national level.⁷¹

⁷¹ ECHR, *Guja v. Moldova*, Application no. 14277/04, Judgment 12.2.2008. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22003-2266532-2424493%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22003-2266532-2424493%22]}), [19.12.2022.].

6. ATTEMPT TO DETERMINE THE TERMS OF PUBLIC AND PRIVATE INTEREST

Bearing in mind the decision of the European Court of Human Rights in the cases of *Hallet v. Luxembourg* and *Heinisch v. Germany*, the question of determining the concept of not only public, but also private interest arises. Public interest is not legal, but it is a legal category and has its own forms and elements.⁷² Under these forms, the authors consider external and internal security, public order and peace, continuous supply of energy and food, normal functioning of public services (health, education, culture, communal order, etc.), orderly and smooth flow of traffic, public communications, connections, preservation environment, functioning of the market, protection of competition, provision of information of public importance, protection of personal data.⁷³ Theorists from the field of administrative law believe that the constitutive elements of the public interest are the realization and protection of human rights and freedoms, the development of social life and the orderly work of state bodies and public services.⁷⁴ From the above, it can be concluded that there is no single definition of public interest, so it can be defined in different ways depending on the context. Some authors believe that the public interest is the sum of all the interests of individuals who together make up the public, so it should be assessed whether the interests concerning the rule of law, that is, the division of power and human rights, have been realized. According to the author's opinion, when deciding who should be given priority, the courts are always guided by the

⁷² About the public interest in: C. Bezemek, T. Dumbrovsky (2020) „The concept of public interest” in: *Graz Law Working Paper* No 01-2020, Graz: Faculty of Law, University of Graz, <https://ssrn.com/abstract=3701204> [19.12.2022.].

⁷³ V. Đurić, N. Vranješ, (2020) „Pravni okvir uloge lokalne samouprave u ostvarivanju javnog interesa – primeri Republike Srbije i Republike Srpske”, *Godišnjak Fakulteta pravnih nauka*, 10, 49-50.

⁷⁴ Z. Tomić, (2019) „Javni poredak: pojam i struktura”, *Anali Pravnog fakulteta u Beogradu*, 67(2), 36.

balancing test, which prevents judicial discretion.⁷⁵ However, it is often very difficult for a potential whistleblower to assess the degree of threat to the public against a private interest. According to the philosophical concept, private interest is defined as something that a person needs or is useful for development or success. Even so, there is a problem of understanding what is necessary for success, because people may not be able to judge or may not want what they need, so the real interests of individuals may not be realized by their unnecessary choices and affections.⁷⁶ According to the unitary theory, which is based on Aristotle's understanding, public interest is a type of association in which the common good is the broadest, most comprehensive. It is derived from the moral principles pursued by both the private and public sectors.⁷⁷ However, the authors who advocate the position that if the public interest serves all parties, it will not benefit anyone, are also right. This is precisely what speaks of the difficulty of assessing the threat of public interest in relation to the threat of one's private interest.⁷⁸

⁷⁵ R. E. Boot, (2020) The Feasibility of a Public Interest Defense for Whistleblowing, *Law and Philosophy*, 39(1), 1-34. Available at: <https://link.springer.com/article/10.1007/s10982-019-09359-1> [19.12.2022.].

⁷⁶ Stated according to: N. Jerinić, (2020) Zaštita uzbunjivača u cilju borbe protiv korupcije. *Op. cit.* 23-24.

⁷⁷ *Ibid.* 23.

⁷⁸ Stated according to: P. Mates, M. Barton, (2011) Public versus Private Interest – Can the Boundaries Be Legally Defined. *Czech Yearbook of International Law*, 2, 186.

7. METHODOLOGICAL APPROACH TO STANDARDS AND INDICATORS

The main approach taken in the study is to analyse the current regulatory frameworks in force in the four countries: Bosnia and Herzegovina, The Republic of North Macedonia, Montenegro, and the Republic of Serbia in selected aspects related to the protection of whistleblowers.⁷⁹

In order to provide a benchmark for the assessment, the study identifies key international standards and indicators in the given area. Indicators were developed for each standard in order to facilitate and guide the assessment. The standards and indicators used in the Protection of Whistleblowers rating methodology were informed by the hard and soft law documents that outline the relevant standards. The approach taken was to identify major issues and synthesize the relevant underlying rules related to them.

The definitions and lists were developed with a reference to the Directive (EU) 2019/1937 on the Protection of persons reporting on breaches of European Union Law. The standards examined in the study are following:

- Clear definition of the scope of protected disclosures and of the persons afforded protection under the law;
- Protection afforded to whistleblowers is robust and comprehensive;
- Clear procedures and channels for reporting wrongdoings and
- Comprehensive enforcement mechanisms.

The core of the study consists of a detailed qualitative assessment of the level of alignment of the national regulatory frameworks of the four countries with the relevant international standards, based on the defined indicators. The assessment takes into account the provisions of

⁷⁹ Bearing in mind that this is a serial publication within the Public Sector Integrity in the Western Balkans series, the same methodological approach and way of defining the methodology was used in the A. Knežević Bojović, M. Reljanović (2022) *Free access to information, An analysis of the regulatory frameworks in selected Western Balkan countries*, Belgrade: Institute of Comparative Law, 24-26.

national legislation. The study goes one step further, as the qualitative assessment is also quantified for each indicator and standard.

The quantification of the assessment is based on the approach used by SIGMA. Consequently, the methodology consists of two layers of quantified assessment.

Table 1

Point	Point description
0	Not in line with standards
1	Mostly not in line with standards
2	Mostly in line with standards
3	Fully in line with standards

The first layer includes assessment per indicator within each standard. Each standard includes one or more indicators. Within this assessment, points are awarded to each indicator on a 0-3 scale as per the Table 1. The 0-3 scale was chosen given that the indicators are, for the most part, defines in rather straightforward terms, often not allowing for a nuanced approach to the assessment of compliance with the relevant standard. A four-point scale was, therefore, deemed optimal.

Table 2. Standard values

Average point	Standard value	Description of standard value
0-0.50	0	Not in line with standard
0.51-1.00	1	Mostly not in line with standard
1.01-1.50	2	Significant departures from standard
1.51-2.00	3	Some departures from standard
2.01-2.50	4	Mostly in line with standard
2.51-3	5	In line with standard

The second layer of assessment is done, once all the indicators within one standard are awarded their respective points. Then, the average point is calculated per standard. The average point per standard is calculated by dividing the sum of all points awarded with the number of indicators for the given standard. The average point for the standard is then translated to a quantified standard value on a 0-5 scale, as per Table 2. Since

standards, as a rule, comprise two or more indicators (with some exceptions), and were purposefully defined to be more complex, the selected six-tier scale allows for nuances to be assessed and identified when it comes to compliance with or departures from the standard.

The quantification is presented in tables at the level of each standard. The intention of the quantification is to provide a simplified, yet informative outlook on the state of play with regard to each of the relevant regulatory framework, and to pinpoint the respective strengths and weaknesses. In addition, this study doesn't offer a definite quantitative assessment, but rather offers a qualitative interpretation of the data collected in the conclusion.

8. COMPLIANCE OF THE LEGISLATION OF ANALYSED COUNTRIES WITH KEY INTERNATIONAL STANDARDS

With regards to the protection of whistleblowers, the regulatory frameworks of the analysed countries indicate the need for additional harmonization with international standards. That is not surprising, given the fact that the regulations governing protection of whistleblowers are more recent in order to meet the conditions for EU membership.

The subject of this research is the analysis of the level of harmonization of national legislation of Bosnia and Herzegovina and its two entities: Federation of Bosnia and Herzegovina and Republic of Srpska, the Republic of North Macedonia, Montenegro and Republic of Serbia with European standards in the field of whistleblower protection. Special attention in this monograph is devoted to the Republic of Serbia, so the level of compliance of its regulations with European Union law in the area of whistleblower protection is analysed in a separate chapter. According to the report on the progress of the Republic of Serbia in the process of accession to the European Union, it is necessary to further improve the protection of whistleblowers. Although the actions of the courts in cases against whistleblowers are urgent, at the end of 2021, 13 cases remained unresolved in which the proceedings were not concluded even after three years. In addition, there are reports of whistleblowing that have not yet been investigated.⁸⁰

We start from the assumption that at the level of mentioned sectors there are no special rules on the protection of whistleblowers, as well as that there is a need to improve the national legal framework in this area.

The provisions of the laws of Bosnia and Herzegovina and the Republic of Srpska need to be more aligned with the EU acquis regarding

⁸⁰ Report of the European Commission on the progress of the Republic of Serbia in the process of accession to the European Union for 2022, russels: European Commission. Text is available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/Serbia_Report_2022_SR.%5B1%5D.pdf, 33. [19.12.2022.].

the protection of whistleblowers. A special problem is that as requirements for the disclosure of criminal and misdemeanour responsibility of the whistleblower is prescribed the standard of “good faith” by the laws on the protection of whistleblowers in these countries. Although it is defined from the aspect of the whistleblower’s belief in the truth of the facts he informs about, it can be a problem from the aspect of whistleblower protection in practice. Namely, the standard of “good faith” is related to the motive, so the existence of such a motive is very complex in practice. Therefore, it may happen that in certain situations the whistleblower is left without the protection guaranteed by law. This can be deterring for potential whistleblowers. Therefore, that standard should be replaced by a standard of “reasonable grounds” in accordance with EU standards. In addition, the problem is the fact that the law is related exclusively to employees in the institutions of Bosnia and Herzegovina and the Republic of Srpska. Bearing in mind certain solutions contained in both laws, it seems that the provisions of one law were taken without adapting to the needs and specifics of practice, as well as additional harmonization with EU standards. However, the biggest problem is the fact that at the Federation of Bosnia and Herzegovina has not yet passed a law on the protection of whistleblowers.

Macedonian legislation lacks provisions relating to the exemption from criminal, misdemeanour or disciplinary liability of persons who report corruption on reasonable grounds. Such an approach can discourage potential whistleblowers. Montenegrin legislation regarding the protection of whistleblowers also required additional harmonization with EU standards.

It seems therefore that it will take some additional time for the legislation of the protection of whistleblowers become fully and more seamlessly integrated in the national legal frameworks.

9. WHISTLEBLOWERS PROTECTION AND INTEGRITY

The establishment of adequate level of whistleblowers' protection is one of the key elements for the improvement of integrity in the public sector. However, the notion of whistleblowing shouldn't be connected exclusively to the public sector or corruption. The need to protect the public interest from illegal, improper and unethical activities also exists in the economic sector.

The precondition for the effective protection of whistleblowers is clear and precise definition of mentioned institution in the national legislation, as well as clearly defined notion of public interest. The possibility and definition of manner of internal, external and public whistleblowing also should be regulated by national legislation. Without adequate protection, whistleblowers can be charged for criminal or be liable for disciplinary offenses. The existence of such a possibility discourages potential whistleblowers.

United States consumer activist Ralph Nader in 1971 was one of the first who used the definition of whistleblowing. According to his definition the whistleblowing is "an act of a man or woman who, believing that the public interest overrides the interest of the organizations he serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent or harmful activity."⁸¹

Different documents and organizations provide different definitions of whistleblowers and whistleblowing. The United Nations Convention against Corruption provides that whistleblower can be any person who reports in good faith and on reasonable grounds to the competent

⁸¹ N. M. Rongine, „Toward a Coherent Legal Response to the Public Policy Dilemma Posed by Whistleblowing“, *American Business Law Journal*, Summer, 1985, Vol. 23, Jss. 2, p. 28, Quoted in: D. Banisar, „Whistleblowing: International Standards and Developments“, in: *Corruption and Transparency: Debating the Frontiers Between State, Market and Society*, I. Sandoval (ed.) Washington: World Bank, Institute for Social Research, 1. Available at: [2https://www.researchgate.net/publication/228124587_Whistleblowing_International_Standards_and_Developments](https://www.researchgate.net/publication/228124587_Whistleblowing_International_Standards_and_Developments), [19.12.2022.].

authorities any facts concerning offences established in accordance with this Convention.⁸²

The Council of Europe's Civil Law Convention on Corruption is also limited exclusively to corruption. It stipulates that whistleblowers may be employees who have "reasonable suspicions of corruption and who, in good faith, report their suspicions to responsible persons or competent institutions".⁸³

The International Labour Organization provides a broader definition of whistleblowing. According to mentioned definition, whistleblowing is reporting by employees or former employees or illegal, irregular, dangerous or unethical practices by employers.⁸⁴ A broader definition of whistleblowing is also prescribed by the Council of Europe Recommendation on the protection of whistleblowers. According to that definition a whistleblower is 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 public or private sector.⁸⁵

Bearing in mind that other harmful activities can be equally dangerous, and not only those related to corruption, we believe that it is

⁸² Article 33 of the UN Convention against Corruption (Adopted by the UN General Assembly 31 October 2003, by resolution 58/4) prescribes that each State Party has the obligation to prescribe at the national level adequate measures to protect against any unjustified treatment of any persons who reports to the competent authority in good faith and on reasonable grounds any facts relating to the offenses established by the Convention. Text of Convention is available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, [19.12.2022.].

⁸³ Pursuant to article 9 of the Civil Law Convention on Corruption, each Contracting State shall provide in its national 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 of authorities. Text of mentioned Convention is available at: <https://rm.coe.int/168007f3f6>, [19.12.2022.].

⁸⁴ I. Chalovat, C. Carrion-Crespo, M. Licata (2019) *Law and practice on protection whistleblowers in the public and financial services sectors*, Geneva: International Labour Office, 6. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_718048.pdf, [19.12.2022.].

⁸⁵ Recommendation CM/REC(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014. Text is available at: <https://rm.coe.int/16807096c7>, [19.12.2022.]. About the whistleblowers protection in the private sector see: M. Kresoja, (2016) „Uzbunjivanje i zaštita uzbunjivača u banci - pravni i kriminalistički aspekti”. *Ekonomski izazovi*, vol. 5, no. 10, 94-116.

justified that the whistleblowing should refer to any activity that endangers the public interest. Precisely such a determination points to the need to accept in national legislation a broader definition of whistleblowing. Therefore, it should refer to reporting not only illegal, but any kind of unprofessional or unethical conduct. Bearing in mind the need to protect the public interest, insurgency should be aimed at detecting irregularities both in public sector institutions and at the level of the economy. Such an attitude is contained in European standards on the protection of whistleblowers. According to Directive (EU) 2019/1937, the national normative, institutional and judicial framework, including as appropriate, collective labour agreements, should be designed and developed to facilitate public interest reports and disclosures by establishing rules to protect the rights and interests of whistleblowers. The existence of clear rules on the protection of whistleblowers is particularly important for the security and defense sector, due to the confidentiality of data and the possible responsibility of whistleblowers due to the disclosure of classified data and information. Thus, e.g. The Law in service in the Armed Forces of Bosnia and Herzegovina stipulates that a disciplinary offense is a violation of regulations on confidential data or information.⁸⁶ However, renewal for disciplinary liability is also concealment or non-reporting of disciplinary offenses.⁸⁷ Thus, the obligation to protect the public interest, even by reporting activities that endanger it, arises from the very definition of the duties of police officers. According to Law on police officers of Bosnia and Herzegovina, a police officer shall be guided by the general interest in the performance of his/her duties and shall in particular serve to assist the public.⁸⁸ However, from the aspect of reporting irregularities that endanger or may endanger the public interest, other provisions of the law can be a problem. According to the provisions of the Law on police officers of Bosnia and Herzegovina, it is forbidden to comment on the work of the police body without the approval

⁸⁶ Article 161. paragraph 1, item m) of the Law in service in the Armed Forces of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, no. 88/05.

⁸⁷ Article 161, paragraph 1, item z).

⁸⁸ Article 36, paragraph 1. of the Law on police officers of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, no. 27/2004...42/2018-Decision of the Constitutional Court. The same obligation is prescribed by Article 56, paragraph 1 of the Law on the Police and Internal Affairs of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, no. 57/2016...82/2019.

of the head.⁸⁹ Any performance of activities without the prior approval of the officer is a serious violation of official duty and a basis for disciplinary liability.⁹⁰ Also, the basis for disciplinary liability is the disclosure of official secrets.⁹¹ Precisely, because of above-mentioned provisions and the existence of a preconception that illegal, improper or unethical conduct that endangers the public interests are difficult to detect in the security and defense sector, there is a risk of undertaking such activities. That imposes the need for the most efficient protection of whistleblowers in security and defense sector at the national level.

⁸⁹ Article 38.

⁹⁰ Article 105, paragraph 1, item 6.

⁹¹ Article 105, paragraph 1, item 14.

10. KEY INTERNATIONAL STANDARDS ON WHISTLEBLOWERS' PROTECTION – GENERAL STANDARDS

At the international global level, the most relevant document is 2003 UN Convention against Corruption which binds all signatory countries to consider introduction of legal provisions to protect people who report corruption-related offences from retaliation. In Article 33 – protection of reporting person, it provides for whistleblower protection and requirement for protection is reporting in good faith and on reasonable ground to the competent authorities any facts concerning offences established in accordance with the Convention.⁹²

The OECD Council adopted in 1998 Recommendations on Improving Ethical Conduct in the Public Service, including Principles for Managing Ethics in Public Service. The principle no. 4 relates to whistleblowers' protection. According to the principle the public servants need to know their rights and obligations in term of exposing actual or suspected wrongdoing within the public service. The clear rules and procedures should be adopted for officials and a formal chain of responsibility, while public servants need to know available type of protection in case of exposing wrongdoing.⁹³ The OECD major contribution to the protection of whistleblowers was a document adopted as a policy instrument by the 2011 G20 summit in Cannes.⁹⁴ Another one very important OECD document in this area was the report "Committing to Effective Whistleblower Protection" published 2016.⁹⁵

⁹² The text of the Convention is available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, [19.12.2022.].

⁹³ The text of Recommendations on Improving Ethical Conduct in the Public Sector is available at: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C\(98\)70/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C(98)70/FINAL&docLanguage=En), [19.12.2022.].

⁹⁴ G-10 Anti-Corruption Action Plan, Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation. Text is available at: <https://www.oecd.org/corruption/48972967.pdf>, [19.12.2022.].

⁹⁵ The text of this document is available at: <https://www.oecd-ilibrary.org/docserver/9789264252639-en.pdf?expires=1629974622&id=id&accname=guest&check->

At the regional level the relevant document referring to the whistleblowers protection is 1999 Council of Europe Civil Law Convention on Corruption, which in article 9 introduce obligation for each party to incorporate in the national law 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 person or authorities.

More detailed whistleblowers' protection is included in the Resolution 1729/2010 of the Parliamentary Assembly of the Council of Europe on the protection of whistleblowers. The Resolution emphasised the importance of reaction of individuals who are exposed to danger, or could put other people at risk by such reaction. This Resolution defines twenty principles on which member states should establish their protection of whistleblowers in the public and private sector. Article 6.1.1. of the above-mentioned Resolution defines whistleblowing as the disclosure of information relating to voluntary warnings of various types of illegal conduct, including any serious human rights violations that endanger the right to life, health, liberty or any other legitimate interest of employed individuals of public service users, authorities, taxpayers or shareholders, employees or clients of private companies. To be considered a legitimate means, whistleblowing should be carried out in bona fide. According to Regulation that considers the existence of a well-founded reason to believe that the information disclosed by the whistleblower is true and non-existence of the whistleblower's intention to achieve an illegal or unethical goal.⁹⁶

Articles 6.1.3.1., 6.1.3.2., 6.1.3.3. and 6.1.3.4. points the areas within which is necessary to provide protection of the whistleblowers' rights. First area of protection relates to the labour law, by protection of employee of improper dismissal or other forms of retaliation in connection with the employment. Second area of protection relates to the criminal law that should provide protection from criminal prosecution for defamation, violation of business or official secrets, as well as witness protection. Third area of protection relates to the media law that should provide the adequate protection of media sources in whistleblowing cases.⁹⁷

sum=04A536FDFF25BAE13AB1F889537371B6. [19.12.2022.].

⁹⁶ The Text of Resolution is available at: <https://pace.coe.int/en/files/17851/html>, [19.12.2022.].

⁹⁷ About that in: N. Jerinić, *Zaštita uzbuñjivača u cilju borbe protiv korupcije*, doctoral thesis, *Op. cit.* 41.

According to the Resolution, three methods of whistleblowing should be described by national legislation: internal, external and whistleblowing through the media. National institution and economic entities should establish internal procedures for whistleblowing. Regarding the protection of whistleblowers in the process of external whistleblowing, the Resolution ensures that the legislation should provide reliable protection through the mechanisms by which the whistleblower's complaint should be examined e.g. through orders, corrective measures and temporary measures (until the end of the procedure) applicable to the employer. The Resolution also recommends to States to establish by national legislation the right to compensation in favour of whistleblowers if no sanctions have been taken against persons who have retaliated against whistleblowers or the consequences of retaliation could not be remedied. The burden of proving the non-existence of causal link between retaliation and reporting or public disclosure of information is on the employer. Resolution from 2010 called member states to review their regulations on the protection of whistleblowers, guided by proposed solutions.

In 2014, the Committee of Ministers of the Council of Europe adopted the Recommendation on the Protection of Whistleblowers CM/Rec (2014) 793, which developed mechanisms for legal protection of individuals who report or publish data on actions and omissions in the workplace that pose a serious threat or harm to the public interests. One of the important points of the Council of Europe Recommendation is the need for additional recognition that freedom of expression and the right to seek and receive information are the basis for the functioning democracy. The Recommendation largely relies on the principles and solutions set out in the EU Resolution from 2010.

At the EU level relevant instrument for the whistleblowers' protection is the Directive (EU) 2019/1937 based on the freedom of expression and information, which is guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union (2007/C303/01) and Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, the freedom of expression and information also includes the right to receive and impart information, freedom of the media and pluralism. According to article 4, paragraph 2 of the Directive (EU) 2019/1937 the protection of whistleblowers also stipulates to persons whose employment has been terminated. According to

Directive the protection is extended to the persons who are related to the whistleblower. That considers a legal entity, owner, or a person for whom the whistleblower works, or with whom is connected in the work environment. The protection also applies to persons connected with the whistleblower as relatives or colleagues. According to articles 4. and 5. paragraph 1, item 7 the protection should be provided only to persons who found out for the information during the performing work-related activities. Directive left to the Member States to decide for themselves whether private and public entities or competent authorities will accept anonymous reports. This Directive is an outstanding contribution to the protection of whistleblowers in the EU and high level of protection for whistleblowers and related parties is incorporated in all segments. The Directive does not address comprehensively whistleblowers' protection since it covers only certain fields of application and refers only to the violation of EU law.

Bearing in mind that the subject of this analysis above all is the level of harmonization of national legislation with EU standards, the greatest attention will be paid to the analysis of compliance with the Recommendation on the Protection of Whistleblowers CM/Rec(2014)793 and Directive (EU) 2019/1937.

11. SPECIFIC STANDARDS FOR SECURITY SECTOR

In the field of police, there are only soft law standards, but which do not refer exclusively to the protection of whistleblowers, but primarily to the field of ethics and the fight against corruption. These are the following standards: Rec(2001)10 on the European Code of Police Ethics and INTERPOL Global Standards to combat corruption in police forces/services.⁹⁸

Unlike INTERPOL Global Standards to combat corruption in the police forces/services, the European Code of Police Ethics doesn't contain provisions that are neither directly nor indirectly related to the area of whistleblowing in police forces/services.

According to INTERPOL Global Standards to combat corruption in police forces/services each member states must provide by national regulations the obligation for the police officers and other employees of the police force or services to report to the appropriate person or authority acts or omissions which constitute or may constitute corruption in the police forces or services.⁹⁹ Each member states also must establish an effective system that obliges police officers and other employees of the police forces/services to report, that enables them and members of civil society to report corruption, and that protects those who report corruption in good faith.¹⁰⁰ National legislation governing service in the police force may regulate only the manner of internal whistleblowing, while external and public whistleblowing should be regulated by national laws on protection of whistleblowers. Regulations governing the work of police officers and other employees in the police may not establish obligations,

⁹⁸ The Text of Rec(2001)10 on the European Code of Police Ethics is available at: <https://rm.coe.int/16805e297e>, The Text of the INTERPOL Global Standards to combat corruption in the police forces/services is available at: <https://policehuman-rightsresources.org/content/uploads/2001/01/Global-Standards-to-Combat-Corruption-in-Police-Forces-Services.pdf?x96812>, [19.12.2022.].

⁹⁹ Item 4.1.3. of the INTERPOL Global Standards to combat corruption in police forces/service.

¹⁰⁰ Item 4.9.

responsibilities or regulate the manner of work of other competent institutions in the procedure of external or public whistleblowing.

Similar standards don't exist in the field of defense. Therefore, in the next chapter, the compliance of regulations governing the whistleblowing and protection of whistleblowers in the defense sector will be analysed only in relation to general international standards. When analysing the harmonization of regulations for the police sector, we will also refer to special international standards in that area.

The problem with the disclosure of certain information is the fact that some countries have an interest in keeping certain information confidential. However, in democratic societies there is always a problem between those interests and the interests of general security, because a person who discloses confidential information can be held liable for doing so. Without setting certain restrictions when determining confidentiality, it may happen that the public is not informed, e.g. with a gross violation of human rights.¹⁰¹

The biggest problem is reporting on national security, as whistleblowers in that area are often held accountable for various types of violations. Official secrets and espionage laws can often contain provisions that allow for the prosecution of national security whistleblowers.¹⁰²

The Global Principles of National Security and the Right to Access to Information have been developed as guidance for persons charged with drafting, revising, or enforcing laws or regulations that relate to the authority of a state to deny access to information for reasons of national security or to punish the disclosure of such information.¹⁰³ They seek to define information that public administration bodies can withhold from the public for reasons of national security.

¹⁰¹ N. Colvin, (2018) „Whistleblowing as a Form of Digital Resistance: State Crimes and Crimes Against the State”, *State Crime Journal*, 31, (doi): 10.13169, Vol. 7, no. 1. Available at: <https://www.scienceopen.com/hosted-document?doi=10.13169/state-crime.7.1.0024>, [19.12.2022.].

¹⁰² *Ibid.* 32.

¹⁰³ Global Principles on National Security and the Right to Information (Tshwane Principles), launched on June 12, 2013, were drafted by 22 groups over a two-year period, in a process that involved consulting more than 500 experts from over 70 countries around the world. The drafting process culminated at a meeting in Tshwane, South Africa, which gave them their name. Available at: <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf> [19.12.2022.].

The goal of their adoption was to define that only information that can have serious consequences for national security can be declared as data protecting national security.¹⁰⁴ The principles apply to the realization of the right to free access to information when the state determines or confirms that providing access to such information could threaten national security.¹⁰⁵ Good practice shows that when national security is used as a reason to limit the right to free access to information, it should be precisely defined in the country's legal framework in a way that suits a democratic society.¹⁰⁶

According to the Global Principles of National Security and the Right to Access Information, authorities can limit the public's right to access information for reasons of national security. However, such restrictions can only be established if the information is in the possession of the authorities and if they meet some of the following conditions:¹⁰⁷

1. if it is information about current defense plans, operations and capabilities, as long as that information is operationally useful, e.g. as long as it can reveal something that the enemies could use or become familiar with the readiness, capacities and plans of the state;
2. if the information concerns the production, capability or use of armed systems and other military systems, including communication systems.¹⁰⁸
3. if it is about information about special measures for the protection of the territory of the state, critical infrastructure or critical national institutions (*institutions essentielles*) or protection against

¹⁰⁴ A. Knežević Bojović, M. Reljanović, *Free Access to information, An Analysis of the Regulatory Frameworks in Selected Western Balkan Countries*, Belgrade: Institute of Comparative Law, 2022, 19.

¹⁰⁵ Article 10 of the European Convention on Human Rights stipulates that the freedom to disclose information may be limited for reasons of national security.

¹⁰⁶ Principle 2.

¹⁰⁷ Principle 9 defines institutions that can legitimately be denied access.

¹⁰⁸ Information on budget lines related to armaments and other military systems should be made available to the public. It is good practice to make a checklist of armaments publicly available, as well as to publish information on armaments, equipment and the number of soldiers. This information includes technological data and inventions, as well as information about production, capabilities or use.

threats, use of force or sabotage, the effectiveness of which depends on secrecy.¹⁰⁹

4. if the information relates to the operations, sources and methods of the intelligence services or is derived from them, as well as if the information concerns the issue of national security and if it concerns information concerning national security, which was provided by a foreign country or an intergovernmental body with the express expectation that their secrecy will be respected, as well as other diplomatic correspondence, if it concerns national security issues.

It should be borne in mind that all restrictions must be prescribed by law. In the event that it concerns information related to terrorism and counter-terrorism measures, and is included in one of the listed categories of information, the right of the public to access that information may be limited for reasons of national security in accordance with principle 9.

For the sake of legal certainty and protection of public interest, national legislation should prescribe a list or category of information that can be withheld for reasons of national security protection. They should be specified as precisely as possible. When proposing a category of such information in national legislation, states should explain how the disclosure of information from a certain category could have a negative impact on national security.¹¹⁰

It should be noted that there are certain categories of information where there is a strong presumption or an overriding interest in favour of disclosure. Some categories of information are of extremely high public interest because of their importance to the rule of law. Therefore, while access to some information may be withheld, this may be done for a strictly limited period of time, in accordance with the law and only if there is reasonable cause to remove adverse consequences that would arise from disclosure. There is also information that must be available to the public, so public access to that information can never be restricted

¹⁰⁹ Critical infrastructure means strategic resources, assets and systems, whether physical or virtual, that are so important to the state that their destruction would have a disabling effect on national security.

¹¹⁰ Principle 9 of the Global Principles of National Security and the Right to Information (Tshwane Principles).

for reasons of national security. In accordance with principle 10 of the Global Principles of National Security and the Right to Access to Information, they are considered to be under it:

1. Information regarding violations of international human rights and humanitarian law;
2. information regarding the protection of the right to freedom and personal security, prohibition of torture and other forms of abuse and denial of the right to life;
3. information concerning decisions on the use of military force or the acquisition of weapons of mass destruction;
4. information concerning surveillance of any kind and
5. information related to the procedures applied when approving supervision, selection of subjects of supervision and use, exchange, storage and destruction of materials, as well as financial information.

Bearing in mind that the security and defense sector also belongs to the state administration, it should be borne in mind that in accordance with principle 37, the disclosure of information by employees of the state administration is allowed, regardless of whether they are marked as secret, that indicate illegal behaviour and which falls into one of the categories that should be considered “protected disclosure of information”. However, that action must be in accordance with the principles. A protected disclosure may relate to ongoing or potential illegal conduct, such as:

1. criminal offences;
2. human rights violations;
3. violations of international humanitarian law;
4. corruption;
5. threats to public health and safety;
6. environmental threats;
7. abuse of position
8. judicial errors;
9. unintended or irrational disposal of funds;
10. retaliation for the disclosure of any of the listed categories of illegal behaviour and
11. intentionally concealment of any issue that falls into one of the above categories.

The law should protect government employees who disclose information indicating illegal conduct, regardless of whether the information is classified or otherwise confidential, provided that at the time of disclosure, the person who disclosed it had a legitimate reason to do so. reason to believe that the disclosed information indicates illegal conduct that falls into one of the categories from Principle 37. The motivation for the protected disclosure of information is immaterial, except in cases where it is proven that the disclosure was intentionally false. A person making a protected disclosure should not be required to provide supporting evidence or bear the burden of proof in relation to the disclosure.¹¹¹

The protection of whistleblowers and other information is defined by principles 40, 43 and 46 of the Global Principles on Security and the Right to Information. They specify that persons who discover illegalities or other irregularities in the public interest must be protected from retaliation, provided that they have done so in accordance with the relevant regulations.

¹¹¹ Principle 38.

12. APPROACH TO STANDARDS AND INDICATORS USED IN THE CHAPTER

The approach taken in the study is to analyse the regulatory frameworks of the four countries in selected aspects related to the protection of whistleblowers. A conscious choice was made to focus on issues that regulate the adequate level of the protection of whistleblowers.

The standards and indicators drew considerable inspiration from the EU standards in the area of the protection of whistleblowers and soft law documents prepared by OECD. Wherever possible, the definitions and lists were developed with a reference to the Directive (EU) 2019/1937.

This chapter also analyses the national regulations governing the police and defense sector. However, they do not contain special provisions that provide protection to whistleblowers, which does not mean that at the internal level of institutions in this area, such regulations in order to improve the procedure of internal whistleblowing should not exist.

12.1. Compliance of the legislation of analysed countries with key international standards

The approach taken in the study is to analyse the regulatory frameworks of Bosnia (Federal level and two entities: Federation of Bosnia and Herzegovina and Republic of Srpska, Republic of North Macedonia, Montenegro and the Republic of Serbia related to protection of whistleblowers. A conscious choice was made to focus on issues that regulate the scope of protected disclosures and of the persons afforded protection under the law, the quality of the protection afforded to whistleblowers, as well as clarity of procedures and channels for reporting wrongdoings. The approach taken was to identify major issues and synthesise the relevant underlying rules to them. The definitions and lists were developed most in line with EU standards on the protection of whistleblowers: The

Council of Europe Recommendation on the protection of whistleblowers and the Directive (EU) 2019/1937 on the protection of whistleblowers.

12.1.1. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law

Indicator 1

Of the four countries whose legislations were the subject of this analysis, only the legislations of the North Republic of Macedonia are fully in line with European standards in terms of defining the scope of protected disclosures and the persons afforded protection under the law. The Law of Bosnia and Herzegovina, as well as the Law of Montenegro, require additional harmonization.

According to the international standards the national legislation should provide a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.

That consider that law should clearly define who can have a status of whistleblower. That shouldn't be exclusively public sector employees, but also persons who are employed in private sector, as well as persons who were employed in the public or private sector. The definition should also include consultants, contractors, temporary employed persons and volunteers.

The very title of the Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina concludes that the law provides protection to a limited number of persons reporting corruption in the institutions of Bosnia and Herzegovina.¹¹² Its provisions apply exclusively to persons who report corruption in the institutions of Bosnia and Herzegovina, as well as to legal entities established by the institutions of Bosnia and Herzegovina. Such a definition of the scope of application of its provisions leads to the conclusion that its provisions do not apply to persons who report corruption in the private sector, and

¹¹² On the basis of the title of the Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina can be concluded that the law provides protection to a limited number of persons (only for persons reporting on corruption in the institutions of Bosnia and Herzegovina), *Official Gazette of Bosnia and Herzegovina*, no. 100/2013.

therefore they cannot be provided with adequate protection in the event of reporting corruption.¹¹³ Such an approach seems to narrow not only the type of irregularities in connection with which a report can be filed, but also the circle of persons who can acquire the status of whistleblowers. In accordance with international standards, it should be possible to report any kind of irregularity in the work not only of an institution in the public sector, but also of a legal entity from the economic sector if such activity endangers the public interest. Likewise, the circle of persons who can acquire the status of whistleblowers should include not only persons who are employed or have been employed in the public sector, but also persons who are employed or have been employed in the economic sector. Therefore, the existing law should be amended to include the above categories. Due to the above-mentioned the Law of the Protection of Persons Reporting Corruption mostly is not in line with international standards. Laws governing service in the army and police force of Bosnia and Herzegovina do not define the term of whistleblower.

At the level of the Federation of Bosnia and Herzegovina, no law has yet been enacted to provide protection to whistleblowers.

In the Republic of Srpska, the protection of whistleblowers is regulated by the Law on the Protection of Persons Reporting Corruption.¹¹⁴ The law is limited to reporting corruption, but stipulates that every person has the right to report any form of it in good faith in the public or private sector if he or she learns about it directly.¹¹⁵ This definition includes an unlimited number of persons, whether in the public or private sector and regardless of whether they are an employee, a person who was once employed by an employer, a person hired on the basis of an employment contract or a person who volunteers in a particular institution or legal entity. In that sense, the law of the Republic of Srpska is more harmonized with international standards than the Law of Bosnia and Herzegovina. However, the reporting of information should not be limited only to information related to corruption, but also to other information on illegal, irregular or unethical activities that endanger or could be endangered the public interest. Bearing in

¹¹³ Article 1 of the Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina.

¹¹⁴ *Official Gazette of the Republic of Srpska*, no. 62/2017.

¹¹⁵ Article 3 of the Law on the Protection of Persons Reporting Corruption of the Republic of Srpska.

mind above-mentioned can be concluded that legislation of the Republic of Srpska regarding the protection of whistleblowers is mostly in line with international standards, but should be amended.

The Macedonian Law on the Protection of Whistleblowers defines the term of whistleblower in great detail. This status can be acquired by a person who is employed for an indefinite or definite period of time in an institution, or a legal entity for which information is applied for, a person who is a volunteer or trainee in an institution or a legal entity, a person who was a volunteer or trainee in institutions or a legal entity, person who is or has been in any way engaged to perform work in the institution or legal entity in the public and private sector to which the disclosure relates. According to the provisions of the law, a whistleblower can also be a person who was a candidate for employment in an institution or a legal entity. In relation to the laws of other countries, which provisions are the subject of this analysis, the Macedonian law most precisely states which persons may have the status of whistleblowers. In addition to the usual categories, it stipulates that a whistleblower may be a person who in any other way performed work or cooperated with the institution or legal entity to which the disclosure is related, as well as a person who uses or has used certain services. from the institution or legal entity in the public or private sector to which the reported information relates. The status of whistleblower and legal protection may be granted to any of the above-mentioned persons if he reports or discloses information in accordance with the law, and according to his personal belief or knowledge.¹¹⁶ Regarding the definition of a person who may have the status of whistleblower, the Law on the Protection of Whistleblowers of the Republic of North Macedonia is fully in line with international standards.

In Montenegro, there is no special law providing protection to whistleblowers. Their status and protection is regulated by the Law on Prevention of Corruption. According to its provisions, the whistleblower can be a legal or natural person who submits reports on the violation of the public interest, and which indicates the existence of corruption.¹¹⁷ Hav-

¹¹⁶ Article 2 of the Law on the Protection of Whistleblowers, *Official Gazette of the Republic of North Macedonia*, no 196/2015 and 35/2018.

¹¹⁷ Article 4, paragraph 2 of the Law on Prevention of Corruption, *Official Gazette of Montenegro*, no 53/2014, 42/2017-Decision of the Constitutional Court.

ing in mind the above definition, it seems that the status of the whistleblower can be held by any person, regardless of his employment status or the manner of connection with the institution or legal entity to which the reported information relates. However, the notion of public interest seems to be unjustifiably narrowed. Thus, the status of whistleblower can be acquired only by a person who reports a threat to the public interest that indicates the existence of corruption. Such an approach mostly is not in line with international standards.

Regulations governing service in the police and armed forces do not, define the term of whistleblowers. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 2

The regulations of all the countries that were the subject of the analysis define what information may be subject to whistleblowing.

In accordance with international standards the law should clearly define what information may be subject to whistleblowing.

The Law of Bosnia and Herzegovina regulates the protection of persons who report only information that they reasonably believe to constitute corruption. Above-mentioned Law defines corruption as any use of power entrusted to a civil servant, employee, advisor, elected or appointed person that may lead to his/her private benefit, as well as to a domestic or foreign natural or legal person. Corruption also means directly or indirectly demanding, offering, giving or accepting a bribe or some other illicit advantage or its possibility, which disrupts the performance of any duty or conduct expected of the recipient of the bribe. Corruption is also a violation of the law, other regulations, as well as irregularities in work and fraud that indicate the existence of corruption.¹¹⁸ Given that the notion of information that may be subject to whistleblowing is too narrow and includes only information related to corruption, it can be concluded that its definition, although clear, mostly is not in line with international standards.

¹¹⁸ Article 2, paragraph 1, item a) of the Law on protection of persons reporting corruption in the institutions of Bosnia and Herzegovina.

A similar provision is contained in the Law on the Protection of Persons Reporting Corruption in the Republic of Srpska. It also defines the notion of corruption as any act or omission, abuse of official authority or official position for private purposes, for the purpose of acquiring illegal property or any other benefit for oneself or another, undertaken by a responsible person or a person engaged in public or private sector.¹¹⁹ The same objection may be addressed to such a decision as to the decision contained in the Law of Bosnia and Herzegovina. The Law on the Republic of Srpska mostly is not in line with international standards.

According to the Law of North Macedonia, the subject of whistleblowing may be information related to the protection of the public interest. It includes the protection of fundamental freedoms and human and civil rights recognized by international law and established by the Constitution of the Republic of North Macedonia, protection of health, defense and security risks, protection of the environment and priorities, protection of property and freedoms of markets and entrepreneurship, rule of law and prevention crime and corruption.¹²⁰ The Republic of North Macedonia anticipate a wider range of whistleblowing information, which is in line with international standards. The Law of the Republic of North Macedonia is fully in line with international standards regarding the protection of whistleblowers.

The Law on Prevention of Corruption of Montenegro prescribes that the subject of whistleblowing may be any information related to endangering the public interest. It means a violation of regulations, ethical rules or the possibility of such a violation that caused, causes or threatens to endanger the life, health and safety of people and the environment, violation of human rights or material or non-material damage to the state or legal and natural person, as well as information about the action aimed at not finding out about such a violation.¹²¹ At first glance, the definition of information that may be subject to whistleblowing appears to be in line with international standards. However, the problem

¹¹⁹ Article 12, paragraph 1, item 1) of the Law on Protection of the Persons Reporting Corruption of the Republic of Srpska.

¹²⁰ Article 2, paragraph 1 and 6 of the Law on protection of whistleblowers of the Republic North Macedonia.

¹²¹ Article 44, paragraph 2 of the Law on Prevention of Corruption of Montenegro.

is the provision prescribed by the same article, paragraph 1. According to it, such information must be related to corruption. Having in mind that can be concluded that there is a conflict of the above-mentioned provisions of the law which is mostly not in line with international standards. The Law of Montenegro needs to be amended or a new law will regulate exclusively the protection of whistleblowers in accordance with international standards must be adopted.

Regulations governing service in the police and armed forces do not, define the term of whistleblowers. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 3

The laws of all countries whose regulations have been the subject of this analysis, except the laws of Montenegro define requirement that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowers. However, the regulations of Bosnia and Herzegovina (both at the federal level and at the level of the Republic of Srpska) and the Republic of North Macedonia also require additional harmonization.

In order to protect whistleblowers from misdemeanour, criminal or disciplinary liability, but also to reduce the possibility of abuse of whistleblowers, **law must clearly define requirement that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowers.**

The Law of Bosnia and Herzegovina prescribes the notion of good faith, which is considered to be the attitude of the whistleblower which is based on facts and circumstances about which he has his own knowledge and which he considers to be true.¹²² Although the law defines good faith from the aspect of the whistleblower's belief in the truth of the facts, it can be a problem in practice. Namely, good faith is mostly observed from the aspect of a person's motive, so proving it in the procedure of protecting whistleblowers could be difficult. The problem may arise in practice when assessing its existence due to the possibility of different interpretations. This creates additional uncertainty and acts as a deterrent to

¹²² Article 3, paragraph 2 of the Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina.

potential whistleblowers.¹²³ The standard of good faith is not contained in EU Directive 2019/1937. Therefore, instead of the stated standard, it is necessary to prescribe by the regulations of Bosnia and Herzegovina the standard of “reasonable grounds”. The existence of such a definition is important for assessing the existence and sanctioning possible false reporting. False reporting is the basis for disciplinary or misdemeanour punishment. Abuse of the right to report constitutes a serious breach of duty. In addition, Article 12 of the Law on Bosnia and Herzegovina prescribes a fine for a misdemeanour for a person who knowingly falsely reports the existence of corruption. Regarding to this indicator, the Law of Bosnia and Herzegovina is mostly not in line with international standards.

The Law of the Republic of Srpska prescribes that the abuse of reporting corruption is prohibited. It is considered to be the submission of information that the applicant knows at the time of reporting is not true or it is a report for which material gain is sought as a reward or compensation for the submission of information and evidence of corruption.¹²⁴ In order to more easily prove the possible existence of abuse, the Law stipulates that a report in good faith is a report that contains facts on the basis of which the applicant suspects that attempted or committed corruption, or which he has his own knowledge and which he considers true.¹²⁵ The same objections to the above definition that may be addressed to the regulations of Bosnia and Herzegovina apply to this provision. The law also prescribes the obligation to refrain from abusing reporting. The misuse of reporting is considered the filing of an anti-corruption report by a person who at the time of reporting knows that the information he provides is not true or submits a report requesting material gain as a reward or compensation for providing information and evidence of corruption. A fine is prescribed for such actions, which is paid into the budget of the Republic.¹²⁶ The existence of such a provision

¹²³ See: *Zakonodavstvo i praksa zaštita uzbunjivača u Bosni i Hercegovini*, Banja Luka, 2020. Text is available at: <https://ti-bih.org/wp-content/uploads/2022/04/Zakonodavstvo-i-praksa-zastite-uzbunjivaca-u-BiH.pdf> [22.12.2022.].

¹²⁴ Article 6. of the Law on Protection of Persons Reporting Corruption of the Republic of Srpska.

¹²⁵ Article 8. of the Law.

¹²⁶ Article 35. of the Law.

should have a preventive effect on abuse of whistleblowing. Bearing in mind above-mentioned can be concluded that the Law on the Republic of Srpska is mostly not in line with international standards and requires additional harmonization.

The Law of the Republic of North Macedonia stipulates that the right to protection belongs to the whistleblower who reports or discloses information that he has a reasonable suspicion that relates to conduct that constitutes criminal, unethical, illegal or unlawful conduct, and that it constitutes a criminal offense or is likely to be committed a crime or endanger the public interest.¹²⁷ It is important that the person reported such behaviour on reasonable grounds.¹²⁸ There is no obligation to prove the existence of good intentions. Macedonian law defines the abuse of whistleblower reports. It is considered to be the deliberate reporting of false information about a natural or legal person in order to cause harmful consequences for him. It exists even if, with due care and conscience to the extent permitted by the whistleblower, it has not verified that the information is accurate and credible. The whistleblower loses the right to protection when the existence of abuse is established. Abuse of the report due to which harmful consequences have occurred for a natural or legal person is the basis for initiating a procedure for determining his responsibility in accordance with the law.¹²⁹ For a whistleblower who abuses his right, no sanction is prescribed, but only the possibility of being left without protection in accordance with the Law. Bearing in mind above-mentioned, can be concluded that Macedonian law is mostly not in line with international standards. That could deter whistleblowing.

The Law on Prevention of Corruption of Montenegro stipulates that a whistleblower who has justified reasons to suspect the existence of a threat to the public interest that indicates the possibility of corruption may file a report in accordance with the law.¹³⁰ The law does not define in more detail what is meant by justified reasons and how they will be determined. The Law of Montenegro does not contain provisions prohib-

¹²⁷ Article 2 of the Law on Protection of whistleblowers of the Republic of North Macedonia.

¹²⁸ Article 3 of the Law.

¹²⁹ Article 14 of the Law.

¹³⁰ Article 44 of the Law on Prevention of Corruption of Montenegro.

iting the abuse of the right to arousal, nor sanctions for such conduct. Therefore, in that part, it is not in line with international standards on whistleblowing.

Regulations governing service in the police and armed forces do not define this area. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

In all of the analysed countries, legislation provide definition of the scope of protected disclosures and of the person afforded protection under the law. However, only the legislations of Macedonia don't require additional harmonization with international standards. Provisions of the legislation of Bosnia and Herzegovina apply exclusively to persons who report corruption in the institution at the public sector at the level of the Republic. According to international standards, it should be possible to report any kind of irregularity in the work, not only of an institution in the public sector, but also a legal entity from the other sectors if such activity endangers the public interest. The Montenegrin legislation provides that the status of whistleblower can be acquired only by a person who reports a treat to the public interest that indicates the existence of corruption. Legislation of Montenegro in that part requires additional harmonization with international standards.

Legislations of all four countries define what information may be subject to whistleblowing. However, provisions of the Bosnia, Republic of Srpska and Montenegrin laws require additional harmonization with international standards.

Table 3. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law

Indicator	Value	BIH			MKD	MNE
		BiH	FBIH	RS		
1. The law clearly defines who can have a status of whistleblower (exclusively public sector employees or also persons who were employed in the private sector, whether definition covers consultants, contractors, temporary employeeed, volunteers and all public sector employees included army and intelligence services	0-3	1	N/A	2	3	1
2. The law clearly defines what information may be subject to whistleblowing	0-3	1	N/A	1	3	1
3. The law clearly defines requirement that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowing and prescribes sanctions for such conduct	0-3	1	N/A	1	1	0
Total points		3	N/A	4	7	4
Average points		1	N/A	1,33	2,33	0,66
Standard	0-5	1		1	3	1

12.1.2. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive

According to international standards the legislation must ensure that the protection afforded to whistleblowers is robust and comprehensive. That considers that the law includes protection of employees from recrimination or other negative consequences when reporting about illegal, improper or unethical activities that endangered or may endanger the public interest. The national legislation must prescribe the obligation for authorised persons and institutions to maintain the anonymity of whistleblowers, as well as effective and proportionate penalties for persons who violate this obligation (confidentiality). In addition, in order to encourage whistleblowing, the law must provide the possibility of accepting anonymous reports (anonymity) by authorised persons

and institutions, as well as that the burden of proofs is on employers who must prove that the action they have taken against an employee is unrelated to whistleblowing.

Indicator 1

The legislation of any country whose regulations were the subject of this analysis is not fully in line with international standards regarding the adequate protection of employees from recrimination of other negative consequences when reporting corruption.

The law includes protection of employees from recrimination or other negative consequences when reporting corruption

The Law of Bosnia and Herzegovina envisages the possibility of obtaining protection, e.g. the status of whistleblower, after addressing the Agency for Prevention of Corruption and Coordination of the Fight against Corruption. If the report is made in good faith, the person will be provided with protection regardless of whether the harmful consequences have occurred or it is suspected that they could occur. This status takes effect from the moment the application is submitted. According to the provisions of the Law, the whistleblower will not be considered materially, criminally or disciplinary responsible for revealing a business secret in the case of reporting corruption to the competent authority.¹³¹ The Agency for Prevention of Corruption and Coordination of the Fight against Corruption informs the whistleblower about the decision to grant the status of whistleblower.¹³² If the whistleblower informs the Agency for Prevention of Corruption and Coordination of the Fight against Corruption that some harmful actions have been taken against him, the Agency is obliged to request relevant documentation from the institution or to request the Administrative Inspection of the Ministry of Justice of Bosnia and Herzegovina to investigate and establish facts, as well as to take the measures provided by law, and submit the minutes to the Agency for Prevention of Corruption and Coordination of the

¹³¹ K. Jovičić (2018) „Poslovne tajne - određenje i osnovi zaštite” *Strani pravni život*, no 1, 7-19.

¹³² Article 7 of the Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina.

Fight against Corruption.¹³³ The protection is terminated in the event that during the procedure it is proved that the whistleblower did not act in a good manner when submitting the application. The Agency will then suspend the provision of protection to the whistleblower.¹³⁴ The law also provides for a misdemeanour sanction if the head of the institution does not follow the instructions of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption in order to eliminate harmful consequences or the possibility of harmful consequences for a person who has acquired the status of whistleblower.¹³⁵ Bearing in mind that the law generally doesn't prescribe the internal protection of whistleblowers, it can be said that in terms of their protection it is not in line with international standards.

The Law of the Republic of Srpska prescribes the internal and external protection of the whistleblowers. The internal protection procedure is initiated by a person who suffers harmful consequences by submitting a request to the responsible person after learning about the harmful consequence or from the occurrence of the harmful consequence.¹³⁶ The person to whom the request is submitted is obliged to take measures and activities without delay to eliminate any act or omission that has been determined as a harmful consequence that endangers or violates the right of the whistleblower, as well as activities that ensure protection of the whistleblower's rights.¹³⁷ In addition to internal, the Law also prescribes external protection of persons who report corruption. The procedure is initiated by a person who suffers harmful consequences by filing a lawsuit in the competent court.¹³⁸ Based on that, it is concluded that the Law of the Republic of Srpska prescribes judicial protection of whistleblowers as a way of external protection. It can be initiated if the applicant is not satisfied with the decision or notification made by the responsible person in the internal protection procedure during internal protection or if the responsible person does not make a

¹³³ Article 8 of the Law.

¹³⁴ Article 9 of the Law.

¹³⁵ Article 12 of the Law.

¹³⁶ Article 20 of the Law on Protection of Persons Reporting Corruption of the Republic of Srpska.

¹³⁷ Article 21 of the Law.

¹³⁸ Article 22 of the Law.

decision or notification within the legal deadline. External protection may also be sought if the whistleblower has not requested internal protection. However, it cannot be provided during the internal protection procedure. In order to ensure the most efficient protection, the Law prescribes the possibility of requesting temporary protection, by imposing security measures by the court. This proposal can be submitted both before initiating the procedure and during the external whistleblowing procedure.¹³⁹ These are the following measures: postponement of the act of the responsible person (e.g. decision on termination of employment), order to the responsible person to prohibit and ensure the prohibition of harmful acts, order to the responsible person to take actions to eliminate harmful consequences, including re-establishment.¹⁴⁰ A fine for a misdemeanour is prescribed for a person who doesn't take measures to eliminate the harmful consequences determined by the court judgment by which the claim was adopted in the procedure of external protection of whistleblowers. Although at first glance the law appears to provide full protection for whistleblowers, it lacks provisions relating to the exemption from criminal, misdemeanour or disciplinary liability of persons who report corruption in good faith. Such an approach by the legislator has a particularly discouraging effect on employees in the police and military service. Therefore, it can be said that the Law of the Republic of Srpska in that respect is mostly not in line with international standards.

In the Republic of North Macedonia, protected reporting is performed as protected internal, protected external and protected public reporting.¹⁴¹ The whistleblower may make a protected report by execution to the Ministry of Interior, the competent public prosecutor's office, the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of North Macedonia or other competent institutions of legal entities if the report is directly or indirectly directed against the manager of the institution, if the whistleblower doesn't receive information about the measures taken within the deadline, if measures are not taken, if the whistleblower is dissatisfied with the action or the reporting will

¹³⁹ Article 28 of the Law.

¹⁴⁰ Article 29 of the Law.

¹⁴¹ Article 3 of the Law on Protection of whistleblowers of the Republic of North Macedonia.

have detrimental consequences for him or a person close to him.¹⁴² The whistleblower may also perform protected reporting by making available to the public available data if it is disabled due to unfounded procedure, e.g. procedure for receiving requests in accordance with the law, in connection with the performed protected reporting doesn't receive information on measures taken within the legally prescribed measures or there is an easily identifiable danger of destruction of evidence or concealment of responsibility.¹⁴³ According to the law of Macedonia on the protection of whistleblowers, a whistleblower who informs about abuses has the right to protection. The protection of the data and identity of the whistleblower is performed by the institution or legal entity in which the report was made by taking actions for its protection against undertaking violations of employment rights or any rights that are violated or endangered due to the submitted report. If protection is not provided, the whistleblower can report it to the State Commission for Prevention of Corruption, the Ombudsman of the Republic of North Macedonia, the Inspection Council, the Ministry of Interior and the Public Prosecutor's Office of the Republic of North Macedonia, who will act without delay in accordance with their competencies.¹⁴⁴ In addition, to the above types of protection, the Law also prescribes judicial protection before the competent court in order to determine that a harmful action has been taken or a right violated due to protected reporting, prohibited performance of harmful action or violation of rights due to protected reporting or recurrence and repetition of harmful action or violation of rights due to protected reporting, annulment of the act which caused harmful action or violation of rights due to protected reporting, elimination of consequences of harmful action or violation of rights due to protected reporting.¹⁴⁵ In case of a dispute due to the violation of the rights of the whistleblower and a person close to him, the burden of proof is on the side of the institution or the legal entity that violated the rights of the whistleblower or his family member.¹⁴⁶ The whistleblower and a person close to him have the right to compensation for damage due to protected reporting, which is realized by filing a lawsuit in the

¹⁴² Article 5 of the Law.

¹⁴³ Article 6 of the Law.

¹⁴⁴ Articles 8 and 9 of the Law.

¹⁴⁵ Article 10.

¹⁴⁶ Article 11.

competent court.¹⁴⁷ A fine for a misdemeanour is prescribed for an institution or a legal entity that does not provide adequate protection to the whistleblower.¹⁴⁸ Although at first glance the law appears to provide full protection for whistleblowers, it lacks provisions relating to the exemption from criminal, misdemeanour or disciplinary liability of persons who report corruption in good faith. Such an approach by the legislator has a particularly discouraging effect on employees in the police and military service. Therefore, it can be said that the Law of the Republic of North Macedonia in that respect is not in line with international standards.

In Montenegro, the authority, company, other legal entity and entrepreneur, as well as the Agency for the Prevention of Corruption are obliged to provide protection against all forms of discrimination and restrictions and denial of whistleblower rights.¹⁴⁹ The Agency shall protect the whistleblower who has reasonable grounds to suspect that the public interest is being compromised, which indicates the existence of corruption, and who reports this suspicion in good faith. The whistleblower has the right to protection if he is harmed, or there is a possibility of damage due to filing a report, and especially if his life, health or property is endangered, if his employment is terminated or his job is terminated or changed or his job description and conditions are changed. the place where he worked, if his business cooperation was terminated by termination of the employment contract or business cooperation agreement or disciplinary proceedings were initiated against him and a disciplinary measure was imposed, if he or she was denied access to certain information necessary for the performance of his or her duties, if denied the means of work he used or prevented his or her advancement and professional development.¹⁵⁰ The right to protection is exercised by the whistleblower submitting a request to the Agency in writing or orally on the record. If the Agency determines that damage was caused to the whistleblower due to the submission of the report, or that there is a possibility of damage, the opinion shall also contain a recommendation on what should be taken to eliminate the damage or prevent its occurrence, as well as the deadline for elimination of harmful

¹⁴⁷ Article 13.

¹⁴⁸ Article 20.

¹⁴⁹ Article 56 of the Law on Prevention of Corruption of Montenegro.

¹⁵⁰ Article 59.

consequences. the possibility of damage. The authority, company, other legal entity or entrepreneur to whose work the recommendation refers, is obliged to submit a report on the actions taken to implement the recommendation within the set deadline. If it fails to do so, the Agency shall notify the body supervising their work and submit a special report to the Assembly and inform the public.¹⁵¹ The whistleblower has the right to protection when the application is submitted, and if his life, health or property is endangered, if his employment is terminated or his job is terminated or changed or the job description and conditions of the job he worked for, if his business is terminated cooperation by terminating the contract on work or business cooperation or disciplinary proceedings have been initiated against him and a disciplinary measure has been imposed, if he or she is denied access to certain data necessary for the performance of work duties, if he or she has been denied the means of work he used or prevented his advancement and professional training, after the submission of his report, the burden of proving that this action or activity is not a consequence of the submission of a report on endangering the public interest that indicates corruption is on the authority, company, other legal entity, that is, to the entrepreneur due to whose actions the whistleblower suffers damage, or due to which there is a possibility of damage.¹⁵² The whistleblower also has the right to initiate court proceedings for the damage suffered. If he exercises this right, the Agency will, at his request, provide the necessary professional assistance in proving the causal link between the filing of a report on endangering the public interest, which indicates the existence of corruption and the damage caused.¹⁵³ If the authority, company, other legal entity, or entrepreneur eliminates the damage or prevents damage during the procedure on the request for protection of whistleblowers, the Agency will inform the whistleblower and give him a deadline to declare it. After receiving the explanation, in the deadline, the Agency will decide whether to suspend or continue the procedure.¹⁵⁴ The whistleblower has the right to judicial protection against discrimination and retaliation at work due to reporting, endangering the public

¹⁵¹ Article 63.

¹⁵² Article 64.

¹⁵³ Article 66.

¹⁵⁴ Article 67.

interest, which indicates the existence of corruption in accordance with the law governing the prohibition of discrimination and the law governing the prohibition of retaliation at work.¹⁵⁵ Although at first glance the law appears to provide full protection for whistleblowers, it lacks provisions relating to the exemption from criminal, misdemeanour or disciplinary liability of persons who report corruption in good faith. Such an approach by the legislator has a particularly discouraging effect on employees in the police and military service. Therefore, it can be said that the Law of Montenegro in that respect is not in line with international standards.

Regulations governing service in the police and armed forces do not, define this area. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 2

The legislation of Republic of Srpska and the Republic of North Macedonia do not prescribe the possibility of waiving criminal liability for protected disclosures (disclosure of information related to official secrets or national security). Bosnian and Montenegrin regulation requires additional harmonization.

According to international standards the law is waiving criminal liability for protected disclosures (disclosure of information related to official secrets or national security). That is a one way to encourage whistleblowing in both the public and private sectors.

Pursuant to the provisions of the Law on protection of persons reporting corruption in the institutions of Bosnia and Herzegovina the whistleblower shall not be held materially, criminally or disciplinary liable for the disclosure of a business secret in the case of reporting corruption to the competent authority. The Agency for Prevention of Corruption and Coordination of the Fight against Corruption informs the whistleblower about the decision to grant the status of whistleblower.¹⁵⁶ The notion of business secret is not clearly defined enough, so it seems that it can exclude official or some other type of secret. That can have a

¹⁵⁵ Article 68.

¹⁵⁶ Article 7 of the Law on protection of persons reporting corruption in the institutions of Bosnia and Herzegovina.

disincentive effect on potential whistleblowers in police and defence sector. Having in mind above-mentioned, it can be concluded that the Law of Bosnia and Herzegovina is not in line with international standards.

The Law of the Republic of Srpska does not contain such a provision and that is not in line with international standards.

The Law of Montenegro doesn't provide that kind of exemptions from liability and it is not in line with international standards

The Law on the Republic of North Macedonia doesn't provide any exceptions of any type of liability for whistleblowers. That solution is not in line with international standards.

The Law on Prevention of Corruption of Montenegro does not provide for an explicit release from liability, but stipulates that the right to protection belongs to the whistleblower against whom disciplinary proceedings have been initiated or a measure imposed for filing a report of corruption.¹⁵⁷ That solution is not in line with standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 3

The law of Republic of Srpska and Montenegro prescribes the obligation to maintain the secrecy of the identity of whistleblowers, as well as effective and proportionate penalties for persons who violate that obligation. The legislation of Bosnia and Herzegovina doesn't prescribe such obligation. The Law on the protection of whistleblowers of the Republic of North Macedonia requires additional harmonization with international standards.

The Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina does not prescribe the obligation to protect the identity of the perpetrator, nor an adequate sanction for a responsible person who violates this obligation and it is not in line with international standards.

The Law on Protection of Persons Reporting Corruption in the Republic of Srpska stipulates that a person who reports corruption at the level of the institution has the right to protection of anonymity

¹⁵⁷ Article 59, paragraph 1, item 4) of the Law on Prevention of Corruption of Montenegro.

and personal data, unless he explicitly allows the disclosure of identity data.¹⁵⁸ This right person acquires if the report was made in good faith and if it is a report that has to do with corruption or that concerns corruption.¹⁵⁹ In order to exercise this right, the responsible person has the obligation to provide the whistleblower with full protection of personal data, as well as anonymity.¹⁶⁰ For the responsible person who doesn't respect the stated obligation, the Law prescribes a financial sanction for a misdemeanour.¹⁶¹ Above-mentioned law is fully in line with international standards regarding this indicator.

The Macedonian Law on the Protection of Whistleblowers prescribes the obligation to protect data on whistleblowers or data through which it is possible to identify the person who submitted the report in accordance with the regulations on the protection of personal data¹⁶² Institutions or legal entities that provide protection to whistleblowers, are also obliged to protect the identity of whistleblowers in accordance with the regulations on the protection of personal data.¹⁶³ The law prohibits the discovery or enabling the disclosure of the identity of the whistleblower without his consent, except when required by a court decision or when it is necessary to conduct the procedure before the competent authority. The person authorized to receive reports from the whistleblower has the obligation to protect data about him or data on the basis of which it is possible to reveal his identity, unless the whistleblower agrees to disclose these data in accordance with the law governing personal data protection. Persons who learn such information have an obligation to protect it. The person authorized to receive reports from the whistleblower is obliged to inform the whistleblower when receiving information that his identity may be revealed to the competent authority. In order to verify the identity of the whistleblower on the basis of a court decision, the

¹⁵⁸ Article 14, paragraph 1, item 4) of the Law on Protection of Persons Reporting Corruption in the Republic of Srpska.

¹⁵⁹ Article 18.

¹⁶⁰ Article 21, paragraph 1, item 4) of the Law on the Protection of Whistleblowers of Republic of Srpska.

¹⁶¹ Article 33, item 3).

¹⁶² Article 4, paragraph 4, of the Law on Protection of Whistleblowers of the Republic North Macedonia.

¹⁶³ Article 5, paragraph 3.

person authorized to receive the report is obliged to inform the whistleblower before revealing the identity. The information provided in the application cannot be disclosed to the person to whom it relates.¹⁶⁴ Bearing in mind that the law doesn't prescribe sanctions for persons who violate this obligation, it can be concluded that the Macedonian law is not in line with international standards regarding this indicator.

The Law on Prevention of Corruption of Montenegro prescribes that personal data be handled in accordance with the law governing the confidentiality of data, unless the whistleblower explicitly requests that these data be made available to the public.¹⁶⁵ In accordance with the provisions of the said Law, the authority, company, other legal entity and entrepreneur or the Agency are obliged to act in accordance with the regulation governing the confidentiality of data and to provide protection against all forms of discrimination and restrictions. and denial of the rights of whistleblowers.¹⁶⁶ A fine is prescribed for a legal entity that does not act in accordance with the said provision.¹⁶⁷ Bearing in mind above-mentioned can be concluded that law of Montenegro is fully in line with international standards regarding this indicator.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 4

Legislation of Republic of Srpska, Republic of North Macedonia and Montenegro provides the possibility of accepting anonymous report in accordance with international standards. Bosnia and Herzegovina regulation doesn't prescribe such solution.

According to international standards, the law must provide for the possibility of accepting anonymous reports (anonymity).

The Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina doesn't provide for such a possibility, while

¹⁶⁴ Article 7.

¹⁶⁵ Article 47 of the Law on Prevention of Corruption of Montenegro.

¹⁶⁶ Article 56.

¹⁶⁷ Article 102, paragraph 1, item 15).

the Law of the Republic of Srpska does not explicitly prescribe the acceptance of anonymous reports, but that the applicant has the right to ensure and protect anonymity with the responsible person and competent bodies to which he reports corruption.¹⁶⁸ The obligation of the legal entity in which the application is submitted is to ensure the protection of personal data and anonymity of the applicant without delay.¹⁶⁹ The Law on Bosnia and Herzegovina is not in line with international standards regarding this indicator, but the Law of the Republic of Srpska is fully in line with standards.

The Law on the protection of whistleblowers of the Republic North Macedonia stipulates that protected reporting is performed as protected internal, external and public reporting, anonymously or confidentially with good intentions and on the basis of the reasonable belief that the information contained in the application is true.¹⁷⁰ That means that Macedonian law allows for anonymous reporting of whistleblowers. The authorized person for receiving reports from whistleblowers, or the head of the institution or legal entity has the obligation to act upon the report respecting the procedures determined by the act for internal reporting, to protect personal data of whistleblowers or data that may reveal the identity of whistleblowers who report anonymously or confidentially. on the protection of personal data.¹⁷¹ The Macedonian Law is fully in line with international standards regarding this indicator.

The Law of the Prevention of Corruption of Montenegro stipulates that the report contains a description of endangering the public interest that indicates the existence of corruption, the signature and personal data of the whistleblower if he does not want to be anonymous.¹⁷² Such wording suggests that the law allows for the submission of anonymous reports by whistleblowers. Authorities, companies, other legal entities and entrepreneurs and the Agency are obliged to handle data in accordance with the law governing the confidentiality of data and provide protection from all forms of discrimination and restrictions and denial of

¹⁶⁸ Article 17, paragraph 1, item 4) of the Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina.

¹⁶⁹ Article 21, paragraph 1, item 4).

¹⁷⁰ Article 3 of the Law on protection of whistleblowers of the Republic of North Macedonia.

¹⁷¹ Article 4, item 4.

¹⁷² Article 46 of the Law on Prevention of Corruption of Montenegro.

the rights of whistleblowers.¹⁷³ The Law of Montenegro is fully in line with international standards regarding this indicator.

Indicator 5

All legislation of analysed countries provides that the burden of proofs must be on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing except the regulation of Bosnia and Herzegovina and Republic of Srpska.

The burden of proofs must be on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing

Such a solution is not prescribed by the Law on the protection of persons who report corruption in the institutions of Bosnia and Herzegovina. The mentioned law is not in line with international standards regarding this indicator.

According to the Law on protection of persons who report corruption of the Republic of Srpska, if a court dispute arises, the whistleblower is obliged to make it probable that the act or omission marked as a harmful consequence, which endangered or violated his/her rights or which placed him/her in a less favourable position, is related to the reporting of corruption. Although the same article of the Law stipulates that the burden of proof is on the defendant who proves the legality, expediency and objective justification or non-existence of an act or omission which is marked as a harmful consequence in the lawsuit this contradicts the above mentioned.¹⁷⁴ Therefore, it seems that part of the burden of proof is on the prosecutor, which is in line with international standards on the protection of whistleblowers. However, given the need to harmonize the above-mentioned provisions of the law, it can be said that this provisions are not in line with international standards regarding this indicator.

According to the Law of the protection of whistleblowers of the Republic of North Macedonia, in the case of a dispute due to violation of the rights of the whistleblower or a person close to him, which is related

¹⁷³ Article 56.

¹⁷⁴ Article 27 of the Law on protection of persons who report corruption of the Republic of Srpska.

to reporting, the burden of proof is on the institution or legal entity suspected of violating the rights of the whistleblower.¹⁷⁵ These provisions are fully in line with international standards.

The Law on Prevention of Corruption of Montenegro stipulates that when the whistleblower's report is submitted in accordance with the law, and the damage or harmful activities are undertaken to the whistleblower, the burden of proving that the action or activity is not a consequence of filing a public interest report corruption is the responsibility of a government body, company, other legal entity, or an entrepreneur due to whose actions the whistleblower suffers damage or due to which there is a possibility of damage.¹⁷⁶ This solution is fully in line with international standards.

Regulations governing service in the police and armed forces do not define this matter. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

The legislation of Bosnia and Herzegovina doesn't prescribe the obligation to maintain the secrecy of the identity of whistleblowers, as well as effective and proportionate penalties for persons who violate this obligation, possibility of accepting anonymous reports and that the burden of proofs is on employers who must prove that the action they have taken against an employee is unrelated to whistleblowing. Mentioned law contains the largest deviation from international standards.

The legislation of Montenegro requires additional harmonization in the area of protection of employees from recrimination or other negative consequences when reporting corruption and waiving of criminal liability for protected disclosures (disclosure of information related to official secrets or national security).

Law on the Republic of Srpska requires improvements regarding the protection of employees from recrimination or other negative consequence when reporting corruption and waiving criminal liability for protected disclosures (disclosure of information related to official secrets or national security). In addition, it should prescribe that the burden of proofs is on

¹⁷⁵ Article 11 of the Law on the protection of whistleblowers of the Republic of North Macedonia.

¹⁷⁶ Article 64 of the Law on Protection of Whistleblowers of Montenegro.

employers, who must prove that action they have taken against an employee is unrelated to whistleblowing. Macedonian legislation also requires additional harmonization with international standards regarding the protection of employees from recrimination or other negative consequences when reporting corruption, waiving criminal liability for protected disclosures as well as maintaining the secrecy of the identity of whistleblowers and proportionate penalties for persons who violate that obligation.

Table 4. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive

Indicator	Max	BIH			MKD	MNE
		BiH	FBIH	RS		
1. The law includes protection of employees from recrimination or other negative consequences when reporting corruption	0-3	1	N/A	1	1	1
2. The law is waiving criminal liability for protected disclosures (disclosure of information related to official secrets or national security)	0-3	1	N/A	0	0	1
3. The law prescribes the obligation to maintain the secrecy of the identity of whistleblowers, as well as effective and proportionate penalties for persons who violate this obligation (confidentiality).The law provides possibility of accepting anonymous reports (anonymity)	0-3	0	N/A	3	1	3
4. According to international standards, the law must provide for the possibility of accepting anonymous reports (anonymity)	0-3	0	N/A	3	3	3
5. The burden of proofs is on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing	0-3	0	N/A	1	3	3
Total points		2	N/A	8	8	11
Average points		0,4	N/A	1,6	1,6	2,2
Standard	0-5	0	N/A	2	2	3

12.1.3. Clear procedures and channels for reporting wrongdoings

Indicator 1

The laws of all the countries whose regulations have been the subject of the analysis prescribe the procedure for internal, external and public whistleblowing. Legislation of Bosnia and Herzegovina, Republic of Srpska and Montenegro require additional harmonization with international standards.

The Law of Bosnia and Herzegovina prescribes two types of protected reporting: internal and external, but doesn't make a clear distinction between external and public reporting. Internal reporting means reporting a corruption to a superior or other person in the institution where he/she is employed, who is responsible for the legal work of the institution, the head of the institution, a person or body that performs supervision or audit in the Institutions of Bosnia and Herzegovina. In that sense, the Law is not quite clear whether it refers to external or internal audit. If it referred to external audit, then it would not be internal, but external reporting. The law prescribes the manner of reporting, but also prescribes the possibility of adopting an internal act on reporting corruption.¹⁷⁷ Under external reporting, the Law implies reporting to the body responsible for conducting criminal investigations and prosecutions of perpetrators of criminal acts, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, as well as the public. Therefore, it can be concluded that the law also prescribes public reporting, but not as a special category, but within the category of external reporting. External reporting can be done if the internal reporting procedure lasts longer than 15 days, the whistleblower believes that the internal reporting procedure was incorrect, and that the head of the institution is brought directly or indirectly in connection with the corrupt act being reported. Bearing in mind that the law doesn't make a clear distinction between external and public whistleblowing, it can be concluded that the law of Bosnia and Herzegovina is mostly not in line with international standards regarding this indicator.

¹⁷⁷ Article 5 of the Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina.

The Law on Protection of Persons Reporting Corruption of the Republic of Srpska also defines two types of reporting: internal and external. Internal reporting is carried out by informing the responsible person about the facts on the basis of which it is suspected that corruption has been attempted or committed at work or in connection with work with the entity managed by the responsible person. External reporting is informing the internal affairs bodies, the prosecutor's office or civil society organizations dealing with the protection of human rights and the fight against corruption about the facts on the basis of which it is suspected that corruption has been attempted or committed.¹⁷⁸ Unlike the Law of Bosnia and Herzegovina, the Law does not recognize public whistleblowing. Its provisions prescribe in detail the obligations of the responsible person in the event of internal whistleblowing. Its provisions also prescribe the obligation of the responsible person to submit the report to the competent authority without delay if he/she considers that the reported activity has the characteristics of a criminal offense. The law also prescribes the obligation for responsible persons who manage legal entities with more than 15 employees, regardless of whether they are public or private sector institutions, to issue instructions that regulate the procedure related to reporting corruption at the internal level, as well as the manner of realization. rights of the applicant, obligations of the responsible person, manner of securing and protection of anonymity.¹⁷⁹ The Law recognizes judicial protection as external protection, which is activated by filing a lawsuit in a competent court by a person who suffers harmful consequences.¹⁸⁰ Given that the law does not prescribe the possibility of public whistleblowing, it can be concluded that it is not in line with international standards regarding this indicator.

The Law of the protection of whistleblowers of the Republic North Macedonia provides internal, external and public whistleblowing.¹⁸¹ The internal whistleblowing is reporting a corruption to the institution or legal entity where the person has doubts or is aware that a criminal offense has been committed, is being committed or will be committed

¹⁷⁸ Article 14.

¹⁷⁹ Article 21.

¹⁸⁰ Article 22, item 1.

¹⁸¹ Article 3 of the Law on protection of whistleblowers of the Republic North Macedonia.

as well as other illegal or impermissible conduct that violates or threatens the public interest. That report shall be applicate to a person authorized by the managing person in the institution or the legal entity to which that information relates.¹⁸² External whistleblowing is reporting to the Ministry of Interior, the competent public prosecutor's office, the State Commission for Prevention of Corruption, the Ombudsman of the Republic of North Macedonia or other competent authorities or legal entities if the subject of whistleblowing is directly or indirectly directed against the managing person in the institution or legal entity where he/she reports, if the whistleblower doesn't receive information about measures taken within the deadline at the internal level, in the case if no measures shall be taken or that the application of rules which regulate internal whistleblowing could cause harmful consequences for whistleblower or for a person close to him/her.¹⁸³ The law of the Republic of North Macedonia also provides the public whistleblowing through making publicly available information.¹⁸⁴ These provisions are fully in line with international standards regarding this indicator.

The Law of Prevention of Corruption of Montenegro provides internal and external whistleblowing. The internal whistleblowing means the submission of report to a government body, company other legal entity or entrepreneur if exist justified reasons for suspicion that the public interest has been endangered, which indicates the existence of corruption. That application shall be submitted in writing, orally on the record by email or electronically.¹⁸⁵ If the whistleblower is not informed or not satisfied with the notification or measures referred by Law, may submit a report on endangering the public interests that indicates the existence of corruption to the Agency for the Prevention of Corruption according to rules which regulate external whistleblowing.¹⁸⁶ The Law of Montenegro provides internal and external but doesn't provide public whistleblowing. Therefore, above-mentioned law is mostly not in line with international standards regarding this indicator.

¹⁸² Article 4.

¹⁸³ Article 5.

¹⁸⁴ Article 6.

¹⁸⁵ Article 45 of the Law on Montenegro.

¹⁸⁶ Article 51.

Indicator 2

The obligation for public and private sector institutions to establish an internal procedure which will define in more detail the manner of internal alerting and clearly is established by legislation of all analysed countries, except Montenegro. The law of Bosnia and Herzegovina and Republic of Srpska establish such obligation only for the public sector institution.

The law provides the obligation for public (and private sector) institutions to establish an internal procedure which will define in more detail the manner of internal alerting and clearly defined lines of internal alerting and responsibility in that procedure

The Law of Bosnia and Herzegovina stipulates that internal reporting is done in a manner regulated by the internal act of the institution on the application.¹⁸⁷ Bearing in mind that the same provision stipulates that exceptionally an application may be submitted directly to the head of the institution if the head of the institution has not issued an internal act or if the internal application procedure is not known, it can be concluded that the procedure depends on the attitude of the head of the institution.¹⁸⁸ However, Article 13 suggests a different conclusion. It stipulates that all institutions to which the application of the law applies have the obligation to adopt internal acts regulating the internal application procedure within 90 days. The law does not prescribe when this deadline is calculated, so it is assumed that it refers to the deadline of 90 days from the day of its entry into force. Bearing in mind that it is necessary to prescribe the explicit provision on obligation to establish an internal procedure at the level of the institution, it can be said that law is mostly in line with international standards.

The Law of the Republic of Srpska prescribes that the responsible person who manages 15 or more employed persons shall issue instructions on how to deal with reports of corruption and ensure the protection of persons who report corruption.¹⁸⁹ This instruction regulates the manner of dealing with reports of corruption, the manner of exercising the rights of whistleblowers, as well as the obligations of the responsible person,

¹⁸⁷ Article 5, item 2 of the Law on Bosnia and Herzegovina.

¹⁸⁸ Article 5, item 3.

¹⁸⁹ Article 21, paragraph 2.

and especially ensuring and protecting the anonymity of reports.¹⁹⁰ Bylaws necessary for the implementation of the Law must be adopted within six months from the day the law enters into force.¹⁹¹ In addition to the obligation to adopt an internal act, the employer is obliged to provide employees with written instructions regarding whistleblowing procedures. The instructions and all other useful information shall be published and updated regularly and distributed at the employer's premises and on the website when technically possible.¹⁹² These provisions of the Law are fully in line with international standards. The Law of Macedonia on Protection of Whistleblowers prescribes that protected internal reporting in institutions in the public sector must be regulated by an act issued by the Minister of Justice on the proposal of the State Commission for the Prevention of Corruption.¹⁹³ In addition, the Law stipulates that protected internal reporting is regulated by an internal act of a legal entity with at least 10 employees. These internal acts must be published in a way that will be publicly available to all employees of the institution or legal entity. Guidelines for their adoption are issued by the Minister of Justice.¹⁹⁴ These provisions are fully in line with international standards.

The Law of Montenegro does not prescribe the obligation to adopt an internal act regulating the procedure of internal whistleblowing. Therefore, above-mentioned law in that part is not in line with international standards.

Indicator 3

The regulations of all countries require additional harmonization with EU standards regarding the prescribing of deadlines and obligation to keep records (especially at the level of the institution) of any type of whistleblowing.

The law clearly prescribes deadlines and establishes the obligation to keep records (especially at the level of the institution) of any type of whistleblowing

¹⁹⁰ Article 21, paragraph 3.

¹⁹¹ Article 30.

¹⁹² Article 28.

¹⁹³ Article 4, item 5.

¹⁹⁴ Article 4, paragraphs 6, 7 and 8.

The law of Bosnia and Hercegovina clearly prescribes deadlines of any type of whistleblowing, but doesn't prescribe the obligation to keep records. Because of that, these provisions are not in line with international standards.

The law of Republic of Srpska also clearly prescribes deadlines of any type of whistleblowing, but doesn't prescribe the obligation to keep records. Because of that, these provisions are not in line with international standards.

The Law on the Republic of North Macedonia prescribes deadlines for whistleblowing, but doesn't prescribes the obligation to keep the records. Bearing in mind that, the above-mentioned law is not in line with international standards regarding this indicator.

The Law on the prevention of corruption of Montenegro provides deadlines for whistleblowing, but but doesn't prescribes the obligation to keep the records. Bearing in mind that, the above-mentioned law is not in line with international standards regarding this indicator.

Indicator 4

The law of Bosnia and Herzegovina doesn't prescribe incentives to encourage reporting. Such solution is not in line with international standards. Legislation of other countries is completely in line regarding this issue.

The law includes incentives to encourage reporting (e.g. reward systems, recover lost or misspent money)

The law of the Bosnia and Hercegovina doesn't prescribe such solution, and because of that is not in line with international standards regarding this indicator.

The Law of the Republic of Srpska prescribes as an incentive measure the right to compensation to a person who reports corruption according to the rules on liability for compensation.¹⁹⁵ The whistleblower may exercise his/her rights by filing a lawsuit to the competent court if his/her rights have been endangered or violated in connection with corruption or a report of corruption, or if he has been placed at a disadvantage or if a certain harmful consequence has occurred. The whistleblower

¹⁹⁵ Article 17, item 7 of the Law.

has the right to ask the court to annul a specific act, prohibit the performance or repetition of an action or order the undertaking of other specific measures and actions in order to eliminate the harmful consequences, including the restoration of the previous situation. In addition, the whistleblower has the right to compensation for material and non-material damage from the victim, as well as the right to publish the verdict rendered in the procedure in the media, at the expense of the defendant.¹⁹⁶ Bearing in mind these provisions, can be concluded that the Law of Republic of Srpska is fully in line with international standards.

The law of the Republic of North Macedonia guarantees the right to compensation for damage suffered by the whistleblower or a person close to him. The right to compensation for damages is determined by filing a lawsuit in court.¹⁹⁷ The provisions of above-mentioned law are fully in line with international standards.

The Law on the Agency for the Prevention of Corruption of Montenegro prescribes a reward for whistleblowers. According to its provisions, a government body, a company, another legal entity, or an entrepreneur may reward a whistleblower who, by submitting a report, has contributed to the prevention of endangering the public interest that points to corruption. A whistleblower who, by submitting such a report, contributed to the realization of public revenues or revenues of a company, legal entity or entrepreneur, and those revenues would have been missing if the application had not been submitted, is entitled to a monetary reward from the government, company, other legal entity or entrepreneur. generated income. The whistleblower acquires this right from the moment of earning income, and if due to the filing of the report, a criminal procedure was initiated and conducted which ended with a final decision on the basis of which the property was permanently confiscated,¹⁹⁸ The reward is determined according to the contribution of the whistleblower in relation to the amount of acquired income or confiscated property. The law determines the minimum and maximum amount of the award. It cannot be lower than 3% or higher than 5% of the realized income or property.¹⁹⁹ The law of Montenegro in this part is fully in line with international standards.

¹⁹⁶ Article 26.

¹⁹⁷ Article 13 of the Law.

¹⁹⁸ Article 68.

¹⁹⁹ Article 69.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

The regulations of the Republic of North Macedonia are mostly in line with international standards regarding the provisions which provide clear procedures and channels for reporting wrongdoings. Only the provisions regarding deadlines and obligation to keep records (especially at the level of the institution) for any type of whistleblowing require additional improvements. Bosnian law must prescribe adequate mechanisms to encourage reporting (e.g. reward systems, recover lost or misspent money). Of all regulations that were the subject of this analysis, the law of Montenegro requires the most harmonization with EU standards.

Table 5. Clear procedures and channels for reporting wrongdoings

Indicator	Max	BIH			MKD	MNE
		BiH	FBIH	RS		
1. The law clearly prescribes the procedure for internal, external and public whistleblowing	0-3	1	N/A	1	3	1
2. The law prescribes the obligation for public (and private sector) institutions to establish an internal procedure which will define in more detail the manner of internal alerting and clearly	0-3	2	N/A	3	3	0
3. The law clearly prescribes deadlines and establishes the obligation to keep records (especially at the level of the institution) of any type of whistleblowing	0-3	1	N/A	1	1	1
4. The law includes incentives to encourage reporting (e.g. reward systems, recover lost or misspent money)	0-3	0	N/A	3	3	3
Total points		4	N/A	8	10	5
Average points		1	N/A	2	2,5	1,25
Standard	0-5	1	N/A	3	4	2

12.1.4. Comprehensive enforcement mechanisms

Indicator 1

Legislation of all countries which were the subject of this analysis defines oversight and enforcement authorities that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts who have the power to order the release of information and redress. Only regulation of the Republic of Srpska requires additional improvements.

The law clearly defines oversight and enforcement authorities (e.g. independent agencies that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress

The Law of Bosnia and Herzegovina prescribes the possibility of reporting corruption to the body responsible for conducting criminal investigations and prosecutions of perpetrators, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, as well as the public in case the internal reporting procedure lasts longer than prescribed by law, that the internal procedure according to the report was incorrect, as well as if the whistleblower has reason to believe that the authorized person to whom the report is submitted according to the internal act or the head of the institution has a direct or indirect in connection with corruption.²⁰⁰ The Agency for Prevention of Corruption and Coordination of the Fight against Corruption, on the basis of a report of a whistleblower submitted in good faith, grants the status of a whistleblower to a person within the legally prescribed period, regardless of whether harmful consequences have occurred or are suspected. In the case of reporting corruption to the competent authority, the whistleblower shall not be held materially, criminally or disciplinary liable for disclosing a trade secret.²⁰¹ In case the whistleblower informs the

²⁰⁰ Article 6 of the Law.

²⁰¹ Article 7.

Agency that some harmful actions have been taken against him, it will request the institution to submit relevant documentation or the Inspection Directorate of the Ministry of Justice of Bosnia and Herzegovina to examine the allegations and establish the facts, as well as to take legal measures. If on that occasion some of the harmful actions have been taken against the whistleblower, the Agency will issue an instruction to the head of the institution in order to eliminate the consequence taken against the whistleblower. The head of the institution has the obligation to take corrective action in that case in order to eliminate the harmful actions within the legal deadline. The corrective measure implies the abolition of harmful activity and return to the previous state. In order to prevent such activities, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption publishes a special annual list with a list of institutions where corruption has been reported, indicating the type of damage and information on whether the corrective measure ordered by the Agency have been taken. The Law of the Republic of Srpska prescribes judicial protection, as a form of external protection of whistleblowers. This procedure is initiated by filing a lawsuit with the competent court within the legal deadline after learning of the harmful consequence. The procedure is initiated if the whistleblower is not satisfied with the decision or notification made by the responsible person in the internal protection procedure or if the responsible person does not make a decision or notification within the legal deadline. However, a person who reports corruption may request external protection by filing a lawsuit even when he or she has not previously sought internal protection. If the internal protection procedure is in progress, the lawsuit is not allowed, so it is necessary to wait for the outcome of that procedure. In proceedings conducted on that basis, the whistleblower does not pay the court fee in the costs of the proceedings, unless he loses the dispute.²⁰² The court protection procedure is urgent, and the deadline is strictly prescribed by law. The procedure before the court is aimed at annulling a certain act which causes damage to the whistleblower, prohibiting the performance or undertaking of harmful action and ordering other specific measures and actions to eliminate the harmful consequences, including re-establishment, compensation for material and non-material damage from the defendant, publishing the verdict rendered in that

²⁰² Article 22 of the Law.

procedure in the media at the expense of the defendant.²⁰³ These provisions are fully in line with international standards.

In addition to internal, the Law also prescribes external protection of persons who report corruption. The procedure is initiated by a person who suffers harmful consequences by filing a lawsuit in the competent court.²⁰⁴ Based on that, it is concluded that the Law of the Republic of Srpska prescribes judicial protection of whistleblowers as a way of external protection. It can be initiated if the applicant is not satisfied with the decision or notification made by the responsible person in the internal protection procedure during internal protection or if the responsible person does not make a decision or notification within the legal deadline. External protection may also be sought if the whistleblower has not requested internal protection. However, it cannot be provided during the internal protection procedure. In order to ensure the most efficient protection, the Law prescribes the possibility of requesting temporary protection, by imposing security measures by the court. This proposal can be submitted both before initiating the procedure and during the external whistleblowing procedure.²⁰⁵ These are the following measures: postponement of the act of the responsible person (eg decision on termination of employment), order to the responsible person to prohibit and ensure the prohibition of harmful acts, order to the responsible person to take actions to eliminate harmful consequences, including re-establishment.²⁰⁶ These provisions of Law is fully in line with international standards.

The Law of Republic of Srpska also prescribes external protection of persons who report corruption. The procedure is initiated by a person who suffers harmful consequences by filing a lawsuit in the competent court. Based on that, it is concluded that the Law of the Republic of Srpska prescribes judicial protection of whistleblowers as a way of external protection. It can be initiated if the applicant is not satisfied with the decision or notification made by the responsible person in the internal protection procedure during internal protection or if the responsible person does not make a decision or notification within the

²⁰³ Article 24.

²⁰⁴ Article 22 of the Law.

²⁰⁵ Article 28 of the Law.

²⁰⁶ Article 29 of the Law.

legal deadline. External protection may also be sought if the whistleblower has not requested internal protection. However, it cannot be provided during the internal protection procedure. In order to ensure the most efficient protection, the Law prescribes the possibility of requesting temporary protection, by imposing security measures by the court. This proposal can be submitted both before initiating the procedure and during the external whistleblowing procedure. These are the following measures: postponement of the act of the responsible person (e.g. decision on termination of employment), order to the responsible person to prohibit and ensure the prohibition of harmful acts, order to the responsible person to take actions to eliminate harmful consequences, including re-establishment. A fine for a misdemeanour is prescribed for a person who doesn't take measures to eliminate the harmful consequences determined by the court judgment by which the claim was adopted in the procedure of external protection of whistleblowers. Although at first glance the law appears to provide full protection for whistleblowers, it lacks provisions relating to the exemption from criminal, misdemeanour or disciplinary liability of persons who report corruption in good faith. Such an approach by the legislator has a particularly discouraging effect on employees in the police and military service. Therefore, it can be said that the Law of the Republic of Srpska in that respect is not in line with international standards.

Macedonian law prescribes the possibility of external reporting to the Ministry of Interior and the State Commission for the Prevention of Corruption, the Ombudsman of the Republic or another competent institution or legal entity. The report can be submitted to these bodies if the report is directed directly or indirectly against the head of the institution or the legal entity to which the report should be sent, when the whistleblower is not notified of the measures taken within the institution, and if the measures are not taken or the whistleblower is not satisfied with the measures taken and if the measures are not taken in order to eliminate the harmful consequences for the whistleblower and a person close to him. This type of reporting is regulated by a bylaw issued by the Minister of Justice.²⁰⁷ In that part, the Macedonian law is fully in line with international standards.

²⁰⁷ Article 5 of the Law on Protection of whistleblowers of the Republic of North Macedonia.

The Law of Montenegro prescribes the possibility of contacting the Agency for Prevention of Corruption if the whistleblower is not informed or is not satisfied with the measures taken at the internal level regarding his report on endangering the public interest. Such an application may be submitted to the Agency without prior submission of the application to the authority, company, other legal entity or entrepreneur to which the application relates.²⁰⁸ When the Agency determines that the public interest has been endangered, which indicates the existence of corruption, its opinion also contains a recommendation on what should be done in order to prevent the violation of the rights of whistleblowers,²⁰⁹ The government body, company, other legal entity or entrepreneur to whose work the recommendation refers have the obligation to submit a report on the actions taken in order to implement the recommendation within the set deadline. In case of non-compliance with that recommendation, the Agency shall notify the body supervising their work, submit a report to the Assembly and inform the public.²¹⁰ If the whistleblower has suffered damage or that there is a possibility of its occurrence, the opinion of the Agency contains a recommendation on what should be done to eliminate or prevent the damage, as well as a deadline for eliminating harmful consequences or preventing damage.²¹¹ At the same time, it represents an obligation for the authority, company, other legal entity or entrepreneur to whose work the recommendation refers to submit to the Agency a report on the actions taken to implement the recommendation. If they do not act in accordance with the recommendation within the specified deadline, the Agency shall notify the body supervising their work and submit a special report to the Assembly and inform the public.²¹² In the case that the whistleblower initiates court proceedings due to the damage suffered, the Agency shall, at his request, provide the necessary professional assistance in proving the causal link between the filing of a report on endangering the public interest and the occurrence of a harmful consequence. In this part, provisions of the Law on Preventing of Corruptions are fully in line with international standards.

²⁰⁸ Article 51 of the Law on Prevention of Corruption.

²⁰⁹ Article 52.

²¹⁰ Article 53.

²¹¹ Article 62.

²¹² Article 63.

Indicator 2

Legislation of Bosnia and Herzegovina at federal level do not provide availability of judicial review and doesn't provide availability of judicial review and doesn't cover all direct, indirect and future consequences of reprisal and also doesn't provide redress (e.g. resuming employment after unfair dismissal, a transfer to a comparable job, or compensation for detrimental treatment that cannot be remedied by injunctions such as unemployment and distress). Montenegrin regulation requires additional improvements and legislation of other countries is fully in line with international standards.

Availability of judicial review – the law entitles the whistleblowers to a fair hearing before an impartial forum with a full right of appeal The law covers all direct, indirect and future consequences of reprisal and provide redress (e.g. resuming employment after unfair dismissal, a transfer to a comparable job, or compensation for detrimental treatment that cannot be remedied by injunctions such as unemployment and distress)

The Law of Bosnia and Herzegovina does not provide a judicial protection of whistleblowers, while such an option exists in the regulations of other countries that are the subject of this comparative analysis. Bearing in mind above-mentioned, the Law of Bosnia and Herzegovina is not in line with international standards.

The Law of the Republic of Srpska prescribes the possibility for a person who suffers harmful consequences due to whistleblowing to file a lawsuit with the competent court. This type of protection is subject to the external protection of whistleblowers. It can be realized if the applicant is not satisfied with the decision or notification made by the responsible person in the internal protection procedure or if the responsible person does not make the decision and notification within the deadline prescribed by law. The possibility of addressing the court also exists if the whistleblower has not previously requested internal protection in accordance with the provisions of the Law. An action is not allowed if an internal protection procedure is in progress.²¹³ These provisions of the Republic of Srpska are fully in line with international standards regarding this indicator.

²¹³ Article 22 of the Law.

The law of the Northern Republic of Macedonia also prescribes the right to judicial protection by a competent court. A lawsuit can be filed if an internal activity has been undertaken or a right of the whistleblower has been violated. He has the right to file a lawsuit to request the cessation of harmful activities, compensation for damages, annulment of acts by which the harmful effect was performed, elimination of consequences of harmful activities that violated his/her rights, compensation for material and non-material damage caused to him/her. The court's action in that procedure is urgent.²¹⁴ The provisions of above-mentioned law is fully in line with international standards.

The Law of Montenegro prescribes the right of whistleblowers to judicial protection against discrimination and retaliation at work for reporting endangering the public interest, which indicates the existence of corruption in accordance with the law prohibiting discrimination and retaliation at work.²¹⁵ However, the problem is that this provisions are limited only to persons employed in the institution or legal entity to which the report indicating the existence of corruption relates. Therefore, these provisions of Law are not in line with international standards.

Indicator 3

The regulations of all countries require additional harmonization with regard to the provisions which should prescribe effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower of persons. Bosnian legislation doesn't prescribe any sanctions for mentioned activities.

The law prescribes effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons

The Law of Bosnia and Herzegovina doesn't prescribe a sanction for a person who prevents the whistleblower from filing a report, as well as a person who takes retaliatory measures against the whistleblower. According to mentioned, the Law of Bosnia and Herzegovina is not in line with international standards regarding this indicator.

²¹⁴ Article 10.

²¹⁵ Article 68 of the Law.

The Law of the Republic of Srpska only prescribes a misdemeanour of a responsible person in the internal protection procedure if that person refuses to receive a report of corruption.²¹⁶ Bearing in mind that, the above-mentioned law is not in line with international standards.

The law of the North Republic of Macedonia doesn't prescribe the sanction for persons who prevent the whistleblower from filling a report. In this part above mentioned law is not in line with international standards.

The Law of the Prevention of Corruption of Montenegro doesn't provide sanctions for persons who prevent the whistleblower from filling a report. In this part above mentioned law is not in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

The legislation of federal level of Bosnia and Herzegovina, North Republic of Macedonia and Montenegro clearly defines oversight and enforcement authorities that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman of information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress. Only regulation of Republic of Srpska requires additional improvements.

The law of Bosnia and Herzegovina is not line with international standards regarding the provisions of availability of judicial review of decision against whistleblowers. Montenegrin legislation needs to be improved, while the regulations of other countries in this regard are fully in line with international standards.

The legislation of all countries which were analysed in this chapter must be improved regarding the system of effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons close to him. Bosnian regulation must prescribe such kind of sanctions.

²¹⁶ Article 33, paragraph 1, item 1 of the Law.

Table 6. Comprehensive enforcement mechanisms

Indicator	Value	BIH			MKD	MNE
		BiH	FBIH	RS		
1. The law clearly defines oversight and enforcement authorities (e.g. independent agencies that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress	0-3	3	N/A	1	3	3
2. Availability of judicial review – the law entitles the whistleblowers to a fair hearing before an impartial forum with a full right of appeal. The law covers all direct, indirect and future consequences of reprisal and provide redress (e.g. resuming employment after unfair dismissal, a transfer to a comparable job, or compensation for detrimental treatment that	0-3	0	N/A	3	3	1
1. The law prescribes effective sanctions for persons who prevent the whistle-blower from filling a report or who take revenge on the whistle-blower or persons close to him.	0-3	0	N/A	1	1	1
Total points		3	N/A	5	7	5
Average points		1	N/A	1,66	2,33	1,66
Standard	0-5	1	N/A	2	3	2

12.2. COMPLIANCE OF THE LEGISLATION OF THE REPUBLIC OF SERBIA WITH KEY INTERNATIONAL STANDARDS

The approach taken in the study is to analyse the regulatory frameworks of the Republic of Serbia related to protection of whistleblowers. A conscious choice was made to focus on issues that regulate the scope of protected disclosures and of the persons afforded protection under the law, the quality of the protection afforded to whistleblowers, as well as clarity of procedures and channels for reporting wrongdoings. The approach taken was to identify major issues and synthesise the relevant underlying rules to them. The definitions and lists were developed most in line with EU standards on the protection of whistleblowers: The Council of Europe Recommendation on the protection of whistleblowers and the Directive (EU) 2019/1937 on the protection of whistleblowers.

12.2.1. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law

Indicator 1

The legislation of the Republic of Serbia is fully in line with European standards in terms of defining the scope of protected disclosures and the persons afforded protection under the law.

According to the international standards the national legislation should provide a clear definition of the scope of protected disclosures and of the persons afforded protection under the law

That consider that law should clearly define who can have a status of whistleblower. That shouldn't be exclusively public sector employees, but also persons who are employed in private sector, as well as persons who were employed in the public or private sector. The definition should also include consultants, contractors, temporary employed persons and volunteers.

The Law on the Protection of Whistleblowers of the Republic of Serbia stipulates that whistleblowing is the disclosure of information on violations of regulations, human rights violations, exercise of public authority contrary to the purpose for which it is entrusted, danger to life,

public health, safety, environment and large-scale damage.²¹⁷ This definition gives the possibility to provide legal protection to a large number of persons in accordance with the law. According to the legal definition, a whistleblower can be a natural person who performs a whistleblowing in connection with his work engagement, employment procedure, use of services of state and other bodies, holders of public authority or public services, business cooperation and ownership of a company.²¹⁸ In order to avoid a different interpretations, the legislator defined work engagement. In accordance with the law, it is considered employment, work outside the employment relationship, volunteering, performing the function, as well as any other factual work for the employer.²¹⁹

In that way, it is possible to provide protection in accordance with the provisions of the Law on Protection of Whistleblowers, both to the person who reports on illegal actions and irregularities in the public sector, and to the person who reports on illegal actions and irregularities in the sector of economy. Such a solution is in line with international standards in the field of whistleblower protection. The legislator gave the possibility to provide protection not only to a person who was employed at the time of reporting the irregularity, but also to a person who was employed or otherwise engaged or used services by a state or other body, holder of public authority or public services, as well as a person who has had business cooperation with a public or private sector entity. Therefore, it can be concluded that in terms of this indicator, the Law of the Republic of Serbia is fully in line with international standards.

Regulations governing service in the police and armed forces do not, define the scope of protected disclosures and of the persons afforded protection under the law. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 2

The regulations of the Republic of Serbia define what information may be subject to whistleblowing in line with international standards.

²¹⁷ Article 2, paragraph 1, item 1) of the Law on Protection of Whistleblowers, *Official Gazette of the Republic of Serbia*, no. 128/2014.

²¹⁸ Article 2, paragraph 1, item 2) of the Law.

²¹⁹ Article 2, paragraph 1, item 5) of the Law.

In accordance with international standards the law should clearly define what information may be subject to whistleblowing

The law defines the content of information that may be subject to whistleblowing. According to Article 13, paragraph 1 of the Law on Protection of Whistleblowers of the Republic of Serbia, it is information that contains data on violations of regulations, human rights violations, exercise of public authority contrary to the purpose for which it was entrusted, danger to life, public health, safety, environment and data to prevent large-scale damage. The legal definition is fully in line with international standards, bearing in mind that the subject of whistleblowing should be information about any illegal behaviour that endangers the public interest.

Regulations governing service in the police and armed forces do not, define the term of whistleblowers. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 3

The law of the Republic of Serbia is mostly in line with international standards. Bearing in mind, the possibility of abuse, it would be useful to prescribe by law a fine for persons who abuse the right to whistleblowing.

In order to protect whistleblowers from misdemeanour, criminal or disciplinary liability, but also to reduce the possibility of abuse of whistleblowers, **law must clearly define requirement that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowers.**

The Law on Protection of Whistleblowers does not define the notion of disclosures made on reasonable grounds, but prescribes that the whistleblower has the right to protection in accordance with the law, among other conditions and in the case of information whose truth would be believed by a person with average knowledge and experience.²²⁰ The same

²²⁰ Article 5, item 3). In addition to the stated condition, the whistleblower shall have the right to protection in accordance with Article 5, items 1) and 2) and if the following conditions are cumulatively fulfilled in accordance with the law: and if it discovers information within one year from the day of learning about the performed action

law prohibits the abuse of whistleblowing. It is considered the action of a person who submits information that he knew to be untrue and if, in addition to the request for action in relation to the information that is being used for whistleblowing, he seeks illegal benefit.²²¹ No sanction is prescribed for such conduct, but a person who abuses the right to whistleblowing will not be provided with the protection provided to whistleblowers in accordance with the provisions of the Law. In terms of the above definitions, the Law on the Protection of Whistleblowers is mostly in line with international standards. Bearing in mind the possibility of abuse, it would be useful to prescribe by law a fine for persons who abuse the right to whistleblowing.

Regulations governing service in the police and armed forces do not define this area. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

The definition of the scope of protected disclosures and of the persons afforded protection under the law prescribed by Serbian legislation are fully in line with international standards. The same can be concluded regarding the definition of information which may be the subject to whistleblowing. However, regarding the conditions that law must clearly define requirement that disclosures be made on reasonable grounds and definition of abuse of the right to whistleblowers the legislation is mostly in line with international standards. Bearing in mind, the possibility of abuse, it would be useful to prescribe by law a fine for persons who abuse the right to whistleblowing. Regarding the standard that the legislation prescribes a clear definition of the scope of protected disclosures and of the persons afforded protection under the law the Serbian legislation is mostly in line with international standards.

Regulations governing service in the police and armed forces do not, define above mentioned. Therefore, in terms of these indicators, we have analysed only the regulations governing the protection of whistleblowers.

due to which it is causing the whistleblowing, and no later than within ten years from the day of performing that action.

²²¹ Article 11, paragraph 2 of the Law.

Table 7. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law

Indicator	Value	Republic of Serbia
1. The law clearly defines who can have a status of whistleblower (exclusively public sector employees or also persons who were employed in the private sector, whether definition covers consultants, contractors, temporary employed, volunteers and all public sector employees included army and intelligence services)	0-3	3
2. The law clearly defines what information may be subject to whistleblowing	0-3	3
3. The law clearly defines requirement that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowing and prescribes sanctions for such conduct.	0-3	2
Total points		8
Average points		2,6
Standard	0-5	4

12.2.2. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive

According to international standards the legislation must ensure that the protection afforded to whistleblowers is robust and comprehensive. That considers that the law includes protection of employees from recrimination or other negative consequences when reporting about illegal, improper or unethical activities that endangered or may endanger the public interest. The national legislation must prescribe the obligation for authorised persons and institutions to maintain the anonymity of whistleblowers, as well as effective and proportionate penalties for persons who violate this obligation (confidentiality). In addition, in order to encourage whistleblowing, the law must provide the possibility of accepting anonymous reports (anonymity) by authorised persons and institutions, as well as that the burden of proofs is on employers who must prove that the action they have taken against an employee is unrelated to whistleblowing.

Indicator 1

The legislation of the Republic of Serbia is fully in line with international standards regarding the protection of employees from recrimination or other negative consequences when reporting corruption.

The law includes protection of employees from recrimination or other negative consequences when reporting corruption

According to the Law on Protection of Whistleblowers, a whistleblower has the right to protection, in accordance with the law if he makes a whistleblower at the employer, authorized body or the public in the manner prescribed by law, discloses information within one year from the day of learning no later than ten years from the day of performing that action and if at the time of the whistleblowing, based on the available data, a person with average knowledge and experience, as well as the whistleblower, would believe in the truthfulness of the information.²²² Therefore, the employer must not, by doing or not doing, put the whistleblower at a disadvantage in relation to the whistleblowing, especially if the disadvantage is related to employment, acquiring the status of trainee or volunteer, working outside employment, education, training or professional development, job advancement, evaluation, acquisition or loss of title, disciplinary measures and penalties, working conditions, termination of employment, salary and other benefits from employment, participation in the employer's profit, payment of remuneration and severance pay, assignment or transfer to another job, failure to take measures to protect due to whistleblowing by other persons, referral to mandatory medical examinations or referral to examinations to assess work ability.²²³ Based on the above mentioned, it can be concluded that the law prescribes the prohibition of a large number of exhaustively listed activities, which provides protection to the whistleblower from incrimination or other negative consequences due to his reporting. The provisions of the general act by which the whistleblower is denied or violated the right, e.g. by which those persons are placed in a less favourable position in connection with the whistleblowing, are considered null and void according to the provisions of the Law.²²⁴ In case of causing damage to the whistleblower, he has the right

²²² Article 5.

²²³ Article 21. paragraph 1.

²²⁴ Article 21. paragraph 2.

to compensation in accordance with the law governing obligations.²²⁵ The law also prescribes judicial protection of whistleblowers, according to which harmful action is prescribed in connection with whistleblowing.²²⁶ According to the Law, the employer is obliged, within its powers to protect the whistleblower from harmful actions, to take the necessary measures for its suspension and elimination of its consequences.²²⁷ In case the employer does not act in accordance with that obligation, he will be fined in the amount of 50,000 to 500,000 dinars.²²⁸ Bearing in mind above mentioned, it can be concluded that the Law on Protection of Whistleblowers of the Republic of Serbia provides both internal and external protection of whistleblowers. Internal protection consists of the protection provided to the employee by the employer. However, it is not regulated in more detail by the Law, so it is assumed that it should be regulated by a general act of the employer, which is adopted in accordance with Article 16 of the Law or a written instruction or procedure, for employers with less than ten employees. According to provisions of the Law on the Protection of Whistleblowers, they are not obliged to adopt such an act.²²⁹ The law also prescribes judicial protection as an external type of protection with the possibility of ordering temporary measures. They may, in accordance with the law governing enforcement and security, be determined by the court before the commencement of court proceedings, as well as during the duration of the court procedure and its surroundings until the execution is carried out.²³⁰ Bearing in mind the mentioned possibilities, it can be concluded that the legislation of the Republic of Serbia in that respect is fully harmonized with international standards.

Regulations governing service in the police and armed forces do not define this area. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

²²⁵ Article 22.

²²⁶ Article 23.

²²⁷ Article 14. paragraph 2.

²²⁸ Article 38. paragraph 1, item 1).

²²⁹ According to the mentioned provision, an employer who has more than ten employees is obliged to regulate the procedure of internal whistleblowing by a general act. According to the Law, the employer is obliged to point out the general act regulating the whistleblowing procedure in a visible place, accessible to every employed person, as well as on the employer's website if there are technical possibilities.

²³⁰ Article 32. of the Law on the protection of whistleblowers.

Indicator 2

The legislation of Republic of Serbia is not in line with international standards regarding the waiving criminal liability for protected disclosures (disclosure or information related to official secrets or national security).

The law of the Republic of Serbia does not contain such, but a somewhat discouraging provision. According to that, the whistleblower cannot inform the public if the information contains secret information, unless otherwise provided by law. However, the said provision neither specifies nor indicates to which law this exception applies. If this is not the case, the whistleblower and other persons are obliged to adhere to the general and special measures for the protection of classified information prescribed by the law governing the confidentiality of information.²³¹ Such a solution is quite discouraging for potential whistleblowers. Therefore, it can be concluded that in that part the legislation of the Republic of Serbia is not in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 3

The legislation of the Republic of Serbia must be aligned with international standards in terms of prescribing the obligation to maintain the secrecy of the identity of whistleblowers, as well as prescribing effective and proportionate penalties for persons who violate that obligation, and the possibility of accepting anonymous reports.

The law prescribes the obligation to maintain the secrecy of the identity of whistleblowers, as well as effective and proportionate penalties for persons who violate this obligation (confidentiality). The law provides possibility of accepting anonymous reports (anonymity)

Article 10 of the Law on Protection of Whistleblowers stipulates that a person authorized to receive information is obliged to protect the

²³¹ Article 20. of the Law on the protection of whistleblowers.

identity of the whistleblower, e.g. data on the basis of which his identity can be revealed, unless the whistleblower does not agree with the disclosure of such data in accordance with the law governing the protection of personal data. In addition, the Law prescribes the obligation that every person who learns the said data protects that data. The same article prescribes the obligation of the person authorized to receive information to inform the whistleblower upon its receipt that his identity may be disclosed to the competent authority, if without disclosing the identity of that person it would not be possible to act by that authority. If during the procedure it is necessary to reveal the identity of the whistleblower, the person authorized to receive the information has the obligation to inform the whistleblower before revealing the identity to competent authority. The data on the whistleblower may not be communicated to the person indicated in the information, unless otherwise prescribed by a special law. However, a special problem is that the Law does not prescribe which bodies (it is assumed that the legislator primarily had in mind the court) to which the identity of the whistleblower is communicated, and without which the action of that body would not be possible. According to the law, the employer must not take measures in order to reveal the identity of the anonymous whistleblower.²³² The authorities responsible for the external protection of whistleblowers are also obliged to apply the protection measures provided to the whistleblower by the authority that provided the notification.²³³ The authorities responsible for the external protection of whistleblowers are also obliged to apply the protection measures provided to the whistleblower by the authority that provided the notification. However, the problem is the lack of precision of the Law in terms of defining the body to which the whistleblower can turn in case of external whistleblowing. This would contribute to a possible more detailed regulation of the procedure for the protection of whistleblowers during external whistleblowing by these bodies. The possibility of external whistleblowing and a very imprecise procedure are prescribed by Article 18 of the Law on the Protection of Whistleblowers. They are defined as “authorized bodies”, and according to which and according to article 2, paragraph 1, item 6) of the Law are considered: a body of the Republic of Serbia, territorial autonomy or local self-government unit or

²³² Article 14. paragraph 3. of the Law on protection of whistleblowers.

²³³ Article 18. paragraph 3.

holder of public authority competent to act on information used to whistleblowing in accordance with the law. In addition, national law does not prescribe sanctions for an employer or other person who discloses the identity of the whistleblower. It seems that more detailed protection of personal data and anonymity of whistleblowers is prescribed only when it comes to internal whistleblowing. Bearing in mind that this prevents the improvement of the protection of anonymity, as well as that the procedure of external whistleblowing itself is not precisely regulated, it can be concluded that the provisions of national legislation are mostly not in line with international standards and require additional harmonization.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 4

The Legislation of the Republic of Serbia is fully in line with with international standards in terms of prescribing the possibility of accepting anonymous reports (anonymity).

According to international standards, the law must provide for the possibility of accepting anonymous reports (anonymity)

The law does not explicitly prescribe the possibility of submitting an anonymous report, but it stipulates that the information may contain the whistleblower's signature and information about the whistleblower, as well as that the employer and the authorized body are obliged to act on anonymous notifications regarding information within their powers.²³⁴ In addition, according to the provisions of the Law, the employer must not take measures in order to reveal the identity of the anonymous whistleblower.²³⁵ The competent authority in the procedure of external whistleblowing is also obliged to apply the protection measures provided to the whistleblower by the authority that provided the notification. If the whistleblower has not given consent for his identity to be revealed, the authorized body that received the notification from the whistleblower, but is not competent to act, is obliged to request the whistleblow-

²³⁴ Article 13, paragraphs 2 and 3 of the Law on Protection of Whistleblowers.

²³⁵ Article 14. paragraph 3. of the Law.

er's consent before forwarding that notification to the competent body, unless otherwise provided by law.²³⁶ Regarding this indicator, the Law on Protection of Whistleblowers is fully harmonized with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 5

Legislation of the Republic of Serbia provides that the burden of proofs must be on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing.

The burden of proofs must be on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing

If during the proceedings the whistleblower has made it probable that a harmful action has been taken against him in connection with the whistleblowing, the defendant (employer) shall bear the burden of proving that the harmful action is not causally related to the whistleblowing.²³⁷ Regarding this indicator, the Law on Protection of Whistleblowers is fully in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

The legislation of the Republic of Serbia is mostly in line with international standards regarding that the protection afforded to whistleblowers is robust and comprehensive. According to Serbian legislation, the whistleblower cannot inform the public if the information contains secret information, unless otherwise provided by law. The said provision neither specifies nor indicates to which law this exception applies. If this is not the case, the whistleblower and other persons are obliged to adhere to the general

²³⁶ Article 18. paragraphs 5 and 6.

²³⁷ Article 29. of the Law.

and special measures for the protection of classified information prescribed by the law governing the confidentiality of information. Such a solution is quite discouraging for potential whistleblowers. Therefore, it can be concluded that in that part the legislation of the Republic Serbia is not in line with international standards and requires additional harmonization. The proportionate penalties for persons who violate the obligation to maintain the secrecy of the identity of whistleblowers must be prescribed by the national legislation of the Republic of Serbia. Regarding other indicators, Serbian legislation is fully in line with international standards.

Table 8. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive

Indicator	Value	Republic of Serbia
1. The law includes protection of employees from recrimination or other negative consequences when reporting corruption	0-3	3
2. The law is waiving criminal liability for protected disclosures (disclosure of information related to official secrets or national security)	0-3	0
3. The law prescribes the obligation to maintain the secrecy of the identity of whistleblowers, as well as effective and proportionate penalties for persons who violate this obligation (confidentiality). The law provides possibility of accepting anonymous reports (anonymity)	0-3	1
4. According to international standards, the law must provide for the possibility of accepting anonymous reports (anonymity)	0-3	3
5. The burden of proofs is on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing	0-3	3
Total points		10
Average points		2
Standard	0-5	3

12.2.3. Clear procedures and channels for reporting wrongdoings

Indicator 1

The procedure for external whistleblowing is not clearly prescribed by the Law on Protection of Whistleblowers and requires additional harmonization with international standards.

The law clearly prescribes the procedure for internal, external and public whistleblowing

The Law of the Republic of Serbia prescribes three types of whistleblowing: internal, external and public whistleblowing. Internal whistleblowing is the disclosure of information to an employer. External means disclosure of information to an authorized body (but the Law on Protection of Whistleblowers does not prescribe which body it is, and public means disclosure of information to the media, via the Internet, at public gatherings or in any other way that can make the notice available to the public.²³⁸ The law stipulates that the internal whistleblowing procedure begins with the submission of information to the employer, the deadline for the employer to act and the whistleblower to be notified of the outcome of the procedure upon its completion.²³⁹ The law also prescribes the obligation of an employer who has more than ten employees to regulate the procedure of internal whistleblower by a general act. The procedure of external whistleblowing is not adequately regulated by the Law on Protection of Whistleblowers. It is not entirely clear from its provisions to whom the whistleblower is addressing and who is the competent authority for submitting information in the procedure of external whistleblowing.²⁴⁰ In addition, the law does not prescribe the possibility for a person who does not receive a response from the employer or adequate protection within the legally prescribed period to apply to the body responsible for the procedure of external alert. Although the law prescribes when the public may be inform without prior notice to the employer or the authorized body, the law does not prescribe in which other situations and in what way the whistleblower may address the

²³⁸ Article 12. of the Law on the Protection of Whistleblowers.

²³⁹ Article 15. of the Law.

²⁴⁰ Article 18. of the Law.

public.²⁴¹ Regarding this indicator, the Law of the Republic of Serbia is mostly not in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 2

The legislation of the Republic of Serbia is mostly in line with international standards regarding the prescribing of the obligation for public (and private sector) institutions to establish an internal procedure which will define in more detail the manner of internal whistleblowing and clearly defined lines of international whistleblowing and responsibility in that procedure.

The law provides the obligation for public (and private sector) institutions to establish an internal procedure which will define in more detail the manner of internal whistleblowing and clearly defined lines of internal whistleblowing and responsibility in that procedure

The law prescribes the obligation only for an employer who has more than ten employees to regulate the procedure of internal whistleblowing by a general act. It is unusual why the Law limited such an obligation to the specified number of employees. However, prescribing such an obligation is certainly a positive solution. The law explicitly prohibits the employer from reducing the scope of rights guaranteed by law by the provisions of the general act, as well as that the provisions that are not in accordance with the law and regulations adopted on the basis of it are null and void.²⁴² Internal whistleblowing in the Republic of Serbia is also

²⁴¹ According to Article 19, paragraph 1 of the Law on Protection of Whistleblowers, the public may sound the whistleblowing without prior notification of the employer or authorized body in case of imminent danger to life, public health, safety, environment, large-scale damage, or if there is an imminent danger of destroying evidence. In addition, in such circumstances, the impossibility of acquittal when disclosing information of public interest, which is a secret under the regulations on the protection of confidentiality of proceedings, could be discouraging for whistleblowers, which in some ways makes the existence of such a provision meaningless.

²⁴² Article 16. of the Law on Protection of Whistleblowers.

regulated by the Rulebook on the manner of internal whistleblowing, the manner of appointing an authorized person by the employer, as well as other issues of importance for internal whistleblowing with an employer with more than ten employees.²⁴³ This act regulates the manner of internal whistleblowing, the manner of appointing an authorized person with the employer to receive information and other issues of importance for whistleblowing with an employer with more than ten employees, the manner of submitting information, issuing a certificate of receipt of information, its content, identity protection, obligations and the manner of compiling the minutes on the statement of the whistleblower, the possibility of objecting to the borrower, the manner of proposing measures to eliminate irregularities and actions that are harmful actions arising in connection with the internal whistleblower.²⁴⁴ The legislator unnecessarily narrows the circle of persons to whom the employer is obliged to submit a notification on the rights they enjoy under the Law. The law prescribes the obligation of the employer in the internal whistleblowing procedure to provide employees with a notice of the rights they enjoy under the law.²⁴⁵ However, this obligation applies exclusively to persons who are employed by the employer. This can be discouraging to potential whistleblowers when reporting corruption (eg service users or persons who have concluded business cooperation agreements with a public or real sector entity). Therefore, this indicator is mostly in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 3

Bearing in mind the importance of the existence of written communication and evidence for possible later proceedings and the protection of whistleblowers, it is necessary to further harmonize legal provisions, which are not in line with international standards regarding the deadlines of keeping records of any type of whistleblowing.

²⁴³ The Official Gazette of the Republic of Serbia, no. 49/2015 and 44/2018.

²⁴⁴ The mentioned Rulebook was adopted by the Ministry of Justice of the Republic of Serbia.

²⁴⁵ Article 14. paragraph 4.

The law clearly prescribes deadlines and establishes the obligation to keep records (especially at the level of the institution) of any type of whistleblowing

Although the procedure of internal whistleblowing is defined by the Law on Protection of Whistleblowers, as well as the Rulebook on the manner of internal whistleblowing, the manner of appointing an authorized person with the employer, as well as other issues of importance for internal whistleblowing at an employer with more than ten employees, no act prescribes the deadlines to keep records of internal whistleblowing. However, having in mind the other provisions, it can be concluded that an obligation to keep records of the internal whistleblowing procedure is prescribed by national legislation. Article 15 of the Law prescribes that case files be kept in the institution or legal entity in which the internal alert was made. The obligation to keep records and provide insight into the case file is also prescribed for the authorized body to which the information is submitted in the procedure of external whistleblowing. The law also does not prescribe deadlines for recording and keeping evidence in the external whistleblowing procedure.²⁴⁶ However, this may be regulated by an internal act of the employer or institution governing the internal whistleblowing procedure. However, having in mind the importance of the existence of written communication and evidence for possible later proceedings and the protection of whistleblowers, it is necessary to further harmonize legal provisions, which are not in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 4

In order to encourage whistleblowing, the Law of the Republic of Serbia should also prescribe the possibility of rewarding whistleblowers.

The law includes incentives to encourage reporting (e.g. reward systems, recover lost or misspent money)

²⁴⁶ Article 18. paragraph 7. of the Law on Protection of Whistleblowers.

The law prescribes that the whistleblower has the right to compensation in accordance with the law that regulates the obligatory relations if he has been harmed due to the whistleblowing.²⁴⁷ However, it does not prescribe the possibility of rewarding whistleblowers in order to encourage reporting. Therefore, in terms of this indicator, legislation of the Republic of Serbia is not in line with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

The legislation of the Republic of Serbia must be improved regarding the clear procedures and channels for reporting of wrongdoings. The Law on Protection of Whistleblowers doesn't prescribe the clear procedures regarding external whistleblowing. In addition, the obligation for public and private sector institution to establish an internal procedure which will define in more detail the manner of internal whistleblowing should be prescribed for all institutions regardless of the number of employees. Bearing in mind the importance of the existence of written communication and evidence for possible later proceedings and the protection of whistleblowers, it is necessary to prescribe the deadlines of keeping records of any type of whistleblowing. In order to encourage whistleblowing, the Law of the Republic of Serbia should also prescribe the possibility of rewarding of whistleblowers.

Table 9. Clear procedures and channels for reporting wrongdoings

Indicator	Max	Republic of Serbia
1. The law clearly prescribes the procedure for internal, external and public whistleblowing	0-3	1
2. The law prescribes the obligation for public (and private sector) institutions to establish an internal procedure which will define in more detail the manner of internal whistleblowing and clearly	0-3	2

²⁴⁷ Article 22. of the Law.

3. The law clearly prescribes deadlines and establishes the obligation to keep records (especially at the level of the institution) of any type of whistleblowing	0-3	0
4. The law includes incentives to encourage reporting (e.g. reward systems, recover lost or misspent money)	0-3	0
Total points		3
Average points		0,75
Standard	0-5	1

12.2.4. Comprehensive enforcement mechanisms

Indicator 1

Legislation of the Republic of Serbia is mostly in line with international standards regarding the clear definition of oversight and enforcement authorities (e.g. independent agencies that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress.

The law clearly defines oversight and enforcement authorities (e.g. independent agencies that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress)

The Law of the Republic of Serbia prescribes only the possibility of judicial protection. According to its provisions, the whistleblower against whom a harmful action has been taken in connection with the whistleblowing has the right to judicial protection by filing a lawsuit for protection in connection with the whistleblowing to the competent court, within six months from the day of learning about the harmful action. action taken.²⁴⁸ These procedures require the special knowledge of the

²⁴⁸ Article 23. of the Law on the Protection of Whistleblowers.

judge. According to the Law, they must have special knowledge regarding the protection of whistleblowers.²⁴⁹ In the protection procedure in connection with the whistleblowing, the court conducting the procedure may order a temporary measure in accordance with the law governing enforcement and security. A motion to order an interim measure may be filed before the commencement of the court proceedings, during the duration and after the end of the court proceedings until the execution is carried out. In addition, the court may *ex officio* order an interim measure.²⁵⁰ However, apart from judicial protection, the Law does not prescribe the competence of any other body in the procedure of supervision and control of activities undertaken against the whistleblower in the procedure or in connection with the whistleblowing procedure. The law only prescribes that the supervision over the implementation of the Law on the Protection of Whistleblowers is carried out by the labour inspection, e.g. the administrative inspection in accordance with the laws governing their powers.²⁵¹ However, despite such a solution, it would be useful if the Law also established the possibility of clear external notification, e.g. Anti-corruption agencies, the Ombudsman or other competent institutions other than the court. Such a possibility should exist e.g. if the report is directed against the head of the institution or the legal entity to which it is necessary to submit the report, if the whistleblower is not informed about the protection measures taken within the institution, if he is not satisfied with the measures taken and if adequate measures are not taken to eliminate harmful consequences for the person close to whistleblower. Although there is a possibility of such notification in the Republic of Serbia, it is not regulated precisely enough. It is necessary, first of all, to determine which bodies are competent to receive such information, as well as to specify in which situations the whistleblower can turn to such a body. Such a solution e.g. exists in Macedonian legislation.²⁵² Bearing in mind the above mentioned, it can be concluded that the mentioned solution is mostly in line with international standards and that additional harmonization is needed.

²⁴⁹ Article 25.

²⁵⁰ Article 32.

²⁵¹ Article 36.

²⁵² Article 5 of the Law on Protection of whistleblowers of the Republic of North Macedonia.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 2

Serbian legislation is fully in line with international standards regarding the availability of judicial review for the whistleblowers.

Availability of judicial review – the law entitles the whistleblowers to a fair hearing before an impartial forum with a full right of appeal The law covers all direct, indirect and future consequences of reprisal and provide redress (e.g. resuming employment after unfair dismissal, a transfer to a comparable job, or compensation for detrimental treatment that cannot be remedied by injunctions such as unemployment and distress)

When it comes to judicial protection, the Law prescribes such a possibility for every whistleblower who has been harmed in connection with the whistleblowing. The procedure for judicial protection in such cases is urgent, and in the procedure for judicial protection in connection with the whistleblowing, a revision is allowed.²⁵³ The lawsuit for protection in connection with the whistleblowing may request that it be established that a harmful action was taken against the whistleblower, prohibition of performing and repeating the harmful action, elimination of the consequences of the harmful action, compensation for material and non-material damage, publication of the verdict. public information at the expense of the defendant.²⁵⁴ Regarding the mentioned indicator, the legislation of the Republic of Serbia is fully harmonized with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Indicator 3

The legislation of the Republic of Serbia must be harmonized with international standards regarding the existence of effective sanctions for

²⁵³ Article 23. paragraphs 4 and 5.

²⁵⁴ Article 26.

persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons close to him.

The law prescribes effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons close to him

Although the Law on the Protection of Whistleblowers prescribes that the prevention of whistleblowing is prohibited, it does not prescribe sanctions for a person who prevents such activities or takes revenge on the whistleblower for the action taken in connection to whistleblowing.²⁵⁵ In that part, the Law of the Republic of Serbia is not harmonized with international standards.

Regulations governing service in the police and armed forces do not, define this question. Therefore, in terms of this indicator, we have analysed only the regulations governing the protection of whistleblowers.

Summary assessment for the standard

Legislation of the Republic of Serbia is mostly in line with international standards regarding the clear definition of oversight and enforcement authorities, but prescribes only the possibility of judicial protection. However, despite such a solution, it would be useful if the Law also established the possibility of clear external notification, e.g. Anti-corruption agencies, the Ombudsman or other competent institutions other than the court. Such a possibility should exist e.g. if the report is directed against the head of the institution or the legal entity to which it is necessary to submit the report, if the whistleblower is not informed about the protection measures taken within the institution, if he is not satisfied with the measures taken and if adequate measures are not taken to eliminate harmful consequences for the person close to whistleblower. However, the Serbian legislation is fully in line with international standards regarding the availability of judicial review for the whistleblowers. The legislation of the republic of Serbia requires additional harmonization with international standards regarding the existence of effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons close to him.

²⁵⁵ Article 3. paragraph 1.

Table 10. Comprehensive enforcement mechanisms

Indicator	Value	Republic of Serbia
1. The law clearly defines oversight and enforcement authorities (e.g. independent agencies that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress or rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress	0-3	2
2. Availability of judicial review – the law entitles the whistleblowers to a fair hearing before an impartial forum with a full right of appeal. The law covers all direct, indirect and future consequences of reprisal and provide redress (e.g. resuming employment after unfair dismissal, a transfer to a comparable job, or compensation for detrimental treatment that cannot be remedied by injunctions such as unemployment and distress)	0-3	3
3. The law prescribes effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons close to him	0-3	0
Total points		5
Average points		1,66
Standard	0-5	2

CONCLUDING REMARKS

At the level of all countries whose regulations have been the subject of this comparative legal analysis, there are special regulations governing the protection of whistleblowers, except in Montenegro. In this country, whistleblowing is prescribed by the Law on Prevention of Corruption and whistleblowing is related exclusively to illegal, irregular and unethical activities related to corruption, although international standards. Directive on the protection of Whistleblowers 2019 stipulate that whistleblowing must be in connection with any conduct that endangers the public interest. These are not only activities related to corruption.

Apart from Montenegro, such a solution is also contained in the regulations of Bosnia and Herzegovina and the Republic of Srpska. At the level of the Federation of Bosnia and Herzegovina, a law on the protection of whistleblowers has not yet been adopted. Therefore, its provisions were not the subject of this comparative analysis.

In Bosnia and Herzegovina the Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina was established 2013 and in its entity Republic of Srpska 2017. Both laws provide protection only to persons who report corruption in the institutions of Bosnia and Herzegovina and the Republic of Srpska. Such a solution is not in line with European standards. Whistleblower protection should cover all persons who inform both the public and private sectors of the existence of illegal or irregular activities that endanger or may endanger the public interest. Bosnian and the legislation of the Republic of Srpska define requirements that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowers, but that is not in line with international standards. Both of legislation prescribe the notion of good faith which is considered to be the attitude of the whistleblower which is based on facts and circumstances about which he has his own knowledge and which he considers to be true. Despite the fact that legislation define good faith from the aspect of the whistle blower's belief in the truth of the facts, it can be a problem in practice, due to the possibility of different interpretations of good faith and proving its existence.

Instead of good faith the EU Directive 2019/1937 provides a standard of “reasonable grounds”. The laws of Bosnia and Herzegovina and Republic of Srpska have not been amended in the meantime since their adoption. They contain a number of similar solutions, which are not in line with European standards. Therefore, it seems that both regulations were adopted solely to meet the conditions in the EU accession process, and not because of the real needs of practice.

The Macedonian Law on the protection of whistleblowers was passed in 2015, and it was amended in 2018. Although in relation to the regulations of Bosnia and Herzegovina and Montenegro, the Macedonian law is to a greater extent harmonized with the European standards in the field of protection of whistleblowers, its provisions require additional harmonisations. In order to achieve full compliance, the relevant provisions need to be improved are the provisions about protection of employees from recrimination or other negative consequences when reporting against corruption, provisions which define requirement that the disclosures be made on reasonable grounds and defines abuse of the right to whistleblowing and prescribed sanctions for such conduct, the provisions which prescribe the waiving criminal liability for protected disclosures (disclosure of information related to official secrets or national security) as well as provisions which prescribe the obligation to maintain the secrecy of the identity of whistleblowers as well as effective and proportionate penalties for persons who violate this obligation. Deadlines and obligation to keep records of any type of whistleblowers at the level of the institutions must be clearly prescribed by the Law on the protection of whistleblowers of the North Republic of Macedonia.

The protection of whistleblowers in Montenegro is not regulated by a special law but by a Law on the prevention of corruption. Mentioned law was passed in 2014 and amended in 2017. Its implementation began in January 2016, and when the anti-corruption agencies started working. However, the application of its provisions concerning the protection of whistleblowers is limited exclusively to those who report corruption. Therefore, it is more expedient to pass a law in Montenegro which will exclusively regulate the protection of whistleblowers as a person who not only report corruption, but also other illegalities and irregularities in order to protect the public interest, in accordance with European standards. The provisions of Montenegrin law that protect whistleblowers, as

well as the regulations of other countries, require additional harmonization with European standards.

When it comes to the area of whistleblowing in the security and defense sector, it can be concluded that there are no special regulations governing this matter. It is exclusively prescribed by the Laws that regulate the area of protection of whistleblowers or prevention of corruption. However, these regulations are not fully in line with international standards. So it is necessary to make additional adjustments. Special attention should be paid to the areas related to the waiving of whistleblower of criminal and other types of liability, as well as the area regarding to establishment of obligation for institutions and legal persons to prescribe internal procedures for internal whistleblowing.

Given the specific nature of security and defense laws, it would be useful to provide by these laws the application of the national legislation regarding the protection of whistleblowers in the event of the need to report irregularities, illegalities or unethical conduct which a member of the security of defence service learns of during performing the service in the police or arms forces.

At the level of the Republic of Serbia, there are regulations that provide protection to whistleblowers. The Law on the Protection of Whistleblowers was passed in 2014, and amended in 2016, and the Rulebook on the Protection of Whistleblowers of the Ministry of Justice in 2015. However, despite this, additional harmonization of regulations with international standards is needed. Regulations governing service in the police and armed forces do not, define whistleblowing and protection of whistleblowers. Therefore, these regulations were not the subject of this analysis.

According to Serbian legislation, the whistleblower cannot inform the public if the information contains secret information, unless otherwise provided by law. That provision neither specifies nor indicates to which law this exception applies. If this is not the case, the whistleblower and other persons are obliged to adhere to the general and special measures for the protection of classified information prescribed by the law governing the confidentiality of information. That solution is quite discouraging for potential whistleblowers. In addition, the proportionate penalties for persons who violate the obligation to maintain the secrecy of the identity of whistleblowers must be prescribed by the

national legislation of the Republic of Serbia. Bearing in mind the possibility of abuse of whistleblowing, national legislation should prescribe a sanction for a person who abuses that possibility.

The legislation of the Republic of Serbia must be also improved regarding the clear procedures and channels for reporting of wrongdoings. The Law on Protection of Whistleblowers doesn't prescribe the clear procedures regarding external whistleblowing. In addition, the obligation for public and private sector institution to establish an internal procedure which will define in more detail the manner of internal whistleblowing should be prescribed for all institutions regardless of the number of employees. Bearing in mind the importance of the existence of written communication and evidence for possible later proceedings and the protection of whistleblowers, it is necessary to prescribe the deadlines of keeping records of any type of whistleblowing. In order to encourage such activities, the Law of the Republic of Serbia should also prescribe the possibility of rewarding of whistleblowers. The clear procedure of external whistleblowing must be prescribed by Law, as well as authorised institution to receive disclosures. However, the Serbian legislation is fully in line with international standards regarding the availability of judicial review for the whistleblowers. The legislation of the Republic of Serbia requires additional harmonization with international standards regarding the existence of effective sanctions for persons who prevent the whistleblower from filling a report or who take revenge on the whistleblower or persons close to him.

Given the specific nature of security and defense laws, it would be useful to provide by these laws the application of the national legislation regarding the protection of whistleblowers in the event of the need to report irregularities, illegalities or unethical conduct which a member of the security of defence service learns of during performing the service in the police or arms forces.

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