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Safe or Sorry: Whistleblower Protection Laws in Europe Deliver Mixed Results



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Safe or Sorry: Whistleblower Protection Laws in Europe Deliver Mixed Results

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Preface

Anna Monaghan is not a household name. In the sphere of whistleblower protection, it should be.

Monaghan was harassed, intimidated, bullied and eventually suspended from her job in 2014 after telling authorities about mistreatment at Áras Chois Fharráige Nursing Home in rural Ireland. Two years later, Labour Court Judge Caroline Jenkinson ruled that Monaghan was a victimized whistleblower entitled to compensation.

Why is this case so important, especially for Europe?

First, the Irish Labour Court came to Monaghan's defence in a way that few if any courts within the EU had ever done before. Without equivocation, Judge Jenkinson declared that the thinly veiled "disciplinary" action taken against her actually was retaliation for reporting the mistreatment, and that her rights under Ireland's Protected Disclosure Act were violated.

Jenkinson not only correctly understood the purpose and spirit of the law, she also applied it wisely and fairly. She did not fall for management's age-old ruse: trying to disguise whistleblower retaliation as discipline.

The EUR 17,500 in compensation Jenkinson ordered the nursing home to pay Monaghan, quickly received attention throughout Ireland, particularly in legal circles. The message was clear: firing a whistleblower can come at a big price for employers.

Moreover, the media attention that the case did receive was overwhelmingly sympathetic to Monaghan, a mother of nine in her 50s. She was not portrayed as a "snitch," as journalists were prone to label whistleblowers until recently. Rather, it was the nursing home whose reputation was drawn into question – providing yet another incentive for employers to think twice before victimizing whistleblowers.

The case of Anna Monaghan should serve as an example to the rest of Europe that a whistleblower protection law can work in practice. These laws, in fact, *must* work in order for governments to recapture trust from citizens exasperated with fraud and corruption.

Plainly, strong legislation is the first step. But these laws cannot succeed without a competent understanding and a true commitment by judges, ombudsman's offices, anti-corruption agencies and other public officials.

Lawyers and activists also need a working knowledge of whistleblower policies and practices in order to do justice to the needs of whistleblowers, while helping to ensure that their reports of misconduct and public health threats are met with corrective actions.

Unfortunately, most cases in Europe do not end with such a positive, clear and decisive outcome.

Even though many EU countries have enacted at least partial legal protections for whistleblowers, most laws are poorly and erratically enforced. Only a very few countries have specialized agencies to advise, support and protect whistleblowers. In nearly all countries, victimized workers must embark on long and costly court battles to even have a chance of being reinstated and compensated.

On top of this, many public officials responsible for protecting whistleblowers simply lack the interest, dedication and courage to uphold their rights.

This report profiles some of the most illustrative cases that have unfolded in Europe in recent years. Through the lens of these cases, a picture emerges of how well – if at all – European whistleblower laws are actually working in practice. It provides the first glimpse of the forces and factors that can help or hinder a whistleblower protection system, and offers points for thought and reform to make these systems function better.

Only with improved performance can victories such as Anna Monaghan's be replicated elsewhere.

Executive Summary

This is the first independent public report assessing how well whistleblower protection laws in Europe are functioning in practice.

Studies have examined the written content of whistleblower laws, by comparing their provisions to European and international standards. This is the first effort to examine the application of these laws in the real-life cases of employees who suffered retaliation after reporting crime and corruption in Europe.

To date, Europe lacks a centralized agency that counts and tracks whistleblower disclosures, retaliation complaints and case outcomes. At the national level, a vast majority of countries – even those with whistleblower laws in place – also lack such agencies. Official statistics, case summaries and analyses are rare.

Relying on the information that is publicly available, this report assesses the implementation of whistleblower laws by examining key cases in selected countries where laws and systems are in place.

Points of Weakness

A review of practices and cases in 15 European countries with legal protections shows that implementation and enforcement of whistleblower laws and policies is inconsistent across Europe. In the following two chapters, this report offers analysis of 12 European countries that offer whistleblower protection in law (Belgium, France, Greece, Ireland, Malta, Netherlands, Slovakia, Sweden, Bosnia and Herzegovina, Hungary, Serbia, UK). In the third chapter, this report provides case studies of seven precedent-setting whistleblower protection cases - four in countries already covered and three in additional countries (Romania, Luxembourg and Kosovo). These cases illustrate various strengths, weaknesses, and challenges whistleblowers face in Europe's diverse national environments.

In most of the 15 jurisdictions studied, implementation suffers from a range of factors including:

- the absence of a designated public authority to protect whistleblowers, monitor cases, oversee corrective actions and report information to the public;

- inadequate coordination among public officials to ensure compliance with laws;
- the lack of comprehensive, plain-spoken information for citizens and employees on whistleblower policies and mechanisms;
- gaps and loopholes in legislation that employers exploit in order to victimize workers who expose misconduct;
- the necessity for victimized whistleblowers to obtain relief through long and costly lawsuits, rather than via administrative (non-judicial) means;
- inconsistent rulings by judges and courts in unfair dismissal and other retaliation cases.

Countries with Established Whistleblower Laws

Four countries with established whistleblower laws and policies were studied. The findings for each include:

- **Bosnia and Herzegovina:** The anti-corruption authority (APIK) has designated staff to oversee the Law on Whistleblower Protection. APIK coordinates with the Ministry of Justice to ensure retaliation complaints are investigated in a timely fashion, employees are protected under the law, and orders to cease workplace retaliation are followed. This transparent system has produced several successful cases.
- **Hungary:** Little is publicly known about enforcement of the Act on Complaints and Public Interest Disclosures. The Commissioner for Fundamental Rights forwards reports to other agencies – sometimes to the same agency where alleged misconduct occurred. It does not investigate disclosures itself. Workplace retaliation cases are not known to be monitored. No whistleblowers are known to have used the law.
- **Serbia:** It took two years and 443 cases for a victimized employee to achieve a significant legal victory under the Law on Protection of Whistleblowers. Novi Sad city employee Marija Beretka won her retaliation case in May 2017. The system has suffered because judges have not ruled consistently on retaliation cases, and victimized employees may have to file separate lawsuits in three layers of courts.
- **UK:** After 20 years of practice, the Public Interest Disclosure Act offers fewer protections and more burdens than originally envisioned. Employers have exploited the law's gaps and anachronisms to the detriment of many workers seeking remedies. One of the law's co-authors called the law "dangerous for whistleblowers because people think they have stronger protection under it than they actually do."

Countries with Newer Whistleblower Laws

Eight countries with new whistleblower laws and policies were studied. The findings for each include:

- **Belgium:** Though generally favourably received by experts, the Law on Reporting a Suspected Integrity Violation has had no known impact yet. Public employees must follow a cumbersome multi-step process in order to apply for protection.
- **France:** The Defender of Rights has protected about 60 people under a new whistleblower law, but the nature and scope of these protections is not publicly known. One downside is that whistleblowers must act “in a disinterested manner.”
- **Greece:** In a legal milestone, the first whistleblower received protection under Article 45b of Law No. 4254 in 2015. However, this protected status was subsequently partially revoked during the case, highlighting the instability of protections offered in Greece.
- **Ireland:** Three employees are known to have won court cases under the Protected Disclosures Act, which has benefited from strong provisions and transparent mechanisms. Several legal experts are encouraged by the law’s early successes.
- **Malta:** While the Protection of the Whistleblower Act is strong on paper, and thorough information about it is available to the public, little is known about how well the law is working in practice.
- **Netherlands:** In its first six months of operation, the House of Whistleblowers was contacted by 70 people considered to be whistleblowers. The agency, however, is not empowered to legally intervene to protect employees from retaliation.
- **Slovakia:** Though in place for three years, very little is known about Slovakia’s whistleblower system. An early analysis found that even if a whistleblower knew about the law, they could not count on much support.
- **Sweden:** The three-page whistleblower law lacks specific mechanisms for employees to report misconduct, who will protect them, how they will be reinstated and compensated if they are victimized, and how reports will be investigated.

Selected Cases

Key cases in seven countries were studied. The findings for each include:

- **Bosnia and Herzegovina:** Tax official Danko Bogdanović was reinstated in 2015 following the intervention of APIK. Unprotected by the law, mining company Tuzla Kvarc suffered serial retaliation after exposing a bribery scheme in 2015.
- **Ireland:** Caregiver Anna Monaghan won a landmark retaliation case in 2016 before the Labour Court, which ruled she was victimized after reporting mistreatment of patients.
- **Kosovo:** Rather than being thanked, bank cashier Abdullah Taçi was fired and convicted of disclosing secret information in 2015 after reporting theft of public funds.
- **Luxembourg:** In January 2018 the conviction of “LuxLeaks” tax evasion whistleblower Antoine Deltour was overturned and that of his co-defendant Raphael Halet was upheld. Both were spared from prison.
- **Romania:** In the first publicly known application of a 12-year-old law, the suspension of transportation whistleblower Claudiu Țuțulan was thrown out in 2016.
- **Serbia:** Following a two-year legal struggle spanning several courts, Marija Beretka prevailed in the retaliation case against the city of Novi Sad in 2017.
- **UK:** Cardiologist Raj Mattu was awarded GBP 1.22 million in compensation in 2017, seven years after he was fired for exposing poor care and overcrowded cardiac wards. A judge cut the compensation for caregiver “Sarah” after holding her partially responsible for being fired after reporting child abuse.

Best Practices for Implementation

To aid public authorities in transforming legislation into policies and procedures that actually work for the benefit of whistleblowers, “Best Practices for Implementing Whistleblower Protection Laws” have been developed. This set of practices is based on interviews and other first-hand interactions with policy-makers, public officials, legal practitioners, whistleblower advocates, anti-corruption experts, independent researchers and whistleblowers themselves.

Practice in European Countries with Established Whistleblower Laws

Since 2013 in particular, public authorities have been more transparent in managing their whistleblower systems, the media has greatly deepened its coverage of cases, and research and advocacy groups have greatly expanded their tracking of policies and practices.

High-profile cases, especially a recent series of national security and financial scandals, have in a fundamental sense raised the profile of whistleblowing throughout the general public around the world.

There is a growing awareness about the need to assess the effectiveness of whistleblower laws and mechanisms. While there has been growth in the data available about cases over the past 5 years, in general it remains difficult to obtain the data needed for the study of cases.

This is often because countries simply do not collect, or do not publish, statistical or qualitative data on cases. In the instances where they do so, the data is sometimes not available in the detailed form needed for analysis.

Here, the UK's 1998 law, the oldest in Europe, and three laws passed in 2014 are assessed in terms of their success or failure in preserving whistleblower rights.

Bosnia and Herzegovina

In 2014 Bosnia and Herzegovina became the first country in the world to develop a system to protect whistleblowers from retaliation in the workplace *before* it causes severe career and personal harm, and without the need for whistleblowers to go to court to exercise their rights.

Under the Law on Whistleblower Protection in the Institutions of Bosnia-Herzegovina, public employees who work at the state level can apply for protection even if they only suspect that retaliation could occur. Unlike every other whistleblower law in the world, Bosnia's law does not require employees to wait until they are fired, demoted, harassed or otherwise retaliated against before seeking whistleblower status via what local experts call "pre-court protection."

Rather than filing a lawsuit, victimized whistleblowers can apply for whistleblower *status* with the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK). Whistleblowers need not hire a lawyer, and applications are answered within 30 days.

In another ground-breaking provision, government officials who defy orders to reinstate fired whistleblowers, or fail to cease retaliation of whistleblowers, may be personally fined up to EUR 10,000. This is a powerful disincentive for retaliation.

These three key provisions – pre-emptive protection, non-judicial relief, and personal liability for retaliation – give whistleblowers a fighting chance to preserve their jobs, their careers and their financial security.

The ultimate key to the system's success is a team of APIK staff specifically assigned to enforce the law, which has broad-based training on the issue.

The law is overseen by APIK Assistant Director Mevludin Džindo, who explained the system's success:

Our whistleblower law is one of the few legal solutions in Bosnia that has worked really well since the very day it came into force. The main reason is that we came up with clear and strong by-laws in collaboration with the courts and the Ministry of Justice. This gave us a very good opportunity to follow through on what the law dictates.

Importantly, our agency, APIK, has a special unit in charge of enforcing the law. Ensuring that the law works at a high level and in a timely way is one of our key work principles.

Cooperation within the government is very important. Working closely with the Ministry of Justice, we carefully review every retaliation complaint and ensure that whistleblowers receive the protections they are entitled to under the law. Upholding their rights is our priority.

It is important to have strong mechanisms that also serve as clear guidelines, and it must be clear who is in charge of enforcing the law. There must be effective legal and institutional frameworks. Above all, it is important to have professional lines of communication among everyone involved.

Bosnia can be a great example for all countries in the region, since our system is actually working. Anyone can visit our agency's website and become familiar with what we are doing – all of our capacities and knowledge are available to everyone.¹

Among Bosnia's successes is the case of V. Bogdanović, a customs whistleblower who was reinstated in 2015.

Hungary

When Hungary passed its first democratically inspired Constitution on 18 April 2011, Article 30 of the Fundamental Law established the Ombudsman's Office to protect the basic rights of all people in the country.

Also known by its complete name, the Office of the Commissioner for Fundamental Rights, the Ombudsman acquired an important new responsibility in 2014. Hungary strengthened its whistleblower protection law and put the Ombudsman in charge of administering it. Lawmakers in the National Assembly hoped the new law would improve upon previous policies² that were widely deemed inadequate.

The Act on Complaints and Public Interest Disclosures (2013) includes many European and international standards, including coverage of public and private sector employees, the ability to report crime and corruption securely and anonymously, and a requirement that alleged crimes and violations be investigated.

The law, however, has many shortcomings. It does not provide for a full range of disclosure channels for employees and citizens. It bans retaliation but lacks the means to protect employees and citizens from reprisals, criminal prosecution and civil actions. Nor are there specific remedies for victimized whistleblowers to be reinstated or compensated. The law requires disclosures to be investigated but not for the results to be released to the public.

Whistleblowers can file reports through the Ombudsman's online system (www.ajbh.hu), but the office forwards them to other agencies and does not investigate the reports itself. Further, disclosures from employees are not known to be distinguished from citizens' reports. Workplace retaliation cases are not known to be monitored.³ Thus, Hungary's whistleblower law lacks the very basic and concrete protections needed by whistleblowers.

Through its annual reports, the Ombudsman releases the number of reports it

receives (see Table 1). However, it does not release the number of workplace or other retaliation complaints and how these cases were resolved, if at all. This reflects the fact that the law does not empower the Ombudsman to protect people from reprisals. It can only protect the identity of whistleblowers.

Table 1: Reports to Hungary’s Office of the Commissioner for Fundamental Rights (Ombudsman), 2014-16

Period	Reports (#)	Well-grounded reports (%)	Reports submitted anonymously/ confidentially (%)	Workplace retaliation cases (#)	Victimized whistleblowers reinstated/ compensated (#)
Jan-Oct 2014	270	40	?	?	?
2015	358	52	90	?	80
2016	314	56	80	?	90

Source: annual reports of Office of the Commissioner for Fundamental Rights, 2014-2016 (www.ajbh.hu)

The Ombudsman releases only the generic nature of reports. In 2014 most cases related to corruption, along with concerns about the environment, waste dumping, construction, transportation and public administration. In 2015 most complaints concerned consumer protection, the environment, police, tax fraud, public procurement and corruption.

The Ombudsman said it referred the complaints to various public authorities, including the National Tax and Customs Administration, mayors’ offices, police departments, environmental and health regulators, Human Resources Minister, National Economy Minister, and the Budapest local government.^{4 5}

Reflecting the significant lack of transparency in the system, the Ombudsman said these authorities “have all taken the necessary measures” and “took care of remedying the situation.” Certain information on cases is posted on the Ombudsman’s website, though not in an easily searchable manner. The website has no separate sections on measures taken or how situations were remedied, or on enforcement or corrective actions taken in response to whistleblower disclosures and complaints.

An Ombudsman’s Office spokesperson would not specify what “necessary measures” have been taken or how the office “took care of remedying the situation.” Additionally, the spokesperson said the office does not:

- distinguish reports from citizens from those originating from employees in a workplace situation;
- maintain statistics on cases involving employees in a workplace situation;
- track or investigate retaliation complaints from employees in a workplace situation;
- take any measures or steps to protect employees from whistleblower retaliation in the workplace, or compensate them for retaliation.⁶

According to K-Monitor, a Budapest-based NGO that specializes in a range of anti-corruption and citizen participation, the Ombudsman's effectiveness suffers because its main role is to forward reports and complaints to the very same institution where the misconduct presumably has occurred.⁷ This lowers the chance that reports will be objectively and thoroughly investigated, and that guilty parties will be held to account.

An Ombudsman's Office spokesperson would not say what percent of reports and complaints are forwarded to the same ministry or agency that was responsible for the alleged misconduct.⁸

The K-Monitor representative said the office is not empowered by the law or adequately staffed, and lacks the resources to ensure that reports are substantively investigated. "The Ombudsman can only, as a formality, check the investigations being conducted by other authorities."⁹

Serbia

Serbia's Law on Protection of Whistleblowers took effect in June 2015 following a lengthy and inclusive effort that united a full range of stakeholders – from policy-makers and elected officials, to activists and international experts. It was seen as a model not only for the Balkans, but for all of Europe and beyond.

"Guess which country is a surprising gold standard for whistleblowers. Did you guess Serbia?" a newspaper in Canada announced.¹⁰

The benefits of these new rights, however, have been slow to materialize. According to an analysis by the Center for Investigative Journalism of Serbia (CINS), the law is still dealing with growing pains that raise questions about how well the law is working in practice.

Only after two years and 443 cases did a victimized whistleblower finally achieve a significant victory in court. On 22 May 2017, Novi Sad city employee Marija Beretka won her retaliation case before an Appeal Court, which ordered the city to reinstate her, pay her EUR 810 in damages and cease any further

retaliation. Beretka sued the city after she was twice punitively transferred for exposing irregularities related to parking violations.

CINS found that despite being trained on the new law, Serbian judges have not ruled on unfair dismissal and other retaliation cases in a consistent manner. Different judges presented with similar facts have issued entirely different rulings. This was a major problem Beretka faced in the numerous courts that heard her case.

Within the Serbian legal system, CINS reported, “Victimized whistleblowers seeking relief may have to file separate lawsuits in three layers of courts: Basic, High and Appeal. The subtly different and sometimes overlapping roles of each court that has jurisdiction over the law – which the law itself does not explain – adds to the confusion. It also can greatly add to the time and expense of pursuing justice.”

These difficulties expose the problems caused by requiring victimized whistleblowers to file lawsuits in order to be reinstated to their positions and compensated for their losses. Months or even years can pass before a person who was unfairly dismissed or harassed can obtain justice.

Serbia has no designated agency nor centralized system to protect whistleblowers or intervene in cases. Therefore, people must rely on the courts and often need to hire a lawyer to represent them. It also means that victimized employees cannot obtain “whistleblower status.” They must ask a judge to order their managers to stop retaliating against them – and hope that the judge agrees.

Nevertheless, 443 whistleblower-related cases were filed in Serbian courts during the first two years after the law took effect. On the upside, this indicates that the citizenry is aware of the law. On the downside, this shows that hundreds of people have been retaliated against for reporting crime and misconduct within their workplace.

Seventy-one cases were filed in Serbian courts within six months of the law taking effect. This jumped to 295 in the whole of 2016, but dropped to 77 cases in the first half of 2017, according to the Supreme Court of Cassation. (See table, next page.)

Table 2: Number of whistleblower-cases filed in courts in Serbia 2015-17

	Basic courts	High courts	Other courts	Total
Jun-Dec 2015	7	42	22	71
Jan-Dec 2016	14	185	96	295
Jan-Jun 2017	2	34	41	77
Total	23	261	159	443

Source: Supreme Court of Cassation, Serbia - Analysis by Center for Investigative Journalism of Serbia

Supreme Court Judge Snežana Andrejević, who helped draft the law, said in an interview with CINS she is not surprised by the drop in cases but predicts it may rebound. “People are waiting to see what will happen to other whistleblowers,” she said.

Andrejević told CINS that the absence of a major whistleblower case thus far may indicate that “people are cautious and do not have enough confidence in court protection of whistleblowers yet, because they do not know enough about it.” She said the focus should be on educating people who work in institutions – as they are potential whistleblowers – as well as educating those who receive reports and complaints.

Nemanja Nenadić of Transparency International (TI) Serbia told CINS that the decline could be due to a drop in corruption reports. “This could be an indirect indicator that the law is not being used enough for its primary purpose: to report illegal and harmful actions,” he said.¹¹

TI Serbia released an in-depth report in 2017 that explores many potential benefits and problems with the technical aspects of the law. Among the shortcomings, according to the report, is the absence of a public oversight agency: “The opportunity to place one body in charge of the general oversight of the law implementation was missed (e.g. the Ministry of Justice which prepared the Law).”

Despite the large number of court cases, TI Serbia found that public authorities have taken almost no steps to inform potential whistleblowers about whom they can contact and what they can expect.

“The information about whistleblowing generally cannot be found on the websites of ministries, while their Information Directories do not contain the

information about the number of received and resolved cases,” the report said. “[E]ven the calls to report corruption and other illegal action posted on the websites of individual ministries do not contain any information relevant to whistleblowing.”¹²

United Kingdom

When the UK passed Europe’s first whistleblower protection law in 1998, many experts gave strong praise to the new legislation.

Whistleblower activist Guy Dehn said passing the Public Interest Disclosure Act (PIDA) was “unbelievably fortunate,” and that “it must have been a whole sequence of stars and planets in happy alignment.”¹³ Union leader Rodney Bickerstaffe said PIDA “paves the way for a new climate of openness and partnership at work.”¹⁴ Employment lawyer Sara Barrett said, “Now, if you follow the correct procedures, there are laws in place to protect you – and your job.”¹⁵

After 20 years of practice, PIDA has been shown to offer fewer protections and to place more burdens on whistleblowers than originally envisioned. Employers have exploited the law’s gaps and anachronisms to the detriment of many workers seeking remedies after being fired or harassed for reporting misconduct.

The difficulties faced by whistleblowers have led one of the law’s co-authors to call for reforms. “PIDA is dangerous for whistleblowers because people think they have stronger protection under it than they actually do,” former UK Member of Parliament Lord Touhig said in 2013. “There are parts of the legislation that are simply not appropriate any longer and contain all sorts of problems. It is tired, frayed at the edges and needs to be thoroughly reviewed.”¹⁶

A 2016 report by the Thomson Reuters Foundation and Blueprint for Free Speech assessed PIDA’s implementation by reviewing Employment Tribunal (ET) case files and rulings, media reports, research analyses and academic papers, in addition to interviewing lawyers, whistleblowers, experts and advocates.

The report found that PIDA “is broken and no longer able to adequately protect whistleblowers” and “cannot adequately fit its purpose without a substantial makeover.”

“Once a worker blows the whistle,” the report found, “PIDA is powerless to stop managers and co-workers from retaliating against that person. From the perspective of the whistleblower, PIDA can enable and even institutionalise

retaliation, rather than preventing, stopping or penalising it.”

The report’s main conclusions are:

- PIDA does not protect a whistleblower from retaliation before it occurs – or even as it is occurring. The law relies on compensation after the fact. Employees may file an Employment Tribunal claim for “protection” after they are fired, harassed or otherwise retaliated against. By then, the career, financial and emotional harm has most likely already occurred;
- The Employment Tribunal system is neither an informal, nor low-cost solution to resolve disputes. Costs are high for the average person, waiting times are long, and these courts are a domain for expensive, specialized lawyers who can outflank whistleblowers who cannot afford their own legal representation.
- Based on the outcomes of 139 Employment Tribunal cases from 2007-14, the median compensation for employees who won their cases was GBP 17,422. In 21 illustrative cases, the average complaint took 20 months to be resolved. Legal fees for plaintiffs typically ranged from GBP 8,000 to GBP 25,000.
- Judges allow employers to examine a worker’s complete work record. This opens the door to character assassination and employers levelling trumped-up allegations against whistleblowers in the hope that they will lose credibility or their entire case, or have their compensation amounts reduced. In one case, a caregiver at a Leeds youth home “won” her Employment Tribunal case, but a judge then reduced her compensation by 25 percent for reasons unrelated to the whistleblower case.
- PIDA contains no direct civil or criminal penalties to stop, prevent, or discourage bullying, victimization or harassment.
- Outdated, ill-suited legal principles have been imported to PIDA from other areas of law, leading to unintended consequences and interpretations that weaken protections and remedies. Even employees who win their Employment Tribunal cases can see their compensation reduced by arcane rules subjectively interpreted by judges.

In addition to these and other problems with how PIDA is enforced, the report found the law contains only 37 percent of international standards developed by the Council of Europe, OECD and NGOs that specialize in whistleblower policy. Thirteen of the 26 standards are missing from PIDA.

The report's recommendations include:

- setting up a rapid-response system to protect whistleblowers;
- establishing a specialized government agency to protect whistleblowers;
- penalizing whistleblower retaliation and violations of PIDA and related laws;
- establishing new standards and criteria for Employment Tribunals specifically geared for whistleblower cases and the needs of whistleblowers;
- government agencies and medium to large companies to establish meaningful internal whistleblower procedures;
- requiring regulators and investigative agencies to follow up on whistleblower disclosures;
- placing the full burden of proof on employers to show any actions taken against a worker were not related to their act of whistleblowing;
- significantly lowering Employment Tribunal fees and simplifying the hearing process.¹⁷

In one notable improvement, ET rulings in PIDA cases are now available online and can be searched by party names and key words. Only rulings made since February 2017 are available through the system.¹⁸ Earlier rulings must be searched by hand at the paper-file repositories at the Bury St Edmunds County Court for England and Wales cases, and the Glasgow Tribunal Hearing Centre for Scotland cases.

Practice in European Countries with New Whistleblower Laws

Since 2013 many countries in Europe have passed new or improved whistleblower protection laws. This has come in response to a range of forces: pressure from citizens; media coverage of disclosures and cases; interest by the EU, UN, OECD and other international organizations; and growing cultural awareness of the role of citizens and employees to expose corruption in the face of institutional failures.

Experience has shown that new whistleblower policies and frameworks rarely function effectively from the start. Public officials, judges and others in authority must assimilate a practical knowledge of these new systems into their work. Employers, in both the public and private sectors, need to learn how to enable staff members to report misconduct while mustering the courage to shield them from reprisals.

Above all, citizens must study new whistleblower procedures and seek expert advice before disclosing inside information – or decide, despite having new legal protections, that the risks to their job security and personal safety are still too great.

Here is a review of eight European countries with newer whistleblower laws and systems, or articles of law, that have yet to reach a full stage of development.

Belgium

Following 15 years of debate and several high-profile whistleblower cases with poor outcomes, Belgium in 2013 passed law that seeks to protect public employees who report misconduct within the federal government. It is known as the “Law on Reporting a Suspected Integrity Violation in a Federal Administrative Authority by a Staff Member.”

Though generally favourably received by experts, the law and its frameworks have had no known impact.

Monitoring the law has proven to be difficult: each federal agency has its own disclosure channels, and the only public agency with a formal role in implementing the law – the Federal Ombudsman (*le Médiateur fédéral*) – has

released no information or statistics on whistleblower disclosures or retaliation complaints. In 2016 the Ombudsman said it opened a total of 6,892 cases in 2015, but that whistleblower reports were not counted separately.¹⁹ The Ombudsman did not respond to requests for updated information.

This lack of information not only makes tracking implementation and practice a challenge, but it also raises transparency concerns. This is compounded by the fact that negative social perceptions of whistleblowers – generally called “denunciators” in Belgium – deter many people from coming forward out of a fear of being labelled a traitor or snitch.

The only known public information available are the disclosure instructions posted online by the Federal Ombudsman’s office. The procedures present challenges in themselves, as they create a uniquely cumbersome multi-step process that employees must follow in order to be eligible for protection from retaliation at work.

As a first step, the instructions suggest asking for an interview with the Ombudsman’s Integrity Centre or the “trusted person of integrity” (*Personne de confiance d’intégrité*, or PCI) at the employee’s workplace. The PCI only advises employees and is not empowered to investigate allegations of misconduct. The PCI merely forwards complaints to the Ombudsman.

It should be noted that by first approaching an official *within* the workplace – rather than an external contact who could maintain confidentiality – immediately exposes the employee to potential retaliation.

The next step is to send a “request for opinion” to the PCI. This form can be sent to the Integrity Centre only if there is no PCI, if the employee wants to make a report on an agency other than where they work, or if directors within their agency may be involved with the misconduct.

The employee must wait up to eight weeks for an answer from the PCI or Integrity Centre as to whether the employee’s report actually concerns a type of misconduct covered by the whistleblower law. Only if the PCI or Integrity Centre agrees that misconduct may have occurred is the employee permitted to actually report the misconduct. This is done by completing and signing another form – the “Confirmation of Denunciation” form, which the employee may submit publicly or confidentially.

If the PCI rules the employee is not permitted to make a report because the misconduct is not covered by the whistleblower law, the employee may appeal

this decision to the Integrity Centre. If the Integrity Centre rules against the employee, this final decision cannot be appealed – and the employee is not eligible for protection from retaliation.

Once the Integrity Centre begins investigating misconduct, the employee is protected from any adverse employment actions for two years. Actions can be taken only if managers can show they were not related to the whistleblowing case.

When the investigation is completed, the Integrity Centre sends the results to agency managers or the minister for corrective action. Whistleblowers are informed of the results but not the details – “in order to guarantee the secrecy of the investigation.”^{20 21}

Belgium’s whistleblower law has no provisions for federal employees to report crime or corruption to the media, the public or a lawyer.

France

The dissolving of long-standing cultural opposition to the concept of whistleblowing through a series of high-profile scandals opened the door to France passing its first comprehensive whistleblower law in December 2016.

Following a lengthy advocacy campaign by a coalition of NGOs, whistleblower protections were woven into the “Law Relating to Transparency, Fight Against the Corruption, and Modernization of Economic Life.” It is better known as “Sapin II,” named for French politician Michel Sapin, who was Finance Minister when the law passed.

The law hands the responsibility of receiving and handling reports to the *Défenseur des Droits* (Defender of Rights), which serves as an ombudsman for citizens. Four staff members have been hired to run the program. Following up on the law, an implementation decree governing a range of procedures and mechanisms was passed in April 2017. The law is not expected to be fully implemented until 2018.

By the end of 2017, the Defender of Rights had provided protection to about 60 people. The agency would not specify the nature and purpose of the protections, however – for example, whether the people were protected from retaliation, compensated for victimization, or protected from their identity becoming known to other agencies or the public. It is also unknown how many public institutions are required to set up disclosure channels. The Defender of Rights did not respond to a request for information.

According to a review of the law, employees wishing to benefit from protections first must report misconduct to a supervisor or designated person at their workplace. Disclosures can be made to a judicial or administrative authority, or a professional order if an internal report is not properly investigated, or in cases of serious and imminent danger. As a last resort, reports may be made to the media or the public. Reports can also be sent to the Defender of Rights.²²

Though some experts have given Sapin II relatively high marks, one provision could pose serious difficulties for employees. The law only protects people from retaliation if they report misconduct “in a disinterested manner and in good faith” (“*de manière désintéressée et de bonne foi*”). This allows judges, prosecutors and lawyers to place a whistleblower’s motive on trial. An employee could lose all rights to protection and compensation if there is any hint of a personal grievance.

“The notion of acting ‘in a disinterested manner’ could be very easily used as a weapon against whistleblowers. It is indeed quite easy to prove that someone did not act in a completely disinterested manner,” notes one expert. “This would...lead to focus on the messenger, rather than on the message, which is at odd with the law’s objective of establishing a working environment where whistleblowers could speak out against fraud without fear of retaliation.”²³

As of the end of 2017, no employees are known to have filed lawsuits under Sapin II for unfair dismissal, harassment or other reprisals.

The fingerprints of the law can be seen in a criminal case settled in November 2017. A criminal court in Toulouse acquitted a care worker and a journalist who had been charged with defamation for saying on the radio that disabled children were being poorly treated at a care facility. The defendants’ lawyers argued their case in the context of whistleblower protections afforded under the new law.

Though the judges did not specifically mention Sapin II in their ruling, they called the women “whistleblowers” who were acting in the “public interest.” This key phrase appears in the opening provision of Sapin II.

Before she went on the radio, the care worker had warned managers several times about poor conditions in the centre, to no avail. The judges acquitted her because she was a witness who had precise facts and details of the abusive treatment, and because she was acting in the public and national interest to protect “the good care and respect of disabled, vulnerable children.” Moreover, her evidence was corroborated by two previous reports that detected an

“institutional form of abuse” at the centre. The judges ruled she had committed defamation but acquitted her of any crime because of the overriding public interest in exposing the abuse.

Greece

Greece’s tentative first steps toward introducing protection for whistleblowers into law in 2014 followed a stream of high-profile international and domestic corruption scandals.

Media reports of Government officials and private companies engaging in bribery, dubious loans and kickbacks reduced public confidence in Greek institutions, both within the country and across the European Community. The country’s financial crisis is seen to have many roots, with the thorny problem of corruption being one of them.^{24 25 26}

In an attempt to encourage those who identify corruption to come forward, the Greek government introduced whistleblower protection in Article 45B of Law No. 4254: Measures to Support and Develop the Greek Economy (2014) which provides protection from prosecution for witnesses.²⁷ The legal protection is not a stand-alone, dedicated law protecting whistleblowers, rather it is a component of a larger law.²⁸

In Greek law, whistleblowers are termed ‘public interest witnesses’. They can receive protections from being prosecuted from particular types of offenses, including ‘perjury, false denunciation, calumniating defamation, violation of classified information or disclosure of personal data’.²⁹ They must meet a set of tests, including making disclosures in good faith, and then they must win approval for their status from the prosecutors.

There are other sections of Greece’s laws that offer some measure of protection to those who reveal serious wrongdoing, in some cases by implication rather than directly. However, the instances where this protection applies are quite limited, and the protections offered are also narrow.

All these assorted protections, taken together as a set, form the beginnings of a legal protection umbrella for whistleblowers. However, there are major gaps.

In particular, the 2014 law allows prosecutors to revoke protection status once granted. This has had a chilling effect on whistleblowers. They fear losing protections part way through what may be a long process of fighting to win back their jobs.

Following the introduction of the 2014 legislation, the first whistleblower applied for and was granted protected status in 2015.³⁰ Following this, the protected status in this case was partially revoked by a prosecutor. No official data could be obtained on the number of whistleblowers who have received protected status.

The narrow net of Greece's 2014 legislation addresses bribery of civil servants, but misses corruption more broadly, such as the risks to public health or safety which have been reflected in current whistleblower cases elsewhere in Europe. Whistleblowers are not protected from civil proceedings, nor from retaliation. There is no independent agency dedicated to accepting and handling disclosures, nor to recommend action based on those disclosures at arm's length from the prosecutors. There are no incentives or obvious supports for whistleblowers. The legislation does not cover the private sector.³¹

Despite these pronounced gaps in protection, whistleblowing plays an important role in the Greek component of an ongoing international whistleblower case.

Novartis, a Swiss pharmaceutical company, has been under investigation by US authorities for widespread misconduct, some of which occurred in Greece.³² The claims included bribery of doctors, public servants, high ranking officials and companies in exchange for favourable treatment in the Greek market.^{33 34}

In early 2017, Greece's Chief Corruption Prosecutor Eleni Raikou resigned after being targeted by "unofficial power centers" over her investigation into the bribery scandal.

The scandal was played out in the public sphere following a newspaper publishing a letter the prosecutor had sent to the Supreme Court where she complained of a lack of "institutional protection" at a time "when it was a common secret that we have the first important evidence in our possession, proving without doubt the extensive corruption but also the mechanism through which the above state officials were being bribed."³⁵

The case includes at least six protected witnesses.³⁶ At least two of the witnesses who gave evidence to the US Securities and Exchange Commission are Greek citizens. The two are employee whistleblowers who had worked at the company since 2008. Details of the other whistleblowers are not known.

The case attracted widespread media attention in Greece and led to declarations that the authorities would act swiftly to root out the corruption. The three

additional witnesses under the protection of the Greek authorities may be challenged by Dimitris Avramopoulos, who is the European Commissioner for Migration and Home Affairs and was the Greek Health Minister between 2006 and 2009. He has said he intends to file a lawsuit with the Greek Supreme Court to identify the whistleblowers.³⁷

On February 7, 2018, Greek prosecutors named eight former Greek government ministers and two former Greek prime ministers they alleged were connected with the case.³⁸ The prosecutors estimated that the alleged price-fixing ‘cost the state billions during the financial crisis which imposed hardship on many families’. The estimate of bribes paid to politicians in the case totals about EUR 50 million.³⁹

The Greek Prosecution’s case file includes testimony of 20 people, including that of the three protected witnesses.⁴⁰ Investigators in the case said the illegal practices of the pharmaceuticals industry has caused damage to the Greek state of about EUR 23 billion in total since 2000.

The Greek civil society organisation Hellenic Anti-Corruption Organization (HACO) drafted a proposed new Greek whistleblower protection law and set of procedures, which it presented to the Office of the Minister of Justice in Greece in November 2017.⁴¹ HACO says one of the particular strengths of its proposal is that it provides a complete, rather than add-on, legislative approach to whistleblower protections and would act as a cornerstone in the fight against corruption and the protection of Greek whistleblowers.

Ireland

Perhaps no whistleblower law passed recently in Europe benefited from more public debate and expert input than Ireland’s Protected Disclosures Act (PDA).

Enacted in 2014, the law contains provisions that are among the strongest in Europe, if not the world. Several years of consistent campaigning by advocates, led by the Ireland chapter of Transparency International, ensured a law that contains nearly all key European standards for protecting and compensating people who report crime and corruption.

One important takeaway is that the high level of effectiveness and transparency of the lawmaking process itself has – thus far – nurtured effective and transparent enforcement of the PDA in real-life cases.

Several Irish law firms have commented favourably on how the law has worked for the benefit of victimized employees. "The age of whistleblowing claims has well and truly arrived," said Bryan Dunne, head of the employment practice at Matheson.⁴²

The first successful PDA complaint for interim relief was filed by two employees of an ambulance company based in Leixlip.

Sean Clarke and Mick Dougan told Ireland's Revenue Commissioners in January 2016 that Lifeline Ambulance Service had attempted to evade taxes. They were then dismissed via redundancy. They filed a PDA lawsuit in Naas Circuit Court seeking either reinstatement or continuation of their salary pending their unfair dismissal complaint before the Workplace Relations Commission (WRC).

The Court ruled in July 2016 there were "substantial grounds" their dismissal was linked to the disclosure. Lifeline Ambulance backed down and offered to re-employ Clarke and Dougan, but the two men refused the offer. Instead, the Court ordered the company to pay their salaries until their WRC case is concluded. The company was also ordered to pay the employees' court costs.

Matheson'Dunne remarked, "It is expected that following the media attention around this order, highlighting just how effective they can be in severance negotiations, that there will be a change in employees' attitudes to the use of this legislation."⁴³

In the second such case, computer security company AlienVault moved to fire Catherine Kelly after she told the company's Texas headquarters about "a catalogue of health and safety disasters" in the 40-employee office in Cork. The Cork Circuit Court ruled in November 2016 that Kelly had "made out a stateable case that she was dismissed because of protected disclosure." A judge granted her request for an injunction to block the dismissal pending a final judgment.

In November 2016 care worker Anna Monaghan became the first person to win a full PDA retaliation case before a Labour Court.

"These cases highlight the very significant protections under the Act and the Courts' increasing willingness to apply these protections," the firm McCann FitzGerald wrote. "These cases, particularly the two successful injunctions, may also prompt and encourage future whistleblowers to seek these reliefs with more confidence that the Courts are willing to grant these."⁴⁴

Siobhra Rush of Leman Solicitors added that, “While the PDA has not produced the plethora of cases that were anticipated, at the very least we now have some valuable experience and an insight into how these cases will be approached in practice. Any employer will now need to be in a position to establish that any action taken against an employee who has made a protected disclosure is not connected to the disclosure itself.”⁴⁵

Unlike many countries with new whistleblowers laws, Ireland acted quickly to make comprehensive, plain-spoken information available to the public online.

The WRC’s Information and Customer Service explains not only the PDA, but also the steps and procedures for employees to make a report, and file a complaint or lawsuit in response to retaliation at work.

The website features information on:

- how to make a claim for unfair dismissal, which can result in compensation of up to 5 years’ salary, with some exceptions;
- how to make a complaint with the WRC for dismissal, threats and other reprisals, which should be made within 6 to 12 months after they occur, depending on the circumstances;
- how to use the WRC’s online complaint form;⁴⁶
- a list of officials and agencies – “prescribed bodies” – to which reports can be made;⁴⁷
- appealing WRC decisions to the Labour Court and High Court;
- obligations of public agencies to set up reporting procedures for public employees;
- a PDA Code of Practice for private companies to receive and handle reports from employees.⁴⁸

The WRC did not respond to a request for additional information.

Malta

A country with a history of sensational whistleblower cases, Malta passed one of Europe’s most comprehensive whistleblower laws in 2013. While the Protection of the Whistleblower Act is strong on paper, and thorough information on how to use it is available to the public, little is known about how well the law is working in practice – if at all.

Extensive information on the law’s goals, elements and mechanisms is presented by Malta’s Ministry for Justice, Culture and Local Government. One Ministry website plainly states: “Anyone who wants to raise the alarm on an act of corruption or illegality can do so safely within the Whistleblower

Act, a law that should also lead to a change in mentality. By the implementation of this legislation the citizens are given the right to report abuses, knowing they will be protected by law.”

All government ministries, and private companies over a certain size, are required to have internal reporting procedures, including a “Whistleblowing Officer.” An External Whistleblowing Officer has been designated within the Cabinet Office. Under certain conditions employees are protected if they report information to specific authorities, rather than within their workplace.⁴⁹

The Ministry has posted a list of all public and private sector contact points, including their names and individual phone numbers, e-mail addresses and mailing addresses.⁵⁰ It is one of the most extensive public lists of any country.

Ministry websites include detailed information and resources on a range of other issues:

- Private sector employees should use any internal procedures in place, lest they may not be protected from employment actions. If there are no internal procedures, each industry has an External Whistleblowing Officer.
- People who receive reports must maintain whistleblower confidentiality, barring exceptional circumstances. Their identity may not be revealed without their permission.
- Whistleblowers may lose protection if they disclose information for “personal gain,” knowingly disclose false information, or “make malicious reports aimed at harming the employer or a fellow employee”.
- The Ministry advises against anonymous whistleblowing, because if a whistleblower’s identity later becomes known, they may not be protected
- Whistleblowers should “let the facts speak for themselves,” not make “ill-considered allegations,” not “become a private detective,” and not “try to investigate the matter you are reporting on”.
- People who are involved with the crime or misconduct on which they are reporting may be eligible for immunity, or lighter sentences and fines. The Ministry urges people in these situations to seek legal advice.⁵¹

Though the Ministry has posted extensive information on how to use the law, it has not posted any figures on the number of disclosures, retaliation complaints, compensation claims, investigations, prosecutions, or violations of the law in its first four years in effect. On one Ministry website, a “Questions and Answers” section can only be viewed by entering an “e-ID.” The Ministry did not respond to requests for information.

Media reports have been incomplete and contradictory. In a 2014 article, Justice Minister Owen Bonnici said his office received 48 reports in the law's first year. The "most serious" were on alleged tampering of some 1,000 utility meters.

Among the law's shortcomings that may require reforms, Bonnici said retired and unemployed people are not protected, and that the fragmented system lacks a centralized office to handle all cases. Bonnici said he only knew of reports made to the Justice Ministry and not to other authorities and agencies.⁵²

Apparently contradicting the 2014 article, a 2017 media report said the Justice Ministry had received 29 reports since the law took effect four years earlier. The Ministry would not say how many reports led to investigations or court actions.⁵³

Malta's most sensational case stems from the "Panama Papers," 11.5 million anonymously leaked documents that exposed more than 200,000 offshore companies in 2015. Based on these records, murdered journalist Daphne Caruana Galizia reported that the wife of Malta Prime Minister Joseph Muscat held interests in a company in Panama, called Egrant.

A year later a former Pilatus Bank employee agreed to testify in the case. It is not known whether the person has sought protections under Malta's whistleblower law. Public criticism of the whistleblower has drawn statements of support from various politicians.

"I...appeal for protection of those who have come forward to reveal the rampant corruption," said Deputy Nationalist Party leader Beppe Fenech Adami. "The Nationalist Party will give full protection to all whistleblowers."

Shadow Justice Minister Jason Azzopardi said, "A whistleblower has guts. A whistleblower risks everything, so it is so disgusting that the (Prime Minister) is trying to discredit those who have the courage and guts to come forward – the same PM and government who brought in the whistleblower Act. I support the appeal...for more people to come forward and kill corruption in this country. It is a shame and also shocking that there is a campaign against the current whistleblowers."⁵⁴

Galizia was murdered by a car bomb near her home on 16 October 2017. Ten people were arrested in connection with attack in December 2017.

Galizia posted the last entry on her “Running Commentary” website a half-hour before she died: “There are crooks everywhere you look now. The situation is desperate.”⁵⁵

Netherlands

Despite lacking a long or rich history of whistleblower cases, the Netherlands became the first EU country to establish a special public agency to help employees report crime and corruption.

On 1 July 2016 the doors opened to the *Huis voor klokkenluiders* – literally the “House of Whistleblowers” – which officially is known as the Whistleblowers Authority. The agency was set up following the passage of the Whistleblowers Authority Act the previous March.

The Authority has five board members appointed by Royal Decree, and as of spring 2017 had an annual budget of EUR 3 million with a staff of 13. Though it falls under the Dutch Ministry of the Interior and Kingdom Relations, the Authority states that it works autonomously and independently. The Ministry is not permitted to obtain information on individual cases or exert influence on the Authority.

The agency’s main roles are to advise people who are considering making a report or who already have done so, and to investigate disclosures. Under the whistleblower law, it cannot legally intervene to protect employees from retaliation, or order employers to reinstate and compensate victimized whistleblowers. Employees suffering from reprisals must seek relief and remedies in Dutch courts or with assistance from labour unions.

Despite its somewhat limited powers, nearly 1,000 people contacted the Authority for advice and information during its first year, and about 30 people requested official investigations of alleged misconduct, according to agency spokesperson Arjen Wilbers. He said no court proceedings have yet been launched as result of any reports or complaints.

Wilbers said most reports concerned older cases, with some dating back 40 years. This has raised a set of challenges. “The difficulty is that sometimes organizations don’t exist anymore, or the people involved might be retired or even deceased,” he said. “We haven’t received requests for an investigation for more recent cases yet, because whistleblowing cases might take some time to take their course, sometimes years.”⁵⁶

Information released by the Authority is among the most comprehensive of any country. Appearing in Dutch and English, its first Annual Report was

published in March 2017. During the office's first six in months in operation from 1 July to 31 December 2016, 532 people contacted the agency, which was "considerably" more than it expected.

Of the reports, 70 were classified as whistleblower cases. Most private sector cases were about alleged misconduct in the financial sector. The largest category in the public sector was violations in municipalities and ministries, and in the semi-public sector, the top category was care and welfare services.

Functionally, the Authority's core tasks fall under two main sections – the Advice Department and Investigation Department.

The Advice Department advises people who suspect crime or misconduct at work. The "interest of the whistleblower," according to the Annual Report, is the "first consideration." Advisors exercise patience in dealing with each case:

It takes a lot of time in most cases to assess whether a work-related suspected wrongdoing is involved. In these cases, the advisor often holds extensive conversations with the reporter and studies the documents he has been sent. If the advisor deems that the issue presented to him is a work-related suspected abuse, he can provide advice and support in reporting it.

Furthermore, the advisor notifies the whistleblower of the risks associated with making a report and helps them to put their report down in writing effectively. The advisor can also bring the whistleblower into contact with the agency which has the authority to investigate the alleged abuse and support and guide them. And we can advise and support them when an investigation...is carried out through our Investigation Department.

The process is inclusive and collaborative: "The whistleblower is in control of every step in the process. The whistleblower decides himself or herself which step will be taken, how and when. This means that whenever a whistleblower – for whatever reason – decides not to make a report or take any follow-up steps, the advisor will respect that decision."

The Investigation Department probes reports of misconduct as well as retaliation complaints. A decision on whether to investigate a case must be

made within six weeks, though this can be extended if more information is needed. Everyone who requested an investigation in 2016 received a response within six weeks, according to the Annual Report.⁵⁷

Authority spokesperson Arjen Wilbers said about 75 percent of people who had made a report experienced some kind of disadvantage. “If we don’t take these issues into consideration,” he said, “it might deter future whistleblowers from reporting wrongdoing at all.”

Wilbers emphasized it is too early to gauge the system’s effectiveness. “We are in the process of analysing the effects of the law. We are, for instance, finding the limits of our legal authorization concerning investigations,” he said. “On some points, the law provides merely guidelines rather than hard definitions. There was a reason for this relatively open approach.”

Beyond the literal provisions in the law, Wilbers said the Authority is working to build an overall productive system based on good outcomes. “Our focus is on uncovering wrongdoing in a safe way, taking into consideration the need to protect whistleblowers from disadvantageous actions taken by employers. Plus, we are finding ways to tackle the financial and mental health problems caused by enduring a long process of whistleblowing.”

Wilbers said the Authority is also investing in prevention by advising organizations on how to set up proper whistleblower systems and integrity polices. About 80 percent have set up internal systems, he said, though only 48 percent meet the law’s requirements.⁵⁸

Slovakia

Though it is been in place for three years, less is known about Slovakia’s whistleblower protection system than perhaps any other in Europe.

The only prominent news has been Prime Minister Robert Fico’s response to reporters covering the case of whistleblower Zuzana Hlávková: “Some of you are dirty, anti-Slovak prostitutes. You don’t inform, you fight with the government.”

An employee of the Cultural Affairs Ministry, Hlávková publicly accused managers in November 2016 of pressuring her to ignore procurement rules in planning ceremonies for Slovakia’s EU presidency. Hlávková said the budget for two concerts rose by EUR 700,000, and that a pre-approved company was awarded the inflated contract. Transparency International (TI) Slovakia has asked public procurement, anti-monopoly and supreme audit officials to look into the case.⁵⁹

Hlávková left the ministry six months before she made her disclosure. It is not known whether she will avail herself of Slovakia's 2014 whistleblower protection law, the "Act on Certain Measures Concerning the Reporting of Antisocial Activities."

Even before Hlávková's revelations, TI Slovakia issued a report in 2015 that was critical of the Labour Inspectorates' role in implementing the law.

TI Slovakia said the Inspectorates were not adequately informing the public about the law, and that even if a whistleblower knew about the law, they could not count on much support.

Under the law, whistleblowers must apply for protection within one week after they are fired or otherwise retaliated against. When the TI contacted Slovakia's nine inspectorates, one responded on the seventh day, six responded within two weeks, and two did not respond within two weeks.

TI Slovakia found that even if a Job Inspectorate had responded quickly enough, it may not have helped.

"Five out of eight inspectorates failed to recognise the request as the one coming from a whistleblower and hence did not provide necessary information," a TI Slovakia staffer said in a media report. "The manner in which information is disseminated is declaratory, with the use of legal terminology that is incomprehensible for regular users. Therefore, the law exists only on paper but not in practice."⁶⁰

The law was little used in its first eight months, according to TI Slovakia. Labour Inspectorates did not receive any retaliation complaints from January to August 2015, though inspectorates protected seven people who had contacted police, prosecutors or other officials.⁶¹

Slovakia's National Labour Inspectorate (NLI) would not speak with researchers for this report. The agency provided via e-mail the following information, covering the time period since 1 January 2015:

- The NLI provided protection to 38 whistleblowers, the Prosecutor's Office protected 20, and regional Labour Inspectorates protected 18. (No information was provided on the nature and scope of the protection.)
- The NLI has no data on the number of people who have filed requests for protection, the number of requests denied, or the specific reasons for denials.

- The NLI has no data on the number of reports made to authorities, nor data on the number of disclosures classified as a “report” under the whistleblower law.
- The NLI has no data on the number and amounts of rewards (“fees”) paid to whistleblowers, or details on these cases.
- Labour Inspectorates allowed employers to take employment actions against six protected whistleblowers, in instances when the employer proved the actions had “no causal link” to the employee being a whistleblower. Nine such requests were denied.
- Fines totalling EUR 5,450 have been proposed for nine violations of the whistleblower law, including for employers who did not comply with the law before the deadline, set up an internal whistleblower system, designate a “responsible person,” and issue a required regulation.

No information on the law or the number of whistleblower reports – nor the law itself – could be located on the National Labour Inspectorate’s website.

Sweden

On 2 December 2016, Sweden celebrated the 250th anniversary of His Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press, which is widely considered the world’s first ban on information and media restrictions. Though the Press Act, as it is more simply known, does not specifically mention whistleblowing, legal experts and policy-makers have held that this constitutionally recognized law protects all people in Sweden from harm if they disclose inside information.

Sweden became the first Scandinavian country to pass a designated whistleblower law, which also carries a lengthy title: the Act on Special Protection for Workers against Reprisals for Whistleblowing Concerning Serious Irregularities.

The Swedish Parliament passed the Whistleblower Act in March 2016 following a 2014 government study that acknowledged that laws on employee disclosures were “difficult and complex.”⁶²

The three-page law, however, lacks specific frameworks and mechanisms for how employees can report crime and corruption, who they can contact, who will protect them from being fired or harassed, how they will be reinstated and compensated if they are victimized, and how disclosures and complaints will be investigated.

Due to the law’s brevity and lack of detail, it is clear that whistleblowers – even

with these new “protections” – will still have to rely on courts and labour unions for relief. Employees will have to continue to place their trust in the “Swedish labour model,” which emphasizes internal, collaborative solutions to disputes.

The Whistleblower Act established no designated public authority to receive and investigate disclosures, though the system is overseen by the Ministry of Employment.

According to Naiti del Sante of the Ministry’s Division for Labour Law, no whistleblowers have contacted the Ministry regarding the law since it took effect in January 2017, nor have any whistleblower cases known to have been filed in Labour Courts.

“However, this is not necessarily a sign that the new law is not working or being applied,” del Sante said. “I think the law is too new. If, after four or five years, there still have been no cases and the law is not yet working, it will be possible to make amendments.”

Del Sante explained that whistleblowing cases are “rare” in Labour Courts, as agreements are usually reached before litigation is necessary. “Seventy to 80 percent of employees are in a union. The first thing employees typically do when they have a concern is to contact their union, which would have their own lawyer,” she said. “Only if the situation cannot be settled would a case go to a Labour Court.”

If and when the new law is tested in court, del Sante said, judges are prepared. Labour Courts participated in public consultations before the law was passed. Unions and employers’ organizations also provided input. “There is a high awareness among trade unions and their representatives,” she said, adding that some unions are critical of employees reporting misconduct outside the workplace, such as to the police.⁶³

Spokespersons for two large labour unions, the Swedish Confederation of Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO), said there are no official statistics on disclosures and that they are aware of no whistleblower cases being brought to court.^{64, 65}

A spokesperson for the Swedish Agency for Government Employers also said no cases are known to have been filed.⁶⁶

Putting Whistleblower Laws to the Test

Laws cannot fulfil their objectives – to protect citizens and serve the public interest – if they are not enforced with efficiency, commitment, honesty and fairness by those placed in charge of them.

As much as any other, whistleblower protection laws need these conditions in order to meet their goals: providing reliable channels for people to report misconduct, compensating victimized whistleblowers, holding guilty parties to account, and correcting the problems that whistleblowers disclose.

The most effective way to determine how well, or if at all, a whistleblower law is working in practice is to examine real-life cases.

The following cases here were chosen based on the presence of a whistleblower law in the respective country, and the availability of public information on the case to assess how judges and other authorities reached their decision whether to protect a victimized whistleblower, and to what extent.

Danko Bogdanović and Tuzla Kvarc *Bosnia and Herzegovina*

The case of Danko Bogdanović is a model for how, given the right set of factors, a whistleblower law can work well in practice – for the ultimate benefit of the whistleblower. This “successful” case also demonstrates the value of the innovative provisions of Bosnia’s Law on Whistleblower Protection.⁶⁷

Passed unanimously by Parliament in December 2013, Bosnia’s law is unique internationally. It allows state-level public employees to be protected immediately after they report misconduct. They do not need to suffer long periods of workplace and personal retaliation before seeking relief through the courts, where cases are typically lengthy and costly with unpredictable outcomes.

Rather, victimized employees can request whistleblower status – without the need to hire a lawyer and file a lawsuit – from Bosnia’s Agency for Prevention of Corruption (APIK).⁶⁸ They can apply for protection even if they only suspect

retaliation *could* occur. If the request is approved, APIK can order the employer to stop the retaliation or reinstate an employee. Employers – typically high-ranking directors of public agencies – must follow such orders within three days, lest they personally face fines of EUR 5,000 to EUR 10,000.

The threat of such a fine succeeded in pressuring the director of Bosnia's Indirect Taxation Authority to reinstate Bogdanović.

After 18 years of unblemished public service, Bogdanović faced sham disciplinary measures and was suspended in 2013 after revealing a widespread bribery scheme that allowed companies to pay lower import and export fees. He was reinstated on 4 June 2015, within days after the Authority's director personally threatened with was a large monetary fine. This essentially pitted one public institution against another. Obtaining justice from such an inter-agency standoff typically is a difficult endeavour. Bogdanović won his case because APIK had the political will to enforce the law.

APIK Assistant Director Mevludin Džindo explained such successes are made possible due to the commitment of public officials. "It is important to have strong mechanisms that also serve as clear guidelines, and it must be clear who is in charge of enforcing the law. There must be effective legal and institutional frameworks. Above all, it is important to have professional lines of communication among everyone involved. Cooperation within the government is very important."

"Ensuring that the law works at a high level and in a timely way is one of our key work principles," Džindo said. "We carefully review every retaliation complaint and ensure that whistleblowers receive the protections they are entitled to under the law. Upholding their rights is our priority."⁶⁹

The Tuzla Kvarc retaliation case did not have such positive outcomes. The small, family-owned mining company in the northeast Bosnian city of Tuzla suffered persistent retaliation for two years after exposing a government bribery scheme in May 2015. Rather than being thanked for dutifully reporting corruption, Tuzla Kvarc faced reprisals that brought the company to ruin.

Officials withheld the company's mining license, seized its property and froze its bank accounts. Its administrative offices were burned, ransacked and demolished. The company and its director faced trumped-up criminal charges. Police carried out nuisance inspections. A government-run TV station accused its deputy director of associating with Islamic extremists.

Because Bosnia's whistleblower law does not apply to companies that suffer retaliation, Tuzla Kvarc and its 50 employees were helpless against the onslaught. Eventually the criminal charges were dropped, the property was returned, a mining license was granted, and the deputy director won his defamation lawsuit against the TV station. However, the mining operations were sold to another company, effectively forcing the director into retirement.

The case drove Bosnia's leading whistleblower activist nearly to despair. "I did not know that this kind of coordinated aggression by a bureaucracy – in the name of the law – was possible," said Bojan Bajić of the Center for Responsible Democracy-Luna. "Our government is inefficient, but when it comes to retaliation it can function in perfect harmony. If they want to do something bad, it's no problem."

"I thought I knew the bottom line of the black hole. Now I see that the situation is much deeper," Bajić said. "The case of Tuzla Kvarc is the breaking point of my hope that this is a normal country."⁷⁰

Anna Monaghan

Ireland

More than two years elapsed before Ireland's Protected Disclosure Act was given the opportunity to help a victimized employee. The outcome shows not only that the law was conceived with few if any major loopholes, but also that the court system has a proper understanding of the law's provisions and purpose, and was prepared for its first major case.

Anna Monaghan was a care worker at Áras Chois Fharráige Nursing Home in the small village of Spiddal, on Galway Bay on Ireland's west coast. At a routine staff meeting in April 2014, Monaghan told the home's matron and one of the owners that a colleague was seriously mistreating patients. She submitted the complaint to managers in writing, which McGrath partners, the owner of the home referred to the Health Information Quality Authority (HIQA), Ireland's nursing home regulator.

HIQA made an unannounced inspection of the home in September 2014. Officials detected what a media report called "a string of major breaches." The inspectors "were not satisfied that each resident's well-being and welfare was maintained by a high standard of nursing care." Specifically, they discovered "significant concerns in the management of nutrition, wounds, falls and epilepsy."

Monaghan's report achieved its desired results. In March 2016 HIQA inspectors found improvements in all aspects of care at Áras Chois Fharráige: "There was evidence of good practice in most areas of the service. Overall, the healthcare needs of residents were well met."

Doubtless a hero to the elderly residents whose health she helped to maintain, Monaghan was treated as an enemy by McGrath Partnership. A mother of nine in her 50s, Monaghan was accused of making the report maliciously and was suspended from work in June 2014. She was suspended again the following November after refusing to sign internal compliance documents.

Monaghan turned to the Labour Court for help, in what became the first case of its kind under Ireland's new whistleblower protection law.

The home's owners argued that her report was an internal grievance and not a protected disclosure. Even if it was a protected disclosure, they claimed, it was not the reason she was suspended.

The Labour Court disagreed. On 5 September 2016, a three-judge panel ruled that McGrath Partnership violated Section 12 of the Public Disclosure Act: "an employer shall not penalise...an employee...for having made a protected disclosure." The "nail in the coffin," according to one expert, was a remark reportedly made by the home's matron to a colleague that Monaghan would return to work "over my dead body."

The court concluded Monaghan would not have been suspended if she did not report the mistreatment of residents. Her suspension was tantamount to retaliation. She was awarded compensation of EUR 17,500.

One expert called the amount "probably high enough...to attract employers' attention." Other employers thus may be deterred from punishing whistleblowers in the future. This is another powerful effect of such a well-crafted and strongly enforced whistleblower law.

Trevor Collins, Monaghan's lawyer, said the experience "has come at huge personal cost to her... I don't think Monaghan's experience would encourage other whistleblowers to come forward, but she can take some comfort from the fact that the lives of the residents have improved as a result of her contact with HIQA."

Collins said that while Monaghan feels vindicated, “the award doesn’t compensate for the stress and trauma she has suffered.” Monaghan stopped working for the nursing home in December 2014.^{71,72}

Abdulla Thaçi

Kosovo

Kosovo’s Law on Protection of Informants, passed in September 2011, plainly grants protections to “any person who...reports in good faith (to) the respective authority...any reasonable doubts about any unlawful actions.”

Among the first to be enacted in Southeast Europe, the law was put to the test less than a year later.

In early 2012, bank cashier Abdullah Thaçi noticed that EUR 10,000 had been transferred from the public budget into the personal account of Nexhat Çoçaj, the education director of Prizren, Kosovo’s second-largest city. Thaçi’s colleagues at ProCredit Bank recommended that he “not pay attention” and carry on with his work.

Thaçi reported the suspicious transfer to bank managers but received no response. He passed on the evidence to a political party, which informed police. Çoçaj was prosecuted and sentenced to three years in prison in June 2016.

Rather than being thanked for reporting corruption, which Kosovo’s law is intended to encourage and protect, Thaçi suffered career and personal ruin. The bank fired him and filed a criminal report against him. On 4 June 2015, he was convicted of disclosing secret information and fined EUR 5,000.

Kosovo’s whistleblower law was designed to shield employers from workplace retaliation. In this case, it failed to protect Thaçi. The law lacks provisions to protect whistleblowers from criminal liability, so he was helpless to fend off prosecution.^{73,74}

Lëvizja FOL, a Pristina-based NGO that specializes in whistleblowing and a range of other anti-corruption issues, found fault with the entire framework: “Neither the Law on Protection of Informants, nor the Constitutional provisions on freedom of expression were taken into account by the court during the proceedings, thus it can be concluded that the Kosovo system failed to protect Thaçi in practice.”⁷⁵

A thorough review of Kosovo's whistleblower policies and practice began in 2017, with input from Lëvizja FOL, the Council of Europe, and regional and international experts.

Antoine Deltour and Raphael Halet *Luxembourg*

Though court proceedings concluded at the beginning of 2018, "LuxLeaks" is already considered one of the most influential whistleblower cases in recent history.

On 5 November 2014, the Washington, DC-based International Consortium of Investigative Journalists released the collaborative work of 80 journalists who reviewed 28,000 pages of leaked documents: 548 tax rulings issued by Luxembourg officials lowered the tax rates of more than 340 major companies. Tax rates of less than 1 percent were secretly given to multinationals the likes of Amazon, Apple, Deutsche Bank, Heinz, IKEA and Pepsi.

The tax rulings were disclosed by PricewaterhouseCoopers employees Antoine Deltour and Raphaël Halet. Their revelations made headlines worldwide and forced policy-makers to scrutinize notorious tax avoidance schemes in Luxembourg and other countries. The European Commission officially condemned the schemes, and Deltour received the European Parliament's Citizens Prize in 2015.

In 2011, three years before Deltour and Halet went public, Luxembourg included whistleblower protection measures in its new Law on Strengthening the Means to Fight Corruption. The law has numerous loopholes that disadvantaged Deltour and Halet. It does not protect employees who disclose information to the media, nor does it designate a government agency to support whistleblowers. Moreover, the law only protects disclosures concerning illicit actions, which in the case of Luxleaks could never be proved since the allowed tax reductions were only considered "unethical", but nevertheless legal.

Lacking legal protections from prosecution, Deltour and Halet were charged with theft, disclosing trade secrets, breach of professional secrecy and computer fraud. In June 2016 they were convicted and given suspended prison sentences. (Journalist Edouard Perrin, who reported on the scandal, was acquitted.)

Their sentences were reduced on appeal in March 2017: Deltour's 12-month suspended sentence was lowered to six months and a EUR 1,500 fine, and Halet's was lowered from nine months to a EUR 1,000 fine. Their criminal

convictions, however, remained intact. They filed a further appeal to the High Court of Luxembourg, with a new trial beginning in November 2017.

With Luxembourg lacking a comprehensive whistleblower law of its own, judges relied on series of rulings handed down by the European Court of Human Rights in Strasbourg. As part of a six-part test, the Court said whistleblowers must act “in good faith” in order to receive protections.

Courts worldwide have been divided over the meaning of ‘good faith’: that the whistleblower had a reasonable belief the information disclosed is true, or that the whistleblower did not have any ulterior motives for disclosing it.

The Luxembourg court adopted the latter view in its 2016 judgment. While agreeing that the disclosure was in the public interest, the court said Deltour was not acting in good faith because one of his motives for taking the documents was to help him find a job in another audit firm.^{76,77}

On 11 January 2018, Luxembourg’s Court of Cassation threw out Deltour’s conviction, ruling that he is a whistleblower and applying the criteria set up by the European Court of Human Rights. “This decision is a significant step in the protection of whistleblowers in Europe,” said his lawyer, William Bourdon. “For the first time in Europe, a high court recognizes the jurisprudence of the European Court of Human Rights.”

However, the court found Halet did not meet the European Court’s criteria for whistleblowing and upheld his conviction.⁷⁸

Despite Deltour’s acquittal, the LuxLeaks ruling illustrates that in the absence of a comprehensive whistleblower law, and without non-judicial remedies for whistleblowers, judges can and often do employ subjective criteria to develop their rulings. Without clear legislative principles, these rulings can suffer from inconsistency.

Claudian Țuțulan Romania

Romania has been widely praised for passing the first whistleblower protection law in continental Europe. Enacted in 2004, the Law on the Protection of Public Officials Complaining about Violations of the Law was ahead of its time. It contains many key provisions that would go on to be included in European and international standards.

However, the first known occasion of a judge citing the law in a retaliation case did not come until more than a decade later.

An Appeal Court in Brasov ruled on 29 September 2016 that Claudiu Țuțulan was unfairly suspended after he exposed alleged wrongdoing and unsafe conditions within Romania's road system. Other courts may have relied on the law in earlier cases, but Țuțulan's is the first to receive any degree of media attention. Romania does not have a public system for tracking whistleblower cases, which poses challenges to monitoring the law.

Țuțulan works for the Regional Directorate of Roads and Bridges in Craiova, Romania's sixth-largest city. On 11 August 2015 he said on television that his inspections revealed contract and financial irregularities in the construction of a motorway from Sibiu to Orăștie. He blamed the state-run National Company of Motorways and National Roads (CNADNR; now known as CNAIR).

Țuțulan also said because certain safety features were not installed by skilled workers, he refused to sign a safety report. "I told the regional director, 'Sir, it's not safe. We cannot do that. People will be sent to their death!' That's the truth. We do not have to hide the truth."⁷⁹

Țuțulan and colleagues Liviu Costache and Alin Goga went on to make other serious allegations. They said public authorities had lost EUR 38 million because fees for unpermitted advertising billboards along roadways had not been collected. Țuțulan also said certain road taxes were not being collected, including a loss of about EUR 1 million per year because truck scales were not installed at a Danube River bridge opened in Calafat in 2013.^{80, 81}

Țuțulan was suspended nine days after appearing on television. He told managers he was protected from retaliation by the whistleblower law, which allows public employees to disclose misconduct directly to the media, bypassing internal channels. This was to no avail:

"Although I invoked the whistleblower law... I became the subject of an internal inquest and was even threatened that I would be sacked. I received two warnings although I told them that, according to the whistleblower law, they had to cooperate with the investigation launched by the media and provide explanations.

They simply didn't care about the law. They started to send me away on a business trip, but wouldn't cover my expenses and

they cut my salary by EUR 220. Although I had bank rates to pay, and family and kids to take care of, I didn't want to give up."⁸²

Țuțulan was formally disciplined and his salary was reduced by 5 percent for three months. He went to court and was represented by the Professional National Union of Road Workers of Romania. The Brasov Appeal Court ordered CNADNR to reimburse Țuțulan for his lost wages as well as about EUR 1,000 in court costs.

Judges ruled Țuțulan was treated unfairly because in 2016 the Constitutional Court found unconstitutional a Labour Code provision that allowed employers to suspend a worker during a preliminary disciplinary investigation – even before a worker is found to have done something wrong.

Judges then cited Romania's whistleblower law. They said because Țuțulan appeared on television to report violations in the public interest, he is a "whistleblower in accordance with the legal provisions" of the law. The fact that his disclosures were investigated by a special CNADNR commission "proves [his] good faith in reporting the...illegality." In conclusion, the court called Țuțulan a "public defender" whose disclosures were "confirmed to the greatest extent."⁸³

Based on the disclosures of Țuțulan and others, Narcis Neaga was fired as CNADNR's director in December 2015 and placed under "judicial control" with a bail of EUR 65,000. As of mid-2017 he was under investigation by the National Anticorruption Directorate for his role in the Sibiu-Orăștie road project.⁸⁴

Țuțulan, Costache and Goga were portrayed in the 2016 play "Ordinary People," written and directed by Gianina Carbuariu.

"The problem is that the whistleblower law is useless unless more people are willing to speak out," Țuțulan observed. "If we don't, it's our children who will suffer in the long term."⁸⁵

Marija Beretka Serbia

As much as any other recent case in Europe, Marija Beretka's experience illustrates the difficulties faced by victimized whistleblowers who must go to court to get their job back and be compensated for financial and other losses.

Serbia's Law on Protection of Whistleblowers was passed in November 2014 and took effect the following June 5. Precisely on that day, Beretka, a municipal employee in Novi Sad, told police that her managers were improperly aiding certain offenders by concealing information about improperly parked vehicles. Rather than being thanked for exposing the misconduct, Beretka was called a "rat," harassed, ostracised and transferred twice against her will.

In a series of reports, the Center for Investigative Journalism of Serbia (CINS) chronicled Beretka's "Kafkaesque" saga through the Serbian court system.⁸⁶

Beretka challenged her first transfer in Novi Sad Basic Court in July 2015. In September, the court ordered her to be reinstated, a decision that the Appeal Court upheld the following December.

Beretka also filed a case in the Novi Sad High Court, seeking a temporary measure to reinstate her while her parallel case proceeded. Contrary to the Basic Court, and working with an identical set of facts, the High Court denied her request. A judge ruled that she failed to prove her transfer was motivated by her making a report to the police, and therefore was not whistleblower retaliation. An Appeal Court upheld the denial in September 2015.

"You have a situation where the judge says that the police are not responsible for investigating crimes. Truly an absurd situation," said Vladimir Radomirović, editor-in-chief of the Serbian investigative journalism organization Pištaljka. "It is impossible that judge doesn't know that police is an authorized body."

The ruling exposes another major flaw. Contrary to European standards, Serbia's law places the initial burden of the proof on employees to show that adverse employment actions were linked to them having reported misconduct – and not on employers to prove the opposite, that employment actions were not motivated by retaliation against an act of whistleblowing.

In a later case before the High Court, a judge ruled in April 2016 that the city must reinstate Beretka. This ruling was overturned by an Appeal Court three months later – with a judge ruling, again, that Beretka did not demonstrate the link between her report and her transfer.

She prevailed in yet another High Court ruling in February 2017, which an Appeal Court upheld in May. A judge ruled she was unfairly transferred and should be reinstated and compensated EUR 810 for "mental pain due to violations of honour and reputation." City officials were banned from committing further reprisals against her.

Though technically a victory, Beretka's case highlights many problems with the new law and how judges go about interpreting it. Different judges presented with similar fact patterns have handed down entirely different rulings.

Moreover, victimized whistleblowers seeking relief may have to file separate lawsuits in three layers of courts: Basic, High and Appeal. The subtly different and sometimes overlapping roles of each court that has jurisdiction over the law – which the law itself does not explain – adds to the confusion. It also can greatly add to the time and expense of pursuing justice.^{87, 88}

Raj Mattu and the “Flash” case

UK

The retaliation and compensation case of cardiologist Raj Mattu reveals both the best and the worst aspects of the UK's whistleblower protection system.

In 2001 Mattu cautioned managers and staff at Walsgrave Hospital in Coventry about a pattern of poor care, including overcrowded cardiac wards that he said led to the deaths of two patients. He and several colleagues warned that the “5-in-4” practice, wedging five patients into a room designed for four, limited access to oxygen, suction, electricity and other emergency services. One patient reportedly suffered a heart attack and died after staff could not reach lifesaving equipment quickly enough.

Rather than fixing the problems, the hospital levelled dubious bullying accusations against Mattu and suspended him in 2002. After a long campaign of harassment, he was fired in 2010.

Mattu recounted his experience to the *Daily Mail*:

“They stopped at nothing to change the focus from the patients – who were at the heart of my concerns – on to false claims about this allegedly ‘bad doctor’ who needed to be removed. Instead of listening to me, embracing what I said and working with me to improve conditions for patients, [hospital] Trust managers tried to destroy me. It was a form of torture.

They tried to shut me up and sideline me. I was marched from my office in broad daylight in front of my staff, colleagues and patients sitting in my waiting room.

Rather than work with me to improve patient care, they

searched for reasons to discredit me, humiliate me and destroy my career. And once they'd set the wheels in motion, they were prepared to throw millions of pounds of taxpayers' money at it."

According to media reports, the UK's National Health Service spent GBP 10 million pursuing some 200 unfounded allegations against Mattu, hiring private investigators to snoop on him, and paying a public relations firm to contain damaging media coverage.

In 2014, 12 years after he was initially suspended, an Employment Tribunal ruled Mattu was unfairly dismissed and targeted by hospital managers for speaking up. He had to wait three more years, until February 2017, for the Tribunal to rule on his compensation, reported to be GBP 1.22 million plus payments for his income tax and insurance.

The fact that Mattu had to wait 15 years for justice to be served exposes a critical weakness with the UK's whistleblower law, the Public Interest Disclosure Act (PIDA), and how it is put into practice. Among its many shortcomings, the law provides no avenues for victimized whistleblowers to be reinstated and compensated without filing a lawsuit in court, and it provides no deadlines for court proceedings.

According to a 2016 study by the Thomson Reuters Foundation and Blueprint for Free Speech, the average time from the point of retaliation to a final ruling in an Employment Tribunal is 20 months.⁸⁹

The lack of time limits in court gives employers the opportunity to concoct bogus allegations and sham disciplinary proceedings against whistleblowers. This enables employers to win Tribunal cases by masking the retaliation with "legitimate" reasons for having fired a whistleblower.

Working in Mattu's advantage, on the other hand, is the fact that PIDA does not cap monetary compensation in whistleblowers cases. This resulted in him receiving among the largest awards since PIDA was passed in 1998. PIDA allows judges to award victimized whistleblowers with many categories of monetary compensation, including unfair dismissal, lost past and future wages, loss of rights, injury to feeling, aggravated damages and "stigma pay," among others.

Mattu was awarded GBP 1.22 million. This is roughly equal to the wages he lost during eight years of suspension, during which he was deprived of one-third of

his GBP 110,000 annual salary, and the seven years from his dismissal in 2010 to the 2017 final Tribunal ruling.

It would appear that the award covered his lost back wages. Another matter is the damage caused to his future earning potential. Mattu said that after so many years away from clinical practice, he is unable to resume his medical career and is planning to become a science teacher.^{90 91 92} Because the Tribunal ruling has not been made public, it is not known whether he was awarded lost future wages or other types of damages.

Another retaliation case from the field of social services, though it received no media attention, reveals yet more problems with the UK's whistleblower protection system. The case of "Sarah"⁹³ shows how judicial discretion, in the absence of legislative clarity, can cause further harm to victimized whistleblowers.

In September 2011, after three years on the job at a Leeds-area youth home, Sarah suspected two colleagues of abusing children. The colleagues were suspended but eventually cleared and reinstated. In apparent retaliation, Sarah was disciplined for several minor issues. Among them, she was chided for using "Flash," a household cleaning product, to remove hair dye from a teenage resident.

Sarah was fired in February 2012 following a disciplinary hearing. She filed a complaint with the Leeds Employment Tribunal, which ruled in March 2013 that she was unfairly dismissed for being a whistleblower and thus was protected under PIDA. A judge calculated her compensation to be GBP 22,800.

The Employment Rights Act, which pre-dates PIDA, allows judges to reduce compensation if they believe a worker was partially to blame for being fired. In Sarah's case, the judge criticized her "failure of common sense" in using Flash to clean the teenager's hair, even though it caused no harm to the youth. As a punishment, the judge said Sarah contributed to her own dismissal and cut her compensation by 25 percent, or GBP 3,450.

The Tribunal did not award Sarah any lost past or future wages. Moreover, it did not order the youth home to pay aggravated damages despite finding she was subject to "serious" detriment.

In weighing the employer's interests against the employee's, the Tribunal's ruling reveals where the judge believes the line of fairness should be drawn: "It is not for us to step into the [employer's] shoes and substitute our findings ... for those of the employer."⁹⁴

Best Practices for Implementing Whistleblower Protection Laws

In recent years, standards on how to draft a proper whistleblower protection law have been developed by international organizations, NGOs, the 2014 Council of Ministers, and research institutes. Many countries have put these guidelines into productive use. The positive result is that most whistleblower laws passed since 2014 include at least some of these standards – and several new laws feature most of them.

Attention since has turned to how these laws can best work in practice. How can legislation be transformed into policies and procedures that actually protect people from retaliation and compensate them for their losses? In other words, how can paper rights be translated into action?

Public authorities are in need of a set of best practices for implementing, enforcing and administering a whistleblower protection. The following set of practices is based on interviews and other first-hand interactions with policy-makers, public officials, legal practitioners, whistleblower advocates, anti-corruption experts, independent researchers and whistleblowers themselves.

(1) A designated agency to receive and investigate whistleblower disclosures and complaints

An independent public agency should be established to accept and investigate retaliation complaints, and disclosures of crime, misconduct, public health dangers and environmental risks. The agency should be empowered to implement and enforce whistleblower laws and policies, including:

- Establishing a range of disclosure channels, including toll-free telephone/fax, secure online portal, mailing address, physical address.
- Investigating disclosures and retaliation complaints.
- Potential crimes and violations to investigators, prosecutors and other proper authorities.
- Enforcing anti-retaliation protections, and determining and enforcing remedies for victimized whistleblowers.
- Ordering the cessation of workplace retaliation.

- Penalizing individuals and organizations that retaliate against a whistleblower, with escalating penalties for repeat offenders.
- Ensuring regulated organizations have whistleblower systems in place
- Monitoring the investigation of disclosures and complaints to ensure needed remedies and corrective actions are taken.
- Ensuring the accountable and transparent administration of whistleblower laws and policies.

(2) Requirement for whistleblower disclosures and retaliation complaints to be investigated and remedied

The designated whistleblower agency should be required to fully investigate all reports and retaliation complaints, and take all appropriate actions to protect and compensate victimized employees. The agency should be empowered to order public authorities to investigate potential crimes, violations and public dangers.

(3) Timely, legally binding decisions on remedies

All decisions by the designated whistleblower agency should be legally binding. These include, but are not limited to, decisions on:

- lost wages and other compensation;
- reinstatement to previous position and status;
- cessation of workplace retaliation;
- penalties for individuals and organizations that retaliate against a whistleblower;
- requiring public authorities to investigate potential crimes and violations
- requiring regulated organizations to have whistleblower systems in place.

(4) Rapid intervention and compensation

The designated whistleblower agency should have the administrative authority to order all appropriate remedies and penalties within a reasonable amount of time (e.g. within 30 days). For extreme cases, provisions should be in place for emergency actions and relief (e.g. within 7 days).

(5) Requirement for all public authorities and certain private companies to implement whistleblower systems

All public authorities, and private companies of a given of size or level of regulation, should be required to implement systems that include:

- Internal and external support and advice for employees, including lawyers subject to attorney-client privilege (confidential and anonymous).
- Internal and external disclosure channels (confidential and anonymous).
- A legally enforceable prohibition on retaliation and threats.
- A designated, autonomous unit to investigate disclosures and retaliation complaints.
- A provision for legally enforceable corrective actions.
- Information for all employees; training for managers.

(6) No-cost support and legal advice for whistleblowers

The designated whistleblower agency should provide free support, advice and resources for employees and citizens who have made a disclosure, or who are considering making a disclosure. This should include plain-spoken information on all whistleblower-related laws and policies, best practices for making a disclosure, and guidance on the risks of making a disclosure.

Support should be provided throughout the entire life cycle of the disclosure. Communications with employees and citizens should be confidential or, when requested, anonymous. Public support should be provided to CSOs and other non-governmental organizations to advise and support whistleblowers.

(7) Training for all official stakeholders, including judges and enforcement officials

All public authorities, officials and employees who have a role in administering or enforcing whistleblower laws and policies should be fully trained in all aspects of the system. They should receive ongoing training, including updates on amendments to laws or policies.

(8) Public and workplace awareness initiatives

The designated whistleblower agency should carry out ongoing awareness-raising initiatives among citizens and employees on whistleblower policies and systems. These should include notices in workplaces that must comply with whistleblower laws.

(9) Bans from public service and public contracts for retaliators

Individuals who have received an official determination of retaliation against public employees who make a disclosure should be banned from working in the public sector for a set period of time. Private companies that are found to have encouraged or condoned retaliation should be ineligible for public contracts for a set period of time.

(10) Transparent administration, statistics and regular public review

The designated whistleblower agency should publicly report information and statistics on disclosures, complaints and case outcomes. All relevant information should be made public, while protecting the identifying information of parties in the cases. These public reports should be made at least annually.

The agency should collaborate with elected officials on publicly inclusive reviews of laws and policies – within three years of a law's enactment, and subsequently at least every five years.

Methodology

This report makes an independent examination and assessment of the implementation and enforcement of whistleblower protection laws and policies across a sample of European countries (EU and non-EU).

It explores the actual practice and application of whistleblower policies, frameworks and mechanisms as they are elaborated in national legislation.⁹⁵

There were two primary types of data collected for analysis in this report. The first type was qualitative interviews with public authorities and officials, independent researchers, legal practitioners, journalists, whistleblowers and NGOs. The second type was primary documents including original legislation, court rulings, official policy documents and reviews, media reports, legal case submissions and academic research.

This report relies on a two stage methodology. In the first stage, a review of legal provisions and cases across European countries was conducted. The authors selected, for closer assessment, a sample of 12 countries that offer legal protections for whistleblowers. The sample includes a range of levels of protections levels for whistleblowers. The sample illustrates the variation that can, and does, occur in reality. Examples include countries with highly developed, stand-alone laws and practical implementations. It also includes jurisdictions where the legal protections are narrow or have not yet matured to comprehensive development. This may be expressed, for example, through legal protections that sit within other laws or otherwise have significant limiting factors attached to them.

The first category includes the four European countries with laws that are more established. These countries examined in this category were:

1. Bosnia and Herzegovina
2. Hungary
3. Serbia
4. UK

The second category incorporates eight European countries with newer, less tested, less transparently quantifiable, or less widely applied laws. The examined countries are:

1. Belgium
2. France
3. Greece
4. Ireland
5. Malta
6. Netherlands
7. Slovakia
8. Sweden

In the second stage of this report, analysis was conducted by selecting seven specific European whistleblower cases, each in a unique country or jurisdiction. Three of these countries are only studied in this section (Kosovo, Luxembourg and Romania). These cases were studied in an in-depth manner to determine how well whistleblower laws were working in practice by looking through the lens of each case. Cases were selected based on the presence of a whistleblower law in the country studied, and the availability of data. The data sought was about how authorities made the decision to protect the whistleblower, or not, and how far that protection went.

Some countries now gather statistical data on the number of cases received, processed and actioned. This data is important, and it has been used where possible in this report. However, as cases often involve complex human interactions and settings, analysis of the qualitative data was necessary to assess implementation.

The qualitative data assessments were for European cases in each of the seven following jurisdictions:

1. Bosnia and Herzegovina
2. Ireland
3. Kosovo
4. Luxembourg
5. Romania
6. Serbia
7. UK

The research questions applied sought to determine how effectively and efficiently policies, frameworks and mechanisms are functioning in practice, and the factors and forces that promote or hinder their functioning.

Key research questions included:

1. Does the country have a designated public agency to administer and/or enforce the law? If not, who oversees the implementation of the law?
2. How has the law been applied in actual whistleblower cases (disclosures and retaliation complaints)? To what extent did judges and other public authorities comply with the law's provisions?
3. What have been the outcomes of cases? What factors and forces have promoted or hindered the preservation of whistleblower rights?
4. To what extent have public authorities presented comprehensive, plain-spoken information on the law, frameworks and mechanisms to the public?
5. Are the laws, frameworks and mechanisms administered transparently? Is information on cases, disclosures, retaliation complaints and outcome readily available to the public?

The primary goal of any whistleblower protection law and system is to protect people who make disclosures of wrongdoing in the public interest from threats to their safety or freedoms, negative career outcomes or workplace mistreatment, and legal consequences. Thus, establishing these requirements as a basis for any effective whistleblower policy is the grounding principle of the research, findings and conclusions.

Appendix 1: Nine International Standards for evaluating whistleblower legislation

1. Specific whistleblower protection provisions for employees in public and private sectors

0	1	2	3	4
none	public or private sector – part of other law	public and private sectors – part of other law	public or private sector – standalone law	public and private sectors – standalone law

2. A full range of disclosure channels: internal, regulatory, public.

0	1	2	3
none	1 of 3	2 of 3	all 3

3. Protection from all types of retaliation

0	1	2	3
none	basic protection from workplace retaliation or prosecution	comprehensive protection from workplace retaliation or prosecution	comprehensive protection from workplace retaliation and prosecution

4. A full range of retaliation protection mechanisms

0	1	2	3
none	judicial or weak administrative protections	judicial or strong administrative protections	judicial and strong administrative protections

5. A full range of relief types and mechanisms

0	1	2	3
none	few	intermediate	comprehensive

6. Immunity from prosecution for disclosing sensitive information: official/military secrets, trade secrets, data privacy.

0	1	2	3
none	1 of 3	2 of 3	all 3

7. Penalties for whistleblower retaliation and other mistreatment

0	1	2	3
none	few	intermediate	comprehensive

8. Appointment of a designated whistleblower agency

0	1	2
none	part of existing agency	independent agency

9. Transparent administration and statistics

0	1	2	3
none	basic	intermediate	comprehensive

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