



Task 2.9 – Whistleblower Estonia

WP2 – Research and Implementation assessments

Lead Contributor	Bianca Toma, Romanian Center for European Policies Bianca.toma@crpe.ro
Other Contributors	Alexandru Damian, Romanian Center for European Policies Bianca Petre, Romanian Center for European Policies
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Whistleblower Estonia

<i>General principles</i>	3
<i>Objective field of application</i>	4
<i>Categories of subjects to whom the protection applies</i>	4
<i>Channels to report irregularities</i>	4
<i>Protection of the privacy of the reporter</i>	5
<i>Protection against retaliation, discrimination and mobbing</i>	5
<i>Sanctions</i>	6
<i>Burden of proof</i>	6
<i>Organizational measures</i>	6



Whistleblower Estonia

General principles

Estonia does not have specific whistleblower legislation. In addition to inadequate legal provisions in the national law, there is also a weak public perception of whistleblowing. As such, there are not specific laws protecting officials or civil servants who report misconduct in public office other than corruption, neither is there protection for whistleblowers in the private sector¹. Despite the lack of thematic regulations, there are few normative acts targeting, although not particularly, the whistleblowers or notifiers.

The Anti-Corruption Act (ACA) - a 1999 law entering into force in 2013- provided protection to public officials who report on corruption (the law targets corruption and forms of corruption, not whistleblowing). Thus, it is limited in protecting whistleblowers. It applies to public officials who report corruption regarding other public officials, in the context of performing public duties and also outside of it. It bans the concealment of corrupt acts and grants them confidentiality and protection against retaliation, unless they knowingly provide incorrect information.

There are other provisions within legal acts that could apply to whistleblowers, although not envisaging them specifically: the Employment Contracts Act², banning the unfair dismissal and illicit worsening of employment conditions; the Equal Treatment Act³, prohibiting any kind of discrimination of persons and the Civil Service Act⁴, which, together with the former, provide employees with the right to demand compensation from their employer, in case they have been punished or illegally released from office. Still, the spread of these regulations among different acts jeopardize legal clarity.

As for **soft law** used in the context of whistleblowing, Estonia is one of the OECD countries which do not guarantee anonymity to public sector whistleblowers⁵. The use of appropriate incentives for notifiers to encourage reporting and disclose wrongdoing is also missing in the country, according to the same source.

There are general acts that relate to whistleblowing, but no specific guidelines on whistleblowing. The main issue is the missing legislation. The main piece of legislation related to whistleblowing steams from ACA, which is an anti-corruption act, not a whistleblowers act.

The whistleblower protection is weak even for the public sector, not to mention the private sector. Thus, all reports, and our interviews back this, state that there is a low protection for public officials reporting other unethical or illegal deeds other than corruption.

On the **private sector**, the law states that *“the principles provided for in this section also apply in the case of notification of an incident of corruption occurred outside the performance of public duties”* but it is unclear how it applies and enforced.

¹Estonia Whistleblower Protection, Briefing, <https://blueprintforfreespeech.net/document/estonia-briefing/>

²The Employment Contracts Act, <https://www.equalrightstrust.org/ertdocumentbank/Republic%20of%20Estonia%20Employment%20Contracts%20Act.pdf>

³The Equal Treatment Act, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/530102013066/consolide>

⁴The Civil Service Act, <https://www.riigiteataja.ee/en/eli/509072014003/consolide>

⁵Committing to Effective Whistleblower Protection, <https://www.oecd.org/daf/anti-bribery/Committing-to-Effective-Whistleblower-Protection-Highlights.pdf>



From our interviews and other reports, there is no specific form of protection on whistleblowing in the private sector, other than employment contracts or general acts against retaliation. But this is not protection on whistleblowing.

Objective field of application

It is worth mentioning that Estonian regulations on whistle-blowing are concentrated, to a very large extent, on the public authorities and institutions of the central and local public administrations, apparatus of the Parliament, working apparatus of the Presidential Administration, working apparatus of the Government, autonomous administrative authorities, public institutions of culture, education and health, national state-owned companies and other representatives of the public sector.

In relation to the private sector, although the Employment Contract Act forbids unfair dismissal, it is unclear whether protection on whistleblowing could be invoked⁶.

Categories of subjects to whom the protection applies

Estonia grants protection to public sector whistleblowers, including to employees, consultants, suppliers, temporary and former employees⁷.

Moreover, the ACA also applies to public officials - persons holding an official position for the performance of public duties regardless of whether he/she performs the duties imposed on him/her permanently or temporarily, for a charge or without charge, while in service or engaged in a liberal profession or under a contract, by election or appointment⁸.

There have been debates on improving whistleblower protection at the level of the Estonian medical sector as well, where an increasing risk of corruption has been acknowledged⁹.

Channels to report irregularities

Estonia lacks a clear and comprehensive framework for whistleblower protection. Specific and adequate reporting channels are yet to be implemented.

However, the Anti-corruption Act includes several provisions concerning the notification of incidents of corruption. Thus, the whistleblower can notify agencies performing public duties, their officials, persons exercising supervision over agencies, persons controlling declarations or bodies conducting proceedings concerning an offence.

Cases of corruption can also be reported through a hotline and website linked to the anti-corruption website of the government¹⁰. Suspicions about corruption could be reported to the Estonian Police and Border Guard Board, through an anonymous line or by e-mail¹¹.

⁶ *The protection of whistleblowers. Challenges and opportunities for local and regional government* <https://rm.coe.int/the-protection-of-whistleblowers-challenges-and-opportunities-for-loc/16809312bd>

⁷ *Towards Comprehensive Public and Private Sector Whistleblower Protection: From Commitments to Effective Protection*, p. 37, http://www.iccspain.org/wp-content/uploads/2015/11/OECD_Whistleblower-Protection_Final-Draft_For-Comments.docx

⁸ *The Anti-Corruption Act*, https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/library-files/estonia_anti_corruption_act_2012_en.pdf

⁹ *Whistleblowers need better protection in Estonia*, <http://www.transparency.ee/cm/node/147>

¹⁰ *Towards Comprehensive Public and Private Sector Whistleblower Protection: From Commitments to Effective Protection*, p. 54, http://www.iccspain.org/wp-content/uploads/2015/11/OECD_Whistleblower-Protection_Final-Draft_For-Comments.docx



The ACA does not foresee or regulate other channels of disclosure such as media or NGOs¹².

Protection of the privacy of the reporter

Estonia does not provide a dedicated protection to whistleblowers. Nevertheless, some form of protection for reporting is required by certain international instruments that Estonia has ratified, such as the Criminal Law Convention on Corruption and the Civil Law Convention¹³.

The country is also part of the United Nations Anti-corruption Convention and the OECD Convention on Combating Bribery. The Ministry of Justice coordinates the anti-corruption policies. A selected anti-corruption parliamentary committee exercises supervision over the implementation of anti-corruption measures, discussing potential incidents of corruption involving officials and assessing them¹⁴.

The Anti-corruption Act specifies that, when whistleblowers are notifying agencies performing public duties, their officials, persons exercising supervision over agencies, persons controlling declarations or bodies conducting proceedings concerning an offence, the confidentiality of the notification shall be ensured. Information about the notification may be disclosed only with the written consent of the notifier. If the notifier is involved as a witness in the proceedings concerning the offence, the provisions of proceedings are applied without violating confidentiality.

In Estonia, there is no protection for public officials who report misconduct other than corruption. A study including 40 interviews with whistleblowers revealed concerning results about the protection granted to reporters in Estonia. All the whistleblowers who were interviewed opted for remaining anonymous, due to strong concerns of negative consequences in case their identities were to be known¹⁵. It is alarming that one in five whistleblowers lost their job, according to the same report.

Protection against retaliation, discrimination and mobbing

The Anti-corruption Act does not provide specific tools for the protection of whistleblowers. According to the general administrative law, however, if the reporting official is suspended, dismissed, transferred or pre-evaluated within a certain timeframe, the act can be declared¹⁶.

Private sector employees also have the right to contest potential harassment and sanctions (i.e. termination of employment contract, disciplinary measures) in a labor dispute committee or in Court.

¹¹Action you can take to reduce risk of corruption, <https://www.politsei.ee/en/action-you-can-take-to-reduce-risk-of-corruption/>

¹²Country Report: Estonia, Towards Greater Protection and Support for Whistleblowers in the EU, p. 6, <https://www.asktheeu.org/en/request/994/response/5854/attach/9/Country%20report%20Estonia.pdf>

¹³The protection of whistleblowers. Challenges and opportunities for local and regional government, <https://rm.coe.int/the-protection-of-whistleblowers-challenges-and-opportunities-for-loca/16809312bd>

¹⁴The Anti-Corruption Act, pg. 4, https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/estonia_anti_corruption_act_2012_en.pdf

¹⁵The protection of whistleblowers. Challenges and opportunities for local and regional government, <https://rm.coe.int/the-protection-of-whistleblowers-challenges-and-opportunities-for-loca/16809312bd>

¹⁶Towards Comprehensive Public and Private Sector Whistleblower Protection: From Commitments to Effective Protection, p. 77, http://www.iccspain.org/wp-content/uploads/2015/11/OECD_Whistleblower-Protection_Final-Draft_For-Comments.docx



This right is a general rule and does not specifically refer to the harassment resulting from whistleblowing¹⁷.

Sanctions

Estonia is one of the few OECD countries that does not have clear sanctions for the retaliation against whistleblowers in the public sector¹⁸. According to the ***Towards Comprehensive Public and Private Sector Whistleblower Protection: From Commitments to Effective Protection*** report¹⁹, twenty-two OECD countries that participated in a survey have penalties in place for retaliation against whistleblowers. These are often interpreted in a broad manner, due to the fact that a dedicated legal framework in this respect is missing.

Specifically, these disputes shall be resolved by a court or a labor dispute committee or by the Chancellor of Justice by means of the conciliation procedure. An employee affected by discrimination or mobbing can go to court and demand both indirect and direct (moral) damages. As such, the sanctions for retaliation, discrimination and mobbing are to be established in court.

Burden of proof

The Anti-corruption Act stipulates that courts shall apply shared burden of proof for the protection of the persons having notified of an incident of corruption. A person referring to or being part of a case in the courts shall state in his/her application the facts based on which he/she has been subject to unequal treatment. The legal text also mentions that, *if the person against whom the application was filed does not prove otherwise, it is presumed that unequal treatment was caused by notification of an incident of corruption*²⁰.

Organizational measures

Estonia has no institution or agency which deals specifically with whistle-blowing and no public policy or monitoring strategy of the number of cases and their outcomes, which frequently remain unknown. For instance, in accordance with a comprehensive study, approximately 80% of the cases were investigated and only 30% of these inspections resulted in some sort of disciplinary measures²¹. The only official records and data known are registered by the Central Criminal Police, where corruption-related cases reported through a hotline are countered, but it remains unknown how many came from whistleblowers²².

Apart from the 2013 amendments to the ACA regarding public officials, there have been no particular efforts of the Estonian political leadership for strengthening whistleblowers' rights in recent years.

¹⁷ *Alternative to Silence: Whistleblower Protection in 10 European Countries*, p. 11, https://www.right2info.org/resources/publications/publications/09_12_01%20ti-Alternative%20WB%20protection.pdf

¹⁸ *Towards Comprehensive Public and Private Sector Whistleblower Protection: From Commitments to Effective Protection*, p. 73, http://www.iccspain.org/wp-content/uploads/2015/11/OECD_Whistleblower-Protection_Final-Draft_For-Comments.docx

¹⁹ *ibidem*

²⁰ *The Anti-Corruption Act*, p. 4, https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/estonia_anti_corruption_act_2012_en.pdf

²¹ *The protection of whistleblowers. Challenges and opportunities for local and regional government*, <https://rm.coe.int/the-protection-of-whistleblowers-challenges-and-opportunities-for-loca/16809312bd>

²² *Estonia – Whistleblower Protection, Briefing*, <https://blueprintforreespeech.net/document/estonia-briefing/>