



D 2.8 – Whistleblower Romania

WP2 – Research and Implementation assessments

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## **Whistleblowing Romania**

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## Whistleblowing Romania

### *General principles*

The law defining in Romania the whistleblower has been in force since December 2004 - **Law no. 571/2004<sup>1</sup> on the protection of personnel in public authorities, public institutions and other units reporting violations of the law.**

According to the Romanian law, a **warning in the public interest** – is referring to a complaint/warning made in good faith to any act that involves a violation of law, professional ethics or the principles of good administration, efficiency, effectiveness, economy and transparency; **A whistleblower** is any person who, in good faith, notices any act of the kind mentioned above;

The principles governing the protection of the whistleblowing are as follows:

- a) the principle of legality;
- b) the principle of the supremacy of the public interest;
- c) the principle of accountability, according to which any person who reports violations of the law is obliged to support the complaint with data or indications of the committed deed;
- d) the principle of abusive non-punishment, according to which persons who complain or suspect violations of the law, directly or indirectly, cannot be punished by imposing a more unfair and more severe sanction for other disciplinary misconduct. In the case of whistleblowing, deontological or professional rules are not applicable to prevent the whistleblowing;
- e) the principle of good administration;
- f) The principle of good conduct according to which the act of whistleblowing regarding the aspects of public integrity and good administration is protected and encouraged, in order to increase the administrative capacity and the prestige of the public authorities, public institutions and other units stipulated in art. 2;
- g) the principle of equilibrium - a person cannot rely on the provisions of this law to reduce the administrative or disciplinary sanction for a more serious deed.

There is no designated soft law on whistleblowing. There are guidelines of best practice - but usually in private companies. There are however Code of Ethics and other legal forms that may apply.

### *Objective field of application*

(art. 2) The law applies to the public authorities and institutions of the central public administration, the local public administration, the apparatus of the Parliament, the working apparatus of the Presidential Administration, the working apparatus of the Government, autonomous administrative authorities, public institutions of culture, education, health and social assistance, national companies, autonomous bodies of national and local interest, as well as national state-owned companies.

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<sup>1</sup>Available in Romanian language at <https://lege5.ro/Gratuit/gu3dinrw/legea-nr-571-2004-privind-protectia-personalului-din-autoritatile-publice-institutiile-publice-si-din-alte-unitati-care-semnaleaza-incalcari-ale-legii>



(2) This law shall also apply to persons appointed to scientific and consultative councils, specialized committees and other collegiate bodies organized in the structure or with public authorities or institutions.

### *Categories of subjects to whom the protection applies*

The whistleblower is the person who sees in good faith violations of the law, which may be:

- a) civil servant - the person invested, by appointment in a public position within the structure of a public authority or institution, with powers in the exercise of their competence, under a regime of public power, with the purpose of achieving a public interest,
- b) contract staff, according to the Labor Code,
- c) personnel working under special statutes, doctors, teachers, police officers, court clerks, priests, etc.

The law is not very detailed on the categories of subjects, but the procedures described by the central public administration bodies has added more details when describing the categories of facts/crimes that could be subject to a public warning. The procedure adopted by one of the most important ministries, the Ministry of Public Administration and Regional Development is describing the hypotheses / facts that may be the subject of a warning are expressly and limitatively provided by the Law no. 571/2004:

- a) Corruption offenses, crimes assimilated to corruption offenses, offenses directly related to corruption offenses, forgery and offenses, or in connection with the service;
- b) Offenses against the financial interests of the European Communities;
- c) Preferential or discriminatory practices or treatments in the exercise of the powers
- d) Breach of the provisions on incompatibilities and conflicts of interest;
- e) Abusive use of material or human resources;
- f) Political partisanship in the exercise of the prerogatives of the post, except for the persons elected or politically appointed;
- g) Violations of the law with regard to access to information and decision-making transparency;
- h) Violation of legal provisions on public procurement and non-refundable funding;
- i) Incompetence or negligence on the job;
- j) Non-selective staff assessments in the recruitment, selection, promotion, relegation and dismissal process;
- k) Violations of administrative procedures or the establishment of internal procedures with non-compliance with the law;
- l) Issuance of administrative or other acts that serve group or client interests;
- m) Maladministration or fraudulent administration of the public and private patrimony of the public authorities, public institutions and other units provided under art. 2 of the said law;
- n) Violation of other legal provisions requiring compliance with the principles of good administration and public interest protection.

It is clear that third parties related contracts, public procurement procedures targeting private companies might be subject to public warnings if links with the public servants and categories of subject targeted by the law are suspected of wrongdoings.



### ***Channels to report irregularities***

The report of violations of the law or of deontological and professional rules may be made, alternatively or cumulatively, to:

- a) the hierarchical superior of the person who has breached the legal provisions, according to art. 5;
- b) the head of the public authority, the public institution or the budgetary unit of the person who violated the legal provisions;
- c) disciplinary commissions or other similar bodies within the public authority, the public institution of which the person who violated the law belongs;
- d) judicial bodies;
- e) bodies responsible for the establishment and investigation of conflicts of interest and incompatibilities;
- f) parliamentary committees;
- g) media;
- h) professional, trade union or employers' organizations;
- i) non-governmental organizations.

A specific and detailed procedure handling whistleblower complaints had to be issued by each ministry in Romania but a significant majority kept the possibility that the complaint to be issued alternatively or cumulatively to any of the above mentioned channels.

### ***Protection of the privacy of the reporter***

The whistleblower can signal incidents as follows:

- To the hierarchical superior of the person who violated the legal provisions or where the illegal practice is reported
- To the head of the public authority, the public institution or the budgetary unit of the person who violated the legal provisions or where the illegal practice is reported
- To the disciplinary commission within the public institution to which the person who violated the law belongs.

Specifically on this law, there are two types of "confidentiality".

1. Confidentiality as part of the whistleblowing law is granted if the one reported through whistleblowing is the hierarchical superior or has control, inspection and evaluation powers over the whistleblower. In this case, the discipline commission or another similar body will ensure the protection of the whistleblower, hiding his identity.
2. If reports concern corruption, forms assimilated with corruption, abuse while on duty and similar offences, crime against the financial interests of the Union, forgery you benefit on ex officio confidentiality, the identity of whistleblower has to be protected from the start. (Article 8 of the Law on WB states that all provisions are taken from the Law on witness protection if you report on the above mentioned situations).

A law enforcement procedure for whistleblowing has been prepared by the National Integrity Agency and is generally valid for all public institutions in Romania that fall under the law.

The procedure regulates measures for the protection of persons who have reported violations of law in public institutions and other units reporting violations of the law.



### ***Protection against retaliation, discrimination and mobbing***

In front of the Disciplinary Committee or other similar bodies, whistleblowers are protected as follows:

- a) public-interest whistleblowers benefit from the presumption of good faith, unless proven otherwise;
- b) at the request a whistleblower under an administrative disciplinary procedure, the disciplinary commissions or other notified bodies have the obligation to invite the press and a representative of the trade union or professional association. The announcement is made by means of a communication on the website of the public authority at least 3 working days before the hearing, under the sanction of nullity of the report and of the disciplinary sanction applied;
- c) in the situation when the accused person is hierarchically superior, and/or has directly or indirectly powers of control, inspection and evaluation of the whistleblower, the discipline commission or other similar body will ensure the protection of the whistleblower, hiding his identity;
- d) in the case of warnings in the public interest that signal violations of the law, the provisions of Law no. 682/2002 on the protection of witnesses should be applied.

In practice, the protection of whistleblowers can be ensured in two directions: administrative and legal<sup>2</sup>. According to the national judicial practice, the administrative litigation or labor panels of the courts have jurisdiction in such cases:

- If the court finds that the whistleblower was prosecuted for warning will find absolute nullity sanction – including in the case of abusive dismissal or disciplinary sanction.
- If the court finds that the sanctioned person is a whistleblower, it will automatically check the manner in which the sanction was given, for what and when (before or after the warning) and whether it is an indirect sanction and / or disproportionate.

### ***Sanctions***

Law no. 571/2004 stipulates that labor disputes or those concerning work relationships, the court may order the cancellation of disciplinary or administrative sanction, if the penalty was applied following a whistleblowing made in good faith.

The court verifies the 'proportionality of the sanction applied to the whistleblower for a disciplinary offense by comparing with the practice of sanctioning or other similar cases' within the same public institution.

The law **does not underline sanctions against retaliation, discrimination and mobbing**. Except for those already mentioned, it is possible to file a complaint to the Court. The decisions are usually taken at the higher levels of the public authority – either disciplinary board or other ones. These decisions can be challenged before the Court. That's why a lot of reports go to the media/other agencies just to be under spotlight and receive support.

### ***Burden of proof***

The law provides that the burden of proof of the bad faith of the public institution and not of the whistleblower. In fact, there is no clear practice or explicit rules on the evidence that a whistleblower

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<sup>2</sup>Ghid privind protectia avertizorilor de integritate (Guidelines regarding the protection of whistleblowers), available in Romanian language at <https://www.transparency.org.ro/publicatii/ghiduri/GProtectieAvertizori.pdf>



should bring in supporting his accusations. However, the lack of relevant elements in support of the referral can make it difficult to take corrective measures from the public institution.

### *Organizational measures*

Central and local public administration entities in Romania have adopted detailed and transparent procedures regarding the functioning and protection of whistleblowers. The functioning of these procedures is the subject of one of the most important and coherent national public policies, the National Anti-Corruption Strategy.

The implementation of the whistleblowers policy in the public institutions in Romania is subject of the National Anti-Corruption Strategy (SNA) followed by extended evaluation and monitoring reports both for the period 2012-2015 and beyond 2020.

Moreover, these monitoring reports on the implementation of the SNA are subject to external auditing and are sent to Brussels as part of the special assessment by the European Commission which has imposed on Romania and Bulgaria after accession (2007) the so-called Justice Cooperation and Verification Mechanism.

The evaluation missions aim at documenting the way in which central and local public administration institutions apply in practice the provisions of the law both from the point of view of notifications, warnings management and whistleblowers' protection.

According to the SNA Implementation Monitoring Report 2012-2015, the indicators relevant for the protection of whistleblowers refer to the number of complaints, the number and type of violated rules, the number of internal regulations harmonized with the legislative provisions, the number of institutions in which there are specially designated persons to receive notifications of whistleblowers, the number of institutions in which a mechanism exists for the protection of whistleblowers.

For the evaluated period, out of a total of 1,598 complaints, the majority (1,466) were registered with the Ministry of Administration and Interior (MAI). In 1,244 institutions, there are specially appointed individuals to receive whistleblower notifications (of which more than 900 at the MAI). There was only one retaliation at work (within the MIA), and in 23 cases compensations were provided to whistleblowers. At the same time, there have been 18 complaints in court.