

Dr hab. Dagmara Skupień, prof. UŁ

University of Lodz
ORCID 0000-0003-3620-5377
e-mail: dskupien@wpia.uni.lodz.pl

Dr Irmina Miernicka

University of Lodz
ORCID 0000-0002-6646-4479
e-mail: irmina.miernicka@wpia.uni.lodz.pl

Report on the International Scientific Conference "Workplace Whistleblower Protection in the V4 Countries, France and Slovenia — Current Regulations and Proposed Changes", organized online by the University of Lodz on 15.06.2021

Sprawozdanie z Międzynarodowej Konferencji Naukowej „Ochrona sygnalistów w miejscu pracy w państwach V4, Francji i Słowenii — obecne regulacje i proponowane zmiany”, zorganizowanej online przez Uniwersytet Łódzki 15.06.2021 r.

Abstract

The Conference, organised by the Faculty of Law and Administration, Department of European, International and Collective Labour Law, University of Lodz within the Visegrad Grant concerning Workplace Whistleblower Protection in the V4 Countries, France and Slovenia (WhistlePro), took place on 15.06.2021. It aimed to present current regulations in the realm of the whistleblower protection as well as proposals for changes and to disseminate the results of the WhistlePro project. Among the speakers there were scientists, including WhistlePro project experts representing universities from V4 countries, France and Slovenia, representatives of the European Commission, state authorities, social partners, non-governmental organizations and employers. Thus, the content of the conference was very diversified and considered multiple points of view.

Keywords

whistleblowing, whistleblowers, EU Whistleblower Protection Directive, Directive (EU) 2019/1937, International Visegrad Fund, WhistlePro

JEL: K31, J83

Streszczenie

W dniu 15.06.2021 r. odbyła się konferencja, zorganizowana przez Katedrę Europejskiego, Międzynarodowego i Zbiorowego Prawa Pracy Wydziału Prawa i Administracji Uniwersytetu Łódzkiego w ramach Grantu Wyszehradzkiego, dotyczącego ochrony sygnalistów w miejscu pracy w państwach V4, Francji i Słowenii (WhistlePro). Miała ona na celu przedstawienie aktualnych regulacji prawnych w zakresie ochrony sygnalistów oraz propozycji zmian, a także upowszechnienie wyników projektu WhistlePro. Wśród prelegentów znaleźli się naukowcy, w tym eksperci projektu WhistlePro reprezentujący uczelnie z państw Grupy Wyszehradzkiej, Francji i Słowenii, przedstawiciele Komisji Europejskiej, władz państwowych, partnerów społecznych, organizacji pozarządowych oraz pracodawców. Dzięki temu treść konferencji była bardzo zróżnicowana i uwzględniała wiele punktów widzenia.

Słowa kluczowe

whistleblowing, sygnaliści, dyrektywa UE o ochronie sygnalistów, dyrektywa (UE) 2019/1937, Międzynarodowy Fundusz Wyszehradzki, WhistlePro

The international scientific conference "Workplace Whistleblower Protection in the V4 Countries, France and Slovenia — Current Regulations and Proposed Changes", organized online by the University of Lodz on 15.06.2021 was the second event¹ organised within the Visegrad Grant (No 21930021), concerning Workplace Whistleblower Protection in the V4 Countries, France and Slovenia (WhistlePro)², coordinated by the University of Lodz, Faculty of Law and Administration in cooperation with Charles University in Prague, Károli Gáspár University of the Reformed Church in Hungary, University of Maribor, University of Tours and Trnava University in Trnava and with the participation of representatives of other universities and research centers, the European Commission, public authorities, social partners, civil society organizations, enterprises and legal practitioners from various countries. The conference was held in English and interpreted simultaneously into V4 languages. The opening of the event by **Prof. Dagmara Skupień** (University of Lodz, the coordinator of the WhistlePro Grant) was followed by the greeting address of **Ms. Marianna Neupauerová**, Deputy Executive Director of the International Visegrad Fund, who appraised the selection of the Grant subject and underlined the importance of creating safe environment for whistleblowers for the sustainable development of the whole V4 region.

The first part of the conference, chaired by Prof. Dagmara Skupień (concerning European and comparative perspective of whistleblower protection), was inaugurated by the speech of **Maria R. Mollica** (European Commission, Directorate-General for Justice and Consumers, Fundamental Rights Policy) who presented the essential elements of whistleblower protection under directive (EU) 2019/1937, such as the guarantee of clear internal and external reporting channels, obligation of private organizations and competent authorities to follow up diligently on reports and to give a feedback within a specific timeframe, protection of persons reporting on breaches against retaliation and measures of support for whistleblowers and also effective, proportionate and dissuasive penalties for the breaches of duties related to whistleblowing.

The second speaker, **Prof. Marcin Górski** (University of Lodz) highlighted the extensive case-law on protection of whistleblowers under Article 10 ECHR (freedom of expression) which was a source of inspiration for the EU Whistleblower Protection Directive (recital 31). M. Górski explained the six-element test elaborated by the ECoHR in order to assess the proportionality of the interference with an employee-whistleblower freedom of expression. At the end of the presentation, the speaker compared the standards set up by the ECoHR with the conditions for public disclosure resulting from Article 15 of the EU

Whistleblower Protection Directive, showing certain discrepancies between them, which may cause problems in the future application of the Directive.

Prof. Gwenola Bargain (University of Tours) presented the state of French legislation concerning the whistleblower protection. The effectiveness of the Loi Sapin 2, the main legal act concerning whistleblowing, appears to be limited. The main shortcomings are multiplication of conditions to be granted the status of a whistleblower (seriousness of the reported breach, personal knowledge about the facts), lack of autonomy of the whistleblower concerning the choice of the appropriate channel or restricted possibility to disclose wrongdoings publicly. Proposals for changes were presented, such as granting material support for whistleblowers, including financial aid to compensate for the loss of income, or creation of a general inspectorate for whistleblowing. Arguments were also listed for enlarging the personal scope of whistleblower protection to legal persons.

Prof. Darja Senčur Peček (University of Maribor) analyzed the Slovenian legislation, especially the Integrity and Prevention of Corruption Act (IPCA) and general labour law rules and presented proposals for the improvement of the whistleblower protection. The current legal acts guarantee protection mainly to employees and civil servants. Protection of workers in the broader sense according to the CJEU definition, economically dependent persons and self-employed persons is very limited, what should be improved by the act implementing the EU Whistleblower Directive. Other proposed solutions encompass i.a. enlarging the material scope of breaches also to breaches of national law, the proper structure of internal channels, set up in agreement with worker representatives, guaranteeing confidence of the whistleblower personal data and also allowing for autonomous reports, operated by competent persons in whom workers could have confidence, the possibility to withhold the retaliatory measures by the competent authority or the right of whistleblowers to be transferred to another post of work. The significant role of controlling inspectorates in assuring the protection of whistleblowers was also underlined.

Last but not least, the presentation, on behalf of **Dr. Attila Gulyás** and herself, was held by **Dr. Zsuzsanna Baksa** (Head and Vice-Head of the Department for the Protection of Whistleblowers and Client Service Office of the Commissioner for Fundamental Rights of Hungary — OCFR). According to national legislation, OCFR provides an operation of protected electronic system for public interest disclosures. In order to support the implementation of the EU Whistleblower Protection Directive, OCFR started an inquiry of state bodies, authorities and institutions related to whistleblower protection. It included questions about the operation of existing internal and external

reporting channels, protection of whistleblowers, personal data processing, storage of reports, statistical data on the type of reports, internal regulations, their communication within the organization and status of persons managing the reporting channel. Collected data should be evaluated and summarized to create the report about good and bad practices, which facilitate the implementation of the Directive.

The second part of the conference, chaired by dr. Monika Smusz-Kulesza (University of Lodz) was dedicated to the whistleblower protection measures in the V4 countries. It started with the introductory remarks of **Prof. J. Morávek** (Charles University in Prague) concerning the previous unsuccessful attempts to regulate the whistleblower protection in the Czech Republic and the current legislative proposal to implement the EU Whistleblower Protection Directive.

Next the floor was taken on behalf of **Dr. Jiří Kapras**, by **Johana Trešlová**, (the Conflict of Interest and Anti-Corruption Department of Ministry of Justice of the Czech Republic). Ms. Trešlová elaborated on the process of the transposition of the EU Whistleblower Protection Directive into the national legislation. The draft bill has gone through several changes. One of the biggest ones applied to the external reporting channel which now is supposed to be the Ministry of Justice. In accordance with the Directive, the reports concerning national security were excluded from material scope of the act. Next, the indicative list of retaliatory measures was introduced into the draft bill. It was also decided to enable the internal reporting to as many people as possible by introducing lower thresholds of employment in enterprises. Lastly, Ms. Trešlová presented related non-legislative activities, aiming to promote whistleblowing, such as trainings, workshops and media campaigns.

The legislative framework concerning whistleblowing in Slovakia was presented by **Prof. Peter Varga** and **Dr. Veronika Zoricaková** (Trnava University in Trnava). Slovakia boasts the special law concerning whistleblowing, namely Act on Protection of Whistleblowers of Anti-Social Activities (No. 54/2019 Coll.) and the Whistleblower Protection Office is created. The whistleblower protection is supplemented by anti-discrimination provisions. Even though Slovak legislation is advanced in comparison with other countries of the V4 Group, the whistleblower protection is not fully satisfactory and revision of the existing rules is necessary, especially with the aim to better protect whistleblowers who do not have the status of an employee and to guarantee the protection independently of the seriousness of the breach reported.

Zuzana Dluhošová (the first Head of the Whistleblower Protection Office of Slovakia) summarized practical challenges and solutions brought

by the new legislation in Slovakia. Ms. Dluhošová emphasized that one of the biggest issues was to make the society recognize whistleblowing as a socially responsible act and increase public trust in police and prosecution service. To achieve this, it is crucial to educate the public, promote the new office, conduct opinion surveys and discussions. In order to measure impact of protection rules and functioning of the office, one should also collect data on discouraging factors for potential whistleblowers, awareness on protection mechanisms and areas in which protection was sought. Concluding the speech, Ms. Dluhošová presented Slovakia's amendments to the existing legislation, including broadening the scope of protection, definition of retaliation measures and more precise rules of employers' obligations. To strengthen the protection and fairness of proceedings, the speaker also proposed shifting the measures to prevent any type of retaliation to courts and setting the timeframes for court actions in such cases.

Prof. Attila Kun (Gáspár Károli University of the Reformed Church in Hungary (KRE)) presented the legal situation of workplace whistleblowers in Hungary. Whistleblowing is regulated mainly by the Act CLXV of 2013 on Complaints and Public Interest Disclosures. The Commissioner for Fundamental Rights maintains a secure electronic system for public interest disclosures guaranteeing anonymity of a whistleblower to the investigating organs. The whistleblowing legal framework is not satisfactory. Its weak points are: lack of clarity concerning the support measures, no rules defining which authority shall establish that the whistleblower is at risk, no precise rules concerning guarantees for protection, no appropriate enforcement rules, too soft sanctions for breaches of obligations related with whistleblowing, as well as no role for the worker representatives and social dialogue in the process of setting up reporting channels. Prof. A. Kun presented proposals for changes, concerning i.a. wider personal scope of protection, introduction of specific rules on prohibition of retaliation and the reversed burden of proof, ban on waiver of rights and remedies by the whistleblower, as well as proportionate, effective and dissuasive sanctions. The speaker also expressed the need for the Hungarian legislator to go beyond the necessary minimum set by the EU Whistleblower Protection Directive.

The speech of **Prof. Zbigniew Hajn** (University of Lodz) acquainted listeners with the personal scope of the EU Whistleblower Protection Directive. First, Prof. Z. Hajn presented the circle of persons who should be protected in connection with whistleblowing according to the EU Whistleblower Protection, namely whistleblowers irrespective of the nature of the legal relationship binding them with the legal entity managing the organization where the breaches occur, and also other persons who may face retaliations,

including facilitators. The speaker proposed to cover with protection not only persons who reported about the breaches of law, but also persons who plan to disclose wrongdoings and persons who do not disclose or do not even intend to report but are suspected of having done so or planning to do so and for this reason suffer retaliation. Second, Prof. Z. Hajn addressed the problems concerning entities obliged to create appropriate conditions for reporting about the breaches of law and bearing responsibility for damages caused to whistleblowers or persons assisting them, as a result of failure to fulfil these duties or retaliation. In this context, the relationship between concepts of 'employer', 'legal entity' and 'legal person' were analysed. The issue of a possible approach to a group of undertakings as a responsible entity was taken into consideration.

The next speaker was **Adam Ożarowski** (Legal Department of the Polish Ministry of Development, Labour and Technology), who presented the key solutions adopted in the Polish draft act. The implementation of the EU Whistleblower Protection Directive into Polish legal system results in the adoption of a comprehensive regulation on this issue. Mr. Ożarowski focused on the most challenging aspects of the transposition, including the material scope, measures of protection and the arrangements for reporting breaches of law to the employer and public authorities. There were some difficulties how to define the breach, which is the subject to reporting, thus it was proposed that Polish regulations should provide a broader scope than the Directive itself. It is also considered to establish a central reporting channel for accepting the reports. Commenting on protection measures, one should remember the rationale to introduce them and use them effectively. Procedural aspects, concerning e.g., verification of the reports, must also be considered.

The last speech of the second session was followed by questions. Mr. Ożarowski indicated that probably the general *vacatio legis* would be applied, however the derogation from the Directive for medium enterprises would also be used. As for the anonymous reports, most likely there will be provisions providing possibility to accept such reports. There are also no plans to establish a separate institution for the whistleblowers' protection.

The third session dealt with whistleblowing in practice and was chaired by Prof. Peter Varga. After the break, the first speaker was **Dr. Jaroslav Stránský** (legal adviser, Czech-Moravian Confederation of Trade Unions — ČMKOS). Dr. Stránský noted that there were already cases of retaliation of employees who reported wrongdoings. That is why EU Whistleblower Protection Directive is considered as an important instrument to protect such persons,

nevertheless, the transposition must achieve its goal, therefore the first draft bill was not supported by ČMKOS. After the amendments, the protection of employees seems enhanced, however most of the protective measures already exist in current legislation. Czech trade unions take the view that first it is important to properly use the instruments already introduced to the legal system. On the other hand, indicating specific protection measures may help to build the awareness and legal certainty. It is also crucial to ensure the effective application of new provisions, primarily within the internal reporting channels and autonomous functioning of the designated authority.

Next the floor was taken by **Dr. Edyta Bielak-Jomaa** (University of Lodz), who drew attention to the aspect of data protection of whistleblowers in public administration. Employees working in public administration must act not only in the interests of the employer, but likewise in the interests of society and the state. In this sector, whistleblowing should be treated also as an obligation. Therefore, it is necessary to provide independent reporting channels and ensure the confidentiality and protection of personal data. In general, creation of effective internal communication channels depends on many factors, such as size and structure of an employer, branch of business, level of fraud risk, employees' knowledge, etc. In case of public administration, it is necessary that personnel designated to receive reports and conduct investigations has sufficient knowledge regarding data protection. Dr. Bielak-Jomaa presented also other issues which should be considered while creating such channels, e.g., structure of offices, reporting systems and data retention.

The following presentation had a very practical input, bringing insight into protection of whistleblowers in one of the largest Czech employers, Škoda Auto a.s. It was held by **Patrik Stonjek**, MSc, a lawyer dealing with labour law in this company. As Mr. Stonjek pointed out, the system dealing with complaints of the employees or customers, managed centrally by the Volkswagen Group, had already been introduced a couple of years ago. The practical aspects of its operation were outlined, including anonymity guarantees, ways of making notifications, multiple reporting channels, including those with legal expertise within the group, designated bodies for verification of reports, procedural unification and protection measures. Also, some examples of internal investigations were presented. To conclude, the EU Whistleblower Protection Directive will not bring significant changes for Škoda Auto a.s., however, some adjustments need to be introduced. At the end, Mr. Stonjek, answering the questions from the audience, noted that there was a special email address within the

enterprise, which could be used for reporting breaches of law, and it was possible to make anonymous reports. There is also a dedicated department within the group, supervising the internal reporting system.

Thereafter, **Zuzana Grochalová** (Transparency International (TI) Slovakia), presented Slovak data about whistleblowing reports and protection. At the beginning, Ms. Grochalová described main activities of TI, namely support for whistleblowers (e.g. by guaranteeing them new workplaces in case of dismissal), public counseling, participation in legislative process and educational activities. Then, statistic data were displayed concerning awareness of legal protection, protection granted, willingness to report breaches, conducted trainings and reports made in public institutions. It must be noted that the number of reports has increased significantly in 2020, however this also meant an increase in irrelevant reports. Additionally, it turned out that labour inspectorates at county level didn't carry out their duties properly, because they didn't get enough funding nor training from the government. On the other hand, the number of trainings provided was improved, as well as prosecutions of corruption crimes. Ms. Grochalová referred also to the first successful case, in which remuneration was paid to a whistleblower according to law.

The last presentation was held by **Julia Besz** (Domański, Zakrzewski, Palinka Sp.K.) and **Vojtech Prerovský** (Veolia Česká Republika a.s.). It referred to the legal design methodology as a new tool for establishment of rules, enabling more successful implementation of whistleblowing systems, as, according to the EU Whistleblower Protection Directive, information on reporting should be clear and

easily accessible. This methodology consists of at least 3 aspects: simple language, understandable graphics and legally compliant content, which allows for better communication. It helps to promote whistleblowing rules in the organization and make internal regulations user-friendly. Increased understanding means increased compliance; therefore, it is also a good idea to involve workers from different sectors in the work on procedures. At the end, practical solutions applied by the Czech employer and their results, confirming the effectiveness of the described method, were presented. Mr. Prerovský also noted that it is important to choose channels of communication which are easily available to the specific types of workers.

The concluding speech, presenting proposals for changes concerning the workplace whistleblower protection in the V4 countries, France and Slovenia, elaborated within the WhistlePro Grant, was held by Prof. Dagmara Skupień. The speaker focused on such important issues as: the material scope of whistleblowing, appropriate structure of internal and external reporting channels, conditions for the public disclosure, protection against retaliations, measures of support for whistleblowers, relationship between general rules and sectoral provisions as well as confidentiality-related issues.

Prof. Dagmara Skupień closed the conference announcing publications summarizing the results of the WhistlePro Grant to be published by the Lodz University Press this year. All interested persons may watch the conference at the University of Lodz YouTube³ and the Book of Abstracts is available in a digital format⁴.

Notes/Przypisy

¹ See also online streaming of the first WhistlePro conference of 25 September 2020 entitled "Workplace Whistleblower Protection in the V4 Countries, France and Slovenia — in Search of an Effective Model of Protection", <https://www.youtube.com/watch?v=niPjCjj5AKo> (accessed 15/08/2021) and the Book of Abstracts for this conference: <https://wydawnictwo.uni.lodz.pl/produkt/workplace-whistleblower-protection-in-the-v4-countries-france-and-slovenia-in-search-of-an-effective-model-of-protection/> (accessed 15/08/2021).

² The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe. More about the International Visegrad Fund see <https://www.visegradfund.org/> (accessed 15/08/2021), more about the WhistlePro Grant: <https://wpia.uni.lodz.pl/en/research/whistlepro> (accessed 15/08/2021).

³ <https://www.youtube.com/watch?v=6vQPwwCeeDQ> (accessed 15/08/2021).

⁴ See I. Miernicka, A. Pietras, D. Skupień (eds.), *Workplace Whistleblower Protection in the V4 Countries, France and Slovenia. Current Regulations and Proposed Changes. Book of Abstracts*. International Scientific Conference Organised Online. Department of European, International and Collective Labour Law. Faculty of Law and Administration, University of Lodz, 15th June 2021, Lodz 2021, <https://wydawnictwo.uni.lodz.pl/produkt/workplace-whistleblower-protection-in-the-v4-countries-france-and-slovenia-current-regulations-and-proposed-changes/> (accessed 15/08/2021).

Dr hab. Dagmara Skupień, prof. UŁ, PhD, DSc, Associate Professor at the University of Lodz, Faculty of Law and Administration, and an attorney at law at the Bar of Lodz. Author of monographs and other publications on Polish and European labour law in Poland and abroad. Speaker at Polish and international congresses and conferences. Associate member of the International Academy of Comparative Law (AIDC-IACL). Expert of the European Trade Union Institute's "Worker Participation Europe network". Former chairperson of the Polish section of Henri Capitant Association des amis de la culture juridique française (2012–2018). In years 2020–2021, coordinator of the Visegrad Grant "Workplace Whistleblower Protection in the V4 countries, France and Slovenia" (WhistlePro).

Dr Irmína Miernicka, PhD in legal sciences, since 2020 assistant professor in the Department of European, International and Collective Labour Law at the Faculty of Law and Administration, University of Lodz. Author of publications in Polish and English, speaker at international and national conferences. Her scientific interests focus, among others, on the issues of interference in the sphere of employee's freedom and discrimination. During her doctoral studies she received a grant for scientific research for young scientists and doctoral students. She is the author of a book entitled *Requirements concerning appearance of employees as an interference in their sphere of freedom*. Since 2016, a legal advisor belonging to the Lodz Bar Association of Attorneys-at-Law.

Dr hab. Dagmara Skupień, prof. UŁ, jest profesorem na Wydziale Prawa i Administracji Uniwersytetu Łódzkiego oraz adwokatem należącym do Okręgowej Izby Adwokackiej w Łodzi. Autorka monografii i innych publikacji dotyczących polskiego i europejskiego prawa pracy w Polsce i za granicą. Wygłaszała referaty na polskich i międzynarodowych kongresach i konferencjach. Członkini stowarzyszona Międzynarodowej Akademii Prawa Porównawczego (AIDC-IACL). Ekspertka sieci „Worker Participation Europe network” Europejskiego Instytutu Związków Zawodowych. Była przewodniczącą polskiej sekcji Association Henri Capitant des amis de la culture juridique française (2012–2018). W latach 2020–2021 sprawuje funkcję koordynatorki Grantu Wyszehradzkiego „Ochrona sygnalistów w miejscu pracy w państwach Grupy Wyszehradzkiej, Francji i Słowenii” (WhistlePro).

Dr Irmína Miernicka, doktor nauk prawnych, od 2020 roku adiunkt w Katedrze Europejskiego, Międzynarodowego i Zbiorowego Prawa Pracy na Wydziale Prawa i Administracji Uniwersytetu Łódzkiego. Autorka publikacji w języku polskim i angielskim, prelegentka na międzynarodowych i krajowych konferencjach. Jej zainteresowania naukowe skupiają się m.in. na problematyce ingerencji w sferę wolności pracownika oraz dyskryminacji. Podczas studiów doktoranckich otrzymała dotację na prowadzenie badań naukowych dla młodych naukowców i doktorantów. Autorka monografii pod tytułem *Wymagania dotyczące wyglądu pracownika jako ingerencja w sferę jego wolności*. Od 2016 r. radca prawny należący do Okręgowej Izby Radców Prawnych w Łodzi.



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