Whistleblower Protection in a Challenging Environment: Romania

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The introduction of whistleblower protection in Romania – need for the law (I)

- The need to *shield employees who refuse to execute illegal orders* (although refusal was regulated by previous civil service legislation, in practice opposition often resulted in elimination from the public system)

- The need to *protect the professional reputation of public sector employees*, by allowing individuals to make a stand against corrupt fellow workers

The introduction of whistleblower protection in Romania – need for the law (II)

- The need *to match the internal channels of complaint* (disciplinary committees, hierarchical superiors and ultimately the prosecutor's office) *with more responsive exterior ones* (civil society organisations, mass media, etc.)

- The need *to break with a tradition of silence and complicity* in the Romanian public sector

The adoption of the Law no. 571/2004 (I)

- In Romania whistleblower protection was introduced in 2004 through the *Law no 571/2004 concerning the protection of personnel within public authorities, public institutions and other institutions reporting infringement of the law* .

- Proposed in a favourable internal and international context, the introduction of whistleblower protection did not encounter strong opposition from public or private actors.

    - Divergence of opinions related to detail regulation rather than the opportunity or usefulness of the measure itself.

    - The draft law contained a number of generous promises which fuelled consensus among decision makers and played a crucial role in its adoption.

The adoption of the Law no. 571/2004 (II)

- ***A carefully structured decision making process***

  - *Law no. 571/2004* was part of a six-law package proposed by Transparency International Romania to the Romanian Government as part of memorandum regarding a common platform for the fight against corruption.

  - The inclusion of whistleblower protection in this package, and, more importantly, the direct dialogue between Government representatives and independent experts proved to be a rewarding advocacy strategy, which allowed for significant improvements to the Romanian anticorruption legal framework.

Law for whistleblower protection Principles

- Legality
- The supremacy of public interest
- Accountability and responsibility
- Non-abusive sanctioning
- Good management
- Good behaviour
- Balance
- Good faith

Law for whistleblower protection
Definitions provided by the law

- ***Whistleblowing in the public interest*** means reporting, in good faith, with regard to any deed to infringe the law, the professional ethical standards or the principles of good administration, efficiency, efficacy, economy, and transparency

- ***Whistleblower*** means the person who reports or informs, as provided in line a) and who is employed within the public authorities, public institutions, or one of the other establishments;

The Romanian model: Protecting whistleblowers (I)

- The law
  - addresses the protection of persons who have complained against or informed with regard to the infringement of the law within public authorities, public institutions, and other institutions, perpetrated by persons holding management or executive positions within the authorities, public institutions, as well as within in the other budgetary units.
  - applies to authorities and public institutions of the central public administration, local public administration, the Parliament, the Presidential Administration, the Government apparatus, autonomous administrative authorities, public institutions of culture, education, health and social services, national companies, autonomous administrations of national and local interest, as well as public companies.
  - applies to persons appointed to scientific and consultative councils, special committees, and other collegial organisations within the structure of or attached to public authorities and institutions.

The Romanian model: Protecting whistleblowers (II)

- The public interest whistleblowers are *assumed of good faith*, until proven otherwise
- At the request of the whistleblower undergoing disciplinary inquiry, the invitation of media representatives and trade unions/ professional associations is mandatory
- The sessions are to be *publicly announced* at least three working days before they are convened, otherwise, the report or the disciplinary sanction is null and void
- When the subject of the whistleblowing is a superior, or is entitled to supervise, control or assess the whistleblower, *the identity of the whistleblower is concealed*

The Romanian model: Protecting whistleblowers (III)

- The provisions of Law 682/2002 regarding the *protection of witnesses automatically apply* to the whistleblowers in public interest
- Courts can *repeal the disciplinary or administrative sanction* given to a whistleblower, when decided after an act of whistleblowing in good faith
- The court must *compare the extent of the sanction* passed against a whistleblower with sanctions passed in similar cases within the same body, in order to avoid future and indirect sanctions against whistleblowers

Progress in implementation

- Few public bodies have harmonised their internal regulations with the provisions of the law
- Personnel in public bodies and potential recipients of whistleblowers' reports (e.g.: the media, NGOs) are rarely or partly informed on provisions of the law
- Prejudice and misunderstanding of whistleblowinig
- Several groundbreaking cases of success

Whistleblower protection measures are efficient only if they are known to potential beneficiaries and observed by the competent bodies!

National Integrity Agency (ANI)
Whistleblowers – Case Study (I)

- *Background*

  - Law no. 144/2007 regarding the organising and functioning of the National Integrity Agency – advocated by TI Romania

  - The role of ANI: control of conflicts of interests, ascertaining and notifying the competent authorities on incompatibilities

National Integrity Agency (ANI)
Whistleblowers – Case Study (II)

- *Issues:*
  - The Chair of ANI is incompatible as he is also owner of two companies (one of which he renounced one year after his appointment in office, while the other he still manages)
  - The Secretary General of ANI was appointed without meeting the requirements provided as mandatory by the law
  - Potential appointments of relatives and/or friends as integrity inspectors (strictly forbidden by the law)
  - Public procurement – restrictive eligibility criteria so as to match the profile of one and only company to which a close relative of the Secretary General is owner

National Integrity Agency (ANI)
Whistleblowers – Case Study (III)

- *Whistleblowing*
  - The Chief of the Chair's Cabinet and one integrity inspector came to TI Romania's ALAC on 5th February 2009 and subsequent meetings were also held

- *Outcomes (so far)*
  - The integrity inspector went public in the National Integrity Council regular meeting on 12th February
  - A Disciplinary Committee was set up for the integrity inspector and results are pending

National Integrity Agency (ANI)
Whistleblowers – Case Study (IV)

- *Outcomes (so far)*
  - The Chief of the Chair's Cabinet was also supoenaed to a Disciplinary Committee; her work contract was terminated the next day
  - Hearing of the Chief of the Chair's Cabinet in the Public Abuse Commission
  - Criminal investigation body (Prosecutor's Office) received a complaint
  - The former Chief of the Chair's Cabinet sued ANI on grounds of illegal termination of contract

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Thank you!

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