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Being a whistleblower is a heavy burden. The desire to support justice and transparency often does not come without consequences, especially where there is an absence of proper legal protection. Europe has seen several high-profile whistleblowing cases in recent years, including LuxLeaks, Cambridge Analytica and the Panama Papers. These have demonstrated the significant importance of whistleblowers, their work and their courage. These cases also indicate that whistleblowers are not considered heroes, but rather leakers – despite their contribution to global justice. One such individual is Antoine Deltour, who has been convicted for revealing widespread tax avoidance.²

In the European Union, several states have comprehensive legal protection for whistleblowers, including Ireland and the United Kingdom, which are among the first countries to introduce this type of regulation.³ Yet just a quarter of EU countries have some degree of protection in their legal systems.⁴ For this reason, the EU Parliament found it necessary to introduce an EU-wide whistleblowing law, known as the Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law (the ‘EU Directive’).⁵ This set of provisions is aimed at protecting whistleblowers across the jurisdiction.

This article will analyse the current situation in Balkan countries regarding whistleblowing and the degree to which domestic politics impede the implementation of whistleblower protections. It will also demonstrate the potential effect of the future EU Directive on whistleblowing regulations in these countries, especially those that are EU Member States, but also those that are candidates for joining the EU. The article will then analyse the Serbian whistleblowing system, given its importance and leading position in Europe.

General overview of whistleblowing regulation in the Balkans

Balkan countries have long struggled with corruption. The states that are candidates for becoming EU Member States, such as Albania, Macedonia, Montenegro and especially Serbia, are undertaking numerous efforts to decrease levels of corruption. Serbia has even implemented many EU recommendations for overcoming corruption.⁶ Following this path, in order to reduce corruption, mainly in the public sector, in 2014, Serbia introduced one of the most advanced whistleblowing

1 This article is the work of the author alone and does not represent the views of the International Bar Association.

2 In 2015, Deltour was awarded the European Citizens’ Prize. In 2016, he was convicted. Simon Bowers, ‘LuxLeaks Whistleblower Avoids Jail After Guilty Verdict’ *The Guardian* (London, 29 June 2016) www.theguardian.com/world/2016/jun/29/luxleaks-pwc-antoine-deltour-avoids-jail-but-is-convicted-of-theft accessed 18 June 2019.

3 *Blue Print for Free Speech: Gaps in the System: Whistleblower Laws in the EU*: <https://blueprintforfreespeech.net/wp-content/uploads/2018/03/BLUEPRINT-Gaps-in-the-System-Whistleblowers-Laws-in-the-EU.pdf> accessed 18 June 2019.

4 *Ibid.*

5 There were three draft versions of the Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law delivered by the EU Parliament, the Council and the Commission. The final version of the directive was adopted in the European Parliament on 16 April 2019. It sets out fundamental standards for whistleblower protection. For further information, see EU Law Analysis, New EU Directive on Whistleblower Protection (2019) <https://eulawanalysis.blogspot.com/2019/04/new-eu-directive-on-whistleblower.html> accessed 18 June 2019.

6 Julia Gabriel, ‘Blowing the Whistle: Fighting Corruption in Western Balkan EU Candidates’ (Eurasian Research and Analysis Institute, 13 February 2017) <https://erainstitute.org/blowing-the-whistle-fighting-corruption-in-western-balkan-eu-candidates> accessed 18 June 2019.

regulations in Europe. Other Balkan countries have also introduced some protections, although unfortunately these have not been particularly effective.

Bulgaria and Romania

Bulgaria and Romania, both as EU members and Balkan countries, do not provide comprehensive protection to people who want to report wrongdoing.

In Bulgaria, there is little support for whistleblower protection. Whistleblowers are not considered heroes, but rather ‘leakers’ and ‘snitches’. For this reason, there are relatively few cases regarding whistleblowing in Bulgaria. However, the government has previously demonstrated its unwillingness to provide protection to those seeking to report wrongdoing. For instance, the current ombudsman in Bulgaria is Maya Manolova. Manolova has been deprived of the use of a National Security car, so she has to travel many kilometres every day to receive complaints from people.⁷ She meets citizens on the bus and train, where she carries out her governmental duties.⁸ The work of Manolova shows the low level of protection, not only for whistleblowers in Bulgaria but also human rights generally in this Balkan country. As an EU Member State, Bulgaria will soon have to comply with the EU Directive on whistleblowing protection.

Romania does provide certain protections for people who report misconduct,⁹ but the protection is only granted to employees in the public sector.¹⁰ On the other hand, whistleblowers in the private sector are not protected by Romanian law, but this will be remedied with the EU Directive.

Romania has faced high-profile whistleblowing cases. The most famous case occurred in 1998: Constantin Bucur, an employee of the Romanian Intelligence Service, reported irregularities he noticed while monitoring telephone conversations among certain politicians, journalists and so others.¹¹ He was convicted for disclosing confidential information in 1998. In 2013, the case went to the European Court of Human Rights, where it was ruled that by convicting Bucur, the Romanian Government had violated his rights, and the public interest in disclosing these irregularities was greater than the interest of keeping the information confidential within the Romanian Intelligence Service.¹²

Croatia

Croatia has recently implemented a Whistleblower Protection Act (the ‘Act’), which will enter into force in July this year.¹³ As an EU Member State, Croatia will also have to comply with the EU Directive. It is difficult to conclude how effective the new Act will be, but it seems to have some

7 Independent Balkan News Agency, ‘Bulgaria’s Ombudsman Takes to Trains and Buses After Official Car Taken Away’ *The Sofia Globe* (Sofia, 5 November 2018) <https://sofiaglobe.com/2018/11/05/bulgarias-ombudsman-takes-to-trains-and-buses-after-official-car-taken-away> accessed 18 June 2019.

8 *Ibid.*

9 Since 2004, Law no 571/2004.

10 Sorin Stratula, ‘Whistleblowing – Legal Situation in Romania’ (East Legal Team) <http://east-legal.com/whistleblowing-legal-situation-in-romania> accessed 18 June 2019.

11 *Bucur and Toma v Romania* www.right2info.org/cases/r2i-bucur-and-toma-v-romania accessed 18 June 2019.

12 Southeast Europe Coalition on Whistleblower Protection, *Protecting Whistleblowers in Southeast Europe, a Review of Policies, Cases and Initiatives, Romania*, (2017).

13 Marko Kapetanovic, ‘Croatia Enacts Whistleblower Protection Act’ (Schonherr, 20 March 2019) www.mondaq.com/x/790408/Whistleblowing/Croatia+enacts+Whistleblower+Protection+Act accessed 18 June 2019.

differences regarding crucial principles adopted in the EU Directive. One of those principles is the ability for external reporting without going internally first, which the Act does not allow. There were some earlier attempts to implement this type of regulation into the Croatian system, particularly after a major scandal involving the whistleblower Bruno Mirtal and well-known Croatian tycoon Ivica Todoric.¹⁴

According to a 2017 report conducted by The Southeast Europe Coalition on Whistleblower Protection,¹⁵ the first whistleblower case that gained public attention occurred in 1998 and involved a bank employee, Ankica Lepej, who disclosed the wrongdoing of the Croatian President and his wife. Lepej was subsequently fired.¹⁶ Hence, it seems that from 1998 until today, whistleblowers in Croatia still remain legally unprotected. Vesna Balenovic, who reported corruption in the Refining and Trade – INA in 2001, she suffered dismissal from the company. However, Balenovic did not give up on fighting against corruption: in 2008, she founded an association called ‘Zvizdac’ (Whistleblower),¹⁷ which has received around 200 reports from mostly anonymous whistleblowers.¹⁸

Albania and Montenegro

Like the majority of Balkan countries, Albania and Montenegro have both implemented whistleblowing regulation (Montenegro in January 2016 and Albania in June 2016). However, it seems that these regulations have not decreased levels of corruption.¹⁹ It has been argued that these countries (and Serbia) have only implemented anti-corruption and whistleblowing regulations to stay on the list of candidates for joining the EU.²⁰

In Albania, for instance, as one commentator suggested, the media plays a crucial role in ‘promoting’ whistleblowing.²¹ The problem is that the media frequently ‘misses the point’ of whistleblowing and whistleblower protection, and as a result, considers whistleblowers as snitches and leakers. The same article further argues that the media in Albania should be raising the awareness of people, reminding them of the new whistleblowing law and importance of fighting corruption.

According to Balkan Investigative Reporting Network (BIRN) Albania,²² there was an attempt to implement transparency in this country in 2015 by conducting training for investigative journalists in order to decrease levels of corruption and promote accountability.²³ The purpose of this project was to introduce Albanian journalists to transparency, and the significance of investigative journalism and

14 For further information, see Toni Gabric, ‘The Lack of Protection for Whistleblowers in Croatia’ (Osservatorio Balcani e Caucaso Transeuropa, 21 November 2017) www.balcanicaucaso.org/eng/Areas/Croatia/The-lack-of-protection-for-whistleblowers-in-Croatia-183674 accessed 18 June 2019.

15 Mark Worth and Arjan Dyrnish, *Protecting Whistleblowers in Southeast Europe: A Review of Policies, Cases and Initiatives* <http://csdgalbania.org/wp-content/uploads/2017/10/Protecting-Whistleblowers-in-SE-Europe.pdf> accessed 18 June 2019.

16 Mucic Magdalena, ‘Ankica Lepej Svoju Knjigu Knjigu o Aferi Prodaje Na Ulici’ (24sata, 18 May 2008) www.24sata.hr/news/ankica-lepej-svoju-knjigu-o-aferi-prodaje-na-ulici-63005 accessed 18 June 2019.

17 Lejla Mazlic ‘HRH Zagreb Revives the Case of Vesna Balenovic’ (Human Rights House Foundation (HRH), 22 February 2010) <https://humanrightshouse.org/articles/hrh-zagreb-revives-the-case-of-vesna-balenovic> accessed 18 June 2019.

18 *Ibid* at 14.

19 See n 5 above.

20 Besnik Pula, ‘The Budding Autocrats of the Balkans’ FP (Washington, DC, 15 April 2016) <https://foreignpolicy.com/2016/04/15/the-budding-autocrats-of-the-balkans-serbia-macedonia-montenegro> accessed 18 June 2019.

21 Mirsada Hallunaj, Whistleblower or Snitch – How the Albanian Media (Mis)Understands Whistleblowing Center for the Study of Democracy and Governance, June 2018.

22 Balkan Investigative Supporting Network (BIRN).

23 BIRN Albania, *Fostering Transparency Through Investigative Reporting*.

access to information.²⁴ However, it seems that the project was not hugely successful in Albania, even though almost 20 journalists were actually trained, especially in the whistleblowing area.²⁵

Montenegro has had anti-corruption regulation since January 2016, which was also designed to protect people who report misconduct in both the private and public sectors. However, whistleblower cases in Montenegro suggest the law is ineffective. In the same year that the Law on Prevention of Corruption was implemented, whistleblower Patricia Pobric reported a doubtful payment that occurred in Montenegro Railways. This case, publicly known as ‘The invoice’, is one of the highest-profile cases in Montenegro. Pobric came across evidence that €1,000 was paid to a hotel (of which Pobric was director) where certain meetings of the Social Democratic Party were held.²⁶ The President of that party is also the head of the Montenegro Railways.²⁷ Pobric was fired after disclosing this information in 2016 on the grounds that her contract of employment was breached.²⁸

These countries are each facing a number of political challenges. As Besnik Pula argues, ‘[f]rom Montenegro to Macedonia, a new generation of leaders has learned to tell the West what it wants to hear while crushing democracy back home’. Therefore, a lack of effective whistleblowing regulation in this region is just the tip of the iceberg. It is unlikely that whistleblowers will be granted actual protection until the complex political situation is resolved.

Whistleblowing in Serbia

‘I was not able to report this to anyone. My only hope was to alarm the public, since any other doors were closed. The Ministry of Health, as protector of public well-being, was obliged to react in those situations and investigate the case. Instead of that, they acted as in ancient times – kill the person who brings the bad news’ – Dr Borko Josifovski,²⁹ Serbian whistleblower.

The ‘death business’

Borko Josifovski is a famous Serbian whistleblower who was prosecuted for 13 years for blowing the whistle and alarming the public on a scheme that included almost 40 medical doctors, hospital personnel and funeral organisations. Josifovski is a Serbian cardiologist who was a director of the emergency room (ER) in one of the largest Serbian public hospitals between 2004 and 2006. During this period, Josifovski became aware of a ‘deal’ between doctors, nurses, drivers and other workers in the ER and private funeral homes in Serbia. The ambulances and certain doctors in the ER did not act in accordance with their professional duty to save lives during emergencies. Instead of acting promptly in those situations, they prolonged the time by informing and waiting for private funeral

24 *Ibid.*

25 *Ibid* at 16.

26 Tina Popović and Mila Radulović, ‘Montenegro, How Not to Protect Whistleblowers’ (Osservatorio Balcani e Caucaso Transeuropa, 15 December 2017) www.balcanicaucaso.org/eng/Areas/Montenegro/Montenegro-how-not-to-protect-whistleblowers-184622 accessed 18 June 2019.

27 *Ibid.*

28 *Ibid.*

29 Jelena Čabović, ‘Trgovina Smréu Veoma Je Unosan Posao U Srbiji! Borko Josifovski Za Espresso Otkriva Rak Ranu Srbije’ (Espresso, 21 October 2018) (Borko Josifovski’s interview) www.espresso.rs/vesti/drustvo/303533/trgovina-smrcu-veoma-je-unosan-posao-u-srbiji-borko-josifovski-za-espresso-otkriva-rak-ranu-srbije-video accessed 18 June 2019.

homes to arrive first, 'because they knew that every lost minute leads a patient to death'.³⁰ In return, the doctors were paid €250 by the funeral organisers for each call.

Josifovski reported this misfeasance to the Ministry of Health, but nothing was done because – according to Josifovski – there was a broader web of participants involved in this scam. Josifovski was subsequently removed from his position at the hospital, and deemed a threat to public peace and order by the ministry. Since going public with the affair, Josifovski has faced 13 years of prosecution. In 2018, he was finally released from any accusations and recognised as a whistleblower. Josifovski was offered the role of Minister of Health, which he refused, considering it inappropriate.

Current whistleblowing protection regulation in Serbia

Serbia has offered protection to whistleblowers since 2014, when the whistleblowing law came into force. The Serbian Whistleblowing Act (Zakon o zaštiti uzbunjivača – the 'Act')³¹ is one of the leading sets of provisions on whistleblowing protection, alongside the UK, Irish and French laws.

The Act secures the protection of whistleblowers' privacy and personal data, and anonymous reporting is accepted and must be followed up on. Information can be disclosed under listed conditions if a person has a reasonable belief that the information is accurate. Notably, the act includes wide personal scope (workers, trainees, interns, shareholders and so on).

When it comes to reporting channels, a person can choose whether to report internally, externally or to the public. Reporting internally means that information is disclosed to the employer or manager in the firm. External reporting can be made to the authorities without reporting internally first. The third option is reporting to the public (eg, the media). Reporting channels must be established in every company with at least ten employees. The Act also entitles whistleblowers to claim damages if they suffer retribution.

Most importantly, judges involved in whistleblowing cases must have adequate knowledge and be trained in an appropriate manner to make a decision concerning whistleblowers. When the report is filed, the judge is obliged to order – if requested by the plaintiff – a 'temporary measure' for protecting evidence and whistleblowers before the actual trial begins.

Effectiveness of the Serbian law: the law might be strong, but the system is weak

Serbian law concerning whistleblowing is, *de jure*, one of the best in Europe. However, what is the *de facto* situation? In other words, is this law really effective?

The best way to demonstrate the effectiveness of any law is through practise. Since the enforcement of the whistleblowing law, Serbia has had many cases with successful outcomes. In that regard, Marija Beretka was the first Serbian whistleblower to be protected by the Serbian Whistleblowing Act.³² Beretka was an employee in the Communal Inspection Office in Novi Sad. After becoming aware of a range of misconduct and corruption in the public sector, Beretka blew the whistle, and as a

30 Razgovarala Ana Stamenkovska Stefanović, 'Borko Josifovski o Pogrebnicima Srpskog Zdravstva' (Pecat, 9 June 2011) (Borko Josifovski's interview) www.pecat.co.rs/2011/06/borko-josifovski-o-pogrebnicima-srpskog-zdravstva accessed 18 June 2019.

31 Serbian Whistleblowing Protection Act www.paragraf.rs/propisi/zakon_o_zastiti_uzbunjivaca.html accessed 18 June 2019.

32 'Prvi Put u Srbiji: Uzbunjiva ica Pobedila Državu' (Mondo, 7 June 2017) <http://mondo.rs/a1014475/Info/Drustvo/Uzbunjivaci-Istorijaska-presuda-u-Srbiji-prva-pobeda-uzbunjivaca-na-sudu.html> accessed 18 June 2019.

punishment for ‘leaking’ information, she was moved to another workplace. Beretka sued the City of Novi Sad, and the Court of Appeal decided that Beretka, as a whistleblower, must be granted protection under Serbian law. The person responsible for corruption has been prosecuted for abuse of authority.

In a more recent case, whistleblower Tomislav Veljkovic reported that 600,000 of the state’s budget was spent on building a ‘wastewater factory’, which does not exist. According to ‘Pištaljka’ (the Whistle)³³ – a specialised non-governmental organisation for whistleblower protection, and the only one in the Balkans for investigating cases and protecting whistleblowers – Veljkovic reported this to the anti-corruption agency and ‘Pištaljka’. He was later fired for disclosing this information, but the court has ruled that he has to be given his job back.³⁴

Therefore, it can be concluded that the Serbian system has the capacity to protect whistleblowers. The extent to which it does depends on its implementation. It also depends on the judicial system itself because, even though the law is well drafted, this does not mean that it will grant proper protection if judges do not apply it properly. Furthermore, the President of the Supreme Court of Cassation in Serbia, Dragomir Milojevic, noted that the whistleblowing law in Serbia must be linked to criminal law in order to function more effectively.³⁵ This is mostly related to retaliation towards employees who report misconduct that occurs in their workplaces.³⁶ In other words, the judge suggested introducing more severe sanctions for those who retaliate or do not comply with court judgments regarding whistleblowers.³⁷

In May 2019, the European Commission published a report (the ‘Report’) on Serbia’s current situation in reference to corruption levels, political criteria, judicial system and so on. The Report states that Serbia has not made any progress in decreasing corruption, and highlights that this issue is concerning. The Report also emphasises that Serbia has not made any progress in granting freedom of expression to its nation. These and many other issues that were discussed in the Report directly jeopardise the effectiveness of the Whistleblowing Law. This Report should be a wakeup call for the Serbian Government. It is also significant to mention that corruption or any other type of misconduct can also be reported to ‘Pištaljka’. This agency grants professional advice and legal protection to whistleblowers. It also informs people through its website and annual reports about ongoing whistleblowing cases, trials and judgments. Thus, if the system does not provide protection, people can always turn to ‘Pištaljka’ and seek shelter by filing a report.

Because Serbia is a non-EU country, it is not mandatory for it to change its provisions in accordance with the EU Directive. Yet, for it to stay on the list of candidates for joining the EU, Serbia is expected to implement EU standards on both whistleblowing and anti-corruption. However, if Serbian law on whistleblowing is compared with the EU Directive, it seems that the act takes account of all crucial standards adopted by the EU Directive. This includes, as discussed earlier, the opportunity to choose reporting channels, as well as a similar personal and material scope. Serbian law also requires that judges involved in whistleblowing cases be properly trained, and have special knowledge and skills.

33 See <https://pistaljka.rs> accessed 18 June 2019.

34 See <https://pistaljka.rs/home/read/800> accessed 18 June 2019.

35 ‘Whistleblowers in Serbia: A Model Law’ (Osservatorio Balcani e Caucaso Transeuropa, 21 December 2017) www.balcanicaucaso.org/eng/Areas/Serbia/Whistleblowers-in-Serbia-a-model-law-184197 accessed 18 June 2019.

36 *Ibid.*

37 *Ibid.*

Conclusion

‘LuxLeaks could not have happened if it was not for the whistleblower, and the team of investigative journalists. The two worked very well together to change the momentum of the debate about corporate taxation in Europe’, according to Margrethe Vestager, the European Commissioner for Competition.³⁸

It is important to remember that Antoine Deltour, Borko Josifovski and many other whistleblowers are responsible for bringing comprehensive whistleblowing regulation to Europe. Through the injustice they suffered, they contributed to the greater good.

Whistleblowing laws in the Balkans are generally well drafted, except in a few states that do not provide any protection, such as Bulgaria and Romania. Nevertheless, their application and efficiency are questionable. In a challenging political environment, it is rather difficult to secure and maintain protection for people who want to report corruption and misconduct in general. Therefore, although people might know that the law does protect them in theory, they are well aware of the fact that the system does not.

³⁸ See n 1 above.