

Providing an Alternative to Silence:

**Towards Greater Protection and Support for
Whistleblowers in the EU**

COUNTRY REPORT: LITHUANIA

This report belongs to a series of 27 national reports that assess the adequacy of whistleblower protection laws of all member states of the European Union. *Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU*, published by Transparency International in November 2013, compiles the findings from these national reports. It can be accessed at www.transparency.org.

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Country profile Lithuania

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I. Executive Summary

Currently, there are no laws in Lithuania explicitly covering the issue of whistleblower protection, no relevant legal terminology and no special guarantees for whistleblowers in the national regulation. Hence, there is no sufficient whistleblowers (hereinafter WB) protection mechanism in place in the country. Discussions on legal regulation of WB protection started back in 2005, when the draft law was registered in the Parliament but stacked there and not yet adopted. From this year on, more vivid public discussions started on whistleblowers protection. A survey conducted in 2009 showed a growing public willingness to participate in anti-corruption initiatives and a positive public perception of whistleblowers, who were reportedly seen as brave and proactive people. Likewise, the Lithuanian Map of Corruption 2011 reported that majority of respondents took a positive view of whistleblowers.

In 2013, the legislative discussions were renewed in the Parliament. The updated National Anti-Corruption Programme 2011 - 2014 provides more than 90 preventive measures, although the Programme does not give strong focus on the whistleblowers protection, only providing for additional analysis and offering scattered regulations for the public sector.

Although there are positive tendencies increasing the focus on whistleblowers protection both in the political and social levels, but concrete steps are still necessary to ensure a comprehensive and efficient protection for whistleblowers. TI Lithuania is continuously engaged in the area of whistleblower protection.

II. Compilation, description and assessment of WB protection laws

By ratifying major anti - corruption treaties such as the United Nations Convention against Corruption and the Council of Europe Civil Law Convention on Corruption, Lithuania made a commitment to ensure appropriate whistleblowers protection. However, there is neither a free-standing national law nor any sector-specific legal provisions on whistleblowers protection existing in Lithuania. The only legal act explicitly concerning whistleblowing, although from a remunerative perspective, is the Government Resolution 'On Remuneration for Valuable Information about Crime which includes Damage to Property'. Yet, this resolution has significant shortcomings and has not been applied in practice.

There is a number of laws related to the protection of witnesses and members of national defence and security departments, as well as laws covering the protection of journalist sources. Under certain circumstances whistleblowers can fall into these categories. Yet, currently, the rights of potential whistleblowers are most likely to be protected (and with greatest effectiveness) by regular general law, i.e. the Labour Code or the Law on Public Service. However, these laws provide only for general mechanisms to protect employees and do not take into account the special situation of whistleblowers. As a result, the current legal framework in Lithuania does not offer any specific whistleblower protection. As long as there is no coherent whistleblower protection framework in place, or at least a definition of what whistleblowing is, it is unfeasible to offer any kind of compensation for retaliation or financial losses, or reward for whistleblowing acts. Also, in cases of dismissal from work, there are no regulations allowing the whistleblowers to enjoy procedural protection in the judicial procedures.

The discussion on legal regulation of WB protection started in 2005 when the draft law was registered in the Parliament but got stalled there. In 2009, TI Lithuania, in a partnership with law expert Petras Ragauskas, PhD drafted a new piece of regulation (comprehensive Whistleblower protection law¹). Those documents were presented for input to various institutions, such as Special Investigations Service (SIS), Prosecution Service, Police Department, State Labour Inspectorate, State Tax Inspectorate, Financial Crime Investigation Service, and the President. It was from the beginning agreed that protection is vital and TI Lithuania together with various institutions were looking for the best whistleblower protection regulatory model. On 30th of September 2010, the group of MPs called for civic involvement in creating Lithuania without corruption and unexpectedly registered the draft Whistleblower Protection Law in the Parliament. This draft law, however, was significantly formalized, narrowed down the reporting channels and the guarantees for whistleblowers.

TI Lithuania indicated the main issues of this draft law, such as:

1. The activities that can be reported are too narrowly defined, i.e. only corrupt activities but no other offenses can be reported;
2. The list of addressees - people, institutions for reporting of activities - is too narrow. It only includes pre-trial investigation institutions, thus, excluding employers as well as the State Labour Inspectorate and the State Tax Inspectorate;

¹ http://transparency.lt/media/filer_public/2013/06/20/tils_praneseju_apsaugos_istatymo_projektas_20115.pdf ; http://transparency.lt/media/filer_public/2013/06/20/tils_pasiulymai_pai_projektui_2010_11_262.pdf ;

3. The application of the whistleblower protection measures does not ensure appropriate protection over time - from the beginning of the pre-trial investigations towards the end of the criminal proceedings.

TI Lithuania also made suggestions on how to improve this draft law² and estimated that such law would rather discourage the potential whistleblowers than grant any real protection. At the same time, legislator also suggested several amendments to existing laws. However, the existing laws, as already mentioned, only cover certain groups of people (like public officials or witnesses in criminal proceedings) so they would only rectify the situation for limited numbers and would not solve the WB protection gap.

At the same time, TI Lithuania conducted two surveys on internal and external reporting practices in public institutions. The surveys revealed that the majority of public institutions surveyed have some sort of internal reporting and protection mechanisms in place that fall into line with current legislation. However, protection is mainly limited to general guarantees for all employees as laid down by the Labour Code, other relevant laws and the technical internal rules and regulations of a particular institution. Therefore, general effectiveness of internal whistleblowing system seems to be highly questionable. Furthermore, most respondent institutions noted only few cases of employee reporting. The previous national anticorruption programme 2008 - 2012 also covered the issue of WB protection to a limited extent. It provided that there is a need to analyse if existing regulation is sufficient and effective in protecting the whistleblowers (the suggestion which was repeatedly included in previous anticorruption programmes), on the other hand, the programme included one concrete regulatory proposal: to amend the Public Service law in order to ensure confidentiality of those public officials who report grave breaches of their colleagues.

Upon the approval of the Lithuanian Parliament, the updated National Anti-Corruption Programme was adopted in 2012. It provides more than 90 anti-corruption and preventive measures although the Programme does not have strong focus on the whistleblowers protection. The measure related to the whistleblowers protection intends to “evaluate the national legislation related to the protection of whistleblowers who report corruption-related offenses, issues of application of such legislative acts and if necessary - to make concrete proposals on protection regulation”. The main purpose of this measure was to ensure a more transparent, more open and more efficient work of judiciary and law enforcement

² http://www.drasmuszodis.lt/userfiles/TILS_siulymai_registruoto_ist_projekto_2010_11_22.pdf

institutions as the current national legislation is not sufficient enough. Four institutions were appointed responsible for the implementation of this measure: the Parliament of the Republic of Lithuania (responsible for the adoption), Ministry of Social Security and Labour (responsible for the preparation), the Special Investigation Service (hereinafter- SIS) and the Ministry of Justice. The responsibility for the implementation of the Programme lies with the state and local authorities. Expected results under this measure were foreseen as a comprehensive analysis and, where appropriate, development and adoption of new legislation ensuring the whistleblowers protection. Although the preliminary date of the implementation was set as 2012, the measure was implemented only partly. Amendments of the Law on Public Service were proposed which were designated to ensure better whistleblowers protection in this sector. The main issue in this amendment was, as also noted by the SIS, that it intends to protect only whistleblowers reporting in the public sector and that is only a small part of all the potential whistleblowers. The National Anti-Corruption Programme 2008 - 2012 intended to enhance legislation protecting all whistleblowers, including those from the private and public sectors. Thus, the purpose of this measure would not be fully implemented by only enhancing whistleblowers protection in the public sector. Also, according to the SIS, there would be a need of preparing amendments of a number of necessary legal acts in order to adopt the protective measures for all whistleblowers: Labour Code and other related legislative acts. SIS suggests³ amending the Labour Code (Art.129 para. 3 section 3) as it only prohibits terminating the Labour Contract with the employee on general grounds and the process of appealing to other administrative institutions but excludes possible situations related to corruption, thus leaving space for employers abuse. The official SIS position was that the adoption of such draft legislation would ensure more effective protection of public servants who report about gross misconduct committed by other public servants.

In June, 2012⁴ SIS evaluated the legislation covering the whistleblowers reporting on corruption-related crimes, the protection of the corruption related issues and made legislative proposals for the Inter-agency Commission for Coordination of Fight against Corruption.

In February, 2013⁵ the Ministry of Justice announced that in order to implement the measure of the whistleblowers protection, the following draft legislation acts have been proposed:

1. Law on the SIS Article 8 (No. 12-4149-01)
2. Law on the Prevention of the Corruption Act Article 5 and Article 11 (1) (No. 12-4154-01)

³ http://www.stt.lt/files/59_priedas_1_5_172351.pdf

⁴ http://www.stt.lt/files/88_priedas_1_5_100125.pdf

⁵ http://www.stt.lt/files/89_priedas_1_5_132800.pdf

3. Administrative Procedure Act Articles 60 and 86 (No. 12-4152-01), and

4. Administrative Code Article 276 (No. 12-4150-01).

These draft laws were coordinated with the SIS. Different measures were taken in order to implement the whistleblowers measure provided in the National Anticorruption Programme. SIS evaluated and prepared the performance report table about the executed and unexecuted measures. When reporting on the implementation level of the measure on WB protection, it was noted that the measure is still in the procedure of the implementation, the SIS also stressed that there is a need to amend particular legislative acts in order to implement this measure fully.

In 2011, following in the steps of previously conducted survey on hotlines, TI Lithuania identified and surveyed more than 50 public institutions that operate external public hotlines and helplines. Content analysis revealed that 59 public institutions (out of 217 analysed) have hotlines or helplines that, among other functions, are positioned as channels for reporting potential corruption cases inside these institutions. 105 different types of channels, where one could report, were found: 36 (34 %) telephone lines, 28 (27%) e-mail boxes particularly for reports, 25 (24%) electronic forms particularly for reports and 15 (15%) links to the website of Special Investigation Service. Those institutions operating in the interior (23 posts making techniques), transportation (18) and health care (17) have the highest number hotlines/ helplines. Institutions operating in education or foreign affairs do not have any hotlines/ helplines. The analysis revealed that organisations operating such external lines and society in general, do not make distinctions between different types and purposes of such lines. Likewise, no distinction is made as to who can submit reports, which means complainants can be employees. This makes it harder to maintain anonymity and confidentiality. There is also no detailed structure for following up on the reports, which weakens trust in the entire system. Many other general concerns were raised by this analysis. It was revealed that the institutions do not generally understand the purpose and the need of hotlines, the purpose of such activity is itself not clear and comprehensive and there is no protection for the whistleblowers or the content of the report. As a result, such uncertainty threatens to deter from reporting about potential violations since only quality and secure hotlines encourage active reporting. At the same time, improving hotlines can also contribute to increased trust in the public sector, thus enabling public officials to better deal with current and prevent future violations.

This study also revealed systematic and structural problems of data protection and information handling. This study, along with the opinion of the Ombudsmen issued on the same issue (TI Lithuania

coordinated its activities with the Office of the Ombudsmen to have greater impact with this study), sparked a vivid debate which led to the establishment of a working group by the Ministry of the Interior in September 2011. The working group featured specialists from all ministries and other agencies that receive reports on violations and was assigned with the task to develop standard guidelines for reporting channels and protection for reporting persons (by technical means). The Resolution of the Government approving the Rules on receiving and handling information on violations was adopted in October 2012. This Resolution was adopted in order to determine the minimum set of requirements to provide and manage the information about violations in the state institutions and bodies as well as ensuring the reporting possibility and enabling public authorities and institutions to prevent these violations. Before adopting this resolution, TI Lithuania submitted a set of concrete critical proposals, proposing to specify the name of the resolution as it implies a broader than the actual scope of regulation, include a provision about the publication of the procedures established by the head of the organisation, prepare concrete provisions notifying if the reporting person needs to indicate his name, contacts and how such personal data would be used, etc.

The political debate on this issue is not over. In the end of 2012, the Ministry of Justice reported conducting an evaluation of existing legal regulations on whistleblowers protection which revealed that the current legislation is sufficient enough. At the same time, a number of related draft laws have been prepared with a declared goal to improve the existing system (proposing to amend the Law on Special Investigation Service, the Law on Corruption Prevention, the Law on Administrative Proceedings, the Code of Administrative Offences), however, neither of them have been adopted yet. TI Lithuania criticized this draft legislation as it mainly covers the public sector, therefore the protection of whistleblowers in the private sector is not guaranteed. Furthermore, the only possible addressee to be reported to according to this legislation would be the SIS (making the act rather misleading as the whistleblowers would have a limited choice for reporting in order to be covered by the proposed legal protection). Finally, these legal acts provide that whistleblowers need to ask for the protection of his or her personal data and this is the only type of possible protection under this law.

TI Lithuania also noted that the choice to amend these legislative acts for the whistleblowers protection is rather fragmented in itself, therefore, real positive impact in this case cannot be reached.

The situation in the private sector is even more obscure. The corporate culture of whistleblower protection appears undeveloped in Lithuania. Few codes of ethics or conduct address whistleblower protection. Lithuania - based branches of international companies tend to have the best level of understanding and standards on whistleblowing, often in compliance with rules and expertise developed by their parent company.

New public discussions about WB protection

In 2013, the discussions on encouraging people to report were renewed in the Parliament. So far, it partly focused in the Governmental resolution which was passed in 2003 but never applied in practice since. This resolution foresees remuneration for those who provide institutions with valuable information on crimes which leads to recovery of damages by the state. Stringent procedure and accumulative criteria make this regulation impossible to apply in practice, more so, institutions are not willing to 'cut the slack' to whistleblowers (they rather wish to reward their own employees). There is a suggestion to either amend this Resolution or to abolish it. TI Lithuania constantly tries to raise the issue of lack of protection of whistleblowers. However, even if the discourse on people who report violations has changed for the better in recent years (no one would call whistleblowers snitches, touts of KGB activists in public), there is still reluctance on the side of institutions to establish an all - encompassing WB protection system. On one hand, it is arguable that the existing regulation is sufficient, on the other hand, they claim the WB protection systems (like the one advocated for by TI Lithuania) are too open for abuse. Thus, the question is left unattended for now.

Recently, there has been a slight increase in the interest in reporting practices from the private sector as more and more companies are securing compliance with the UK Bribery Act and the USA Foreign Corrupt Practices Act. Companies that engage in international business are more and more often encouraged to review their codes of ethics in the light of ensuring maximum efforts in anti-corruption standards provided by these foreign laws, often resulting in the adoption of some kind of whistleblowers protection policy. However, since there is no legal definition of a whistleblower in the first place, these initiatives seem to be rather internal.

New cases

As there are no specific WB regulation in Lithuania as well as accepted terminology to refer to whistleblowing and whistleblowers, it is very difficult to label any cases as such. Even labour cases (for example, of unfair dismissal) would be difficult to be analysed from this angle as there is no such legal ground as unfair dismissal due to reporting against the employer. An interesting and informative example here is a case related to the dismissal of doctor in the Karoliniškių clinics in 2010. This case received quite some attention from the media over the last few years. Director Ms E. Kutkauskienė dismissed Ms A. Kavaliauskaitė from her job three years ago. According to the dismissed doctor, she was sacked when she tried to use her staff representative's functions demanding a fair wage distribution, more rational planning of the work in the clinics and defending illegally dismissed employees. Ms A. Kavaliauskaitė was an active leader of worker's professional union; therefore, she was defended by several medical organizations. At that time, the Vilnius City Second District Court ordered the employer to return Ms A. Kavaliauskaitė to her former workplace and pay her a compensation for the forced absence. The clinics appealed, but to no avail: Vilnius Regional Court confirmed the dismissal to have been illegal. However, she did not come back to work as it was stated that it is impossible to return due to unfavourable work conditions. After appeals in the Supreme Court, the final decision concluded that Ms A. Kavaliauskaitė indeed should be allowed to return to work and severance pay needs to be paid along with the compensation for the forced absence and costs incurred by the court. The final decision has been taken after 2 years of litigation. Although the dismissal was solved, according to the media, misbehaviour in the workplace allegedly continues. According to the medical and employees trade unions, the chairman of Lithuanian doctors' trade union Ms A. Kavaliauskaitė is still allegedly facing psychological pressure at work today.

III. Perception and political will

Studies conducted in 2009, showed growing public willingness to participate in anti-corruption initiatives and a positive public perception of whistleblowers as brave and proactive people. The Lithuanian Map of Corruption 2011 revealed that more than 80 per cent of respondents took a positive view of whistleblowers, but only 15 per cent of respondents indicated a personal willingness to engage in anti-corruption activities, and a number of those who actually do so are even smaller.

The public still thinks that reporting harms the ones who report and still feels fear of losing a job and being publicly destroyed. Despite that, thousands of reports reach institutions annually (with a much lower percentage of valuable reports).

IV. Strengths, weaknesses and recommendations

<p>Strengths</p> <ul style="list-style-type: none"> - It is notable that focus for the whistleblowers is increasing both in political and social levels. - Positive tendencies in the public discourse. 	<p>Weaknesses</p> <ul style="list-style-type: none"> - Lack of national law and/ or legal provisions on whistleblower protection in Lithuania. - Public authorities do not have a common position towards whistleblowers protection. It is not clear if extra law amendments or new legislative acts are necessary according to them.
<p>Opportunities</p> <ul style="list-style-type: none"> - Collecting best practices from other countries and adopting them in the national level; - Tendencies of some favourable politics towards better whistleblowers protection; - SIS made positive shifts towards better and more efficient regulation. - As TI Lithuania noticed that legislative acts are hard to amend, organization concentrated on such acts that are not laws in the hierarchical sense but regulate the security of the reporting channels. This is to be noted as a successful <i>ad hoc</i> solution for the moment. 	<p>Threats</p> <ul style="list-style-type: none"> - Legislative procrastination and no definition of what whistleblowing is; - As there is no real protection, potential whistleblowers can get into a situation where they themselves will become defendants; it would not only discourage others potential whistleblowers but also it would give a negative impact for the future; - Because of employers abuse of powers, employees rather failure to report about the possible violations.

V. References and sources

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