

Providing an Alternative to Silence:

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

COUNTRY REPORT: ROMANIA

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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Report on Whistleblowing in Romania



1. Introduction

Transparency International defines whistleblowing as “the disclosure of information about a perceived wrongdoing in an organization, or the risk thereof, to individuals or entities believed to be able to effect action.”¹ In Romania, Law no. 571/2004 defines whistleblowing as “*the disclosure made in good faith of any offense involving a violation of the law, of professional ethics and of the principles of good governance, efficiency, effectiveness, economy and transparency.*”² Whistleblowers are those individuals that make these types of disclosures, in good faith, in order to fight corruption, protect human rights and ensure that the law is being upheld, oftentimes at great risk to themselves. As such, they are an essential element of safeguarding the rule of law, as well as one of the best weapons society has in the ongoing fight against corruption.

In many cases, whistleblowers are retaliated against because of their disclosures. The retaliation ranges from harassment at the workplace (sexual or otherwise), demotion or dismissal from their workplace, to facing criminal charges and sanctions and, in some cases, even physical harm.

Romania was the first country in the continental legislative system to have a comprehensive whistleblower protection act. Here, the legislation to protect whistleblowers appeared as a result of an advocacy campaign initiated by Transparency International Romania as part of a larger project meant to strengthen and improve integrity in the public sector. As a result, the number of disclosures increased significantly, as did the number of successfully resolved cases of corruption, now that more people are encouraged to come forward and present crucial evidence of

¹ TI (2012), “*Recommended principles for whistleblowing legislation*”, p. 1,
http://www.transparency.org/files/content/activity/2009_PrinciplesForWhistleblowingLegislation_EN.pdf

² Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 3, letter a)

wrongdoing, evidence that would otherwise have been very difficult, if not outright impossible, to gather.

In this country report, I set out analyze Romania's legislation concerning whistleblowing and whistleblower protection, particularly in regard to how accurately it respects and applies the principles of whistleblowing (as developed by the Transparency International Secretariat) and the standard disclosure procedures of Romania, the level of protection it affords whistleblowers in the public sector, how effectively it is enforced by the proper authorities, as well as what changes have been effected on it since it was passed. I also chose and presented a case exemplifying the proper application of the law that shows just how important it is for whistleblowing to be properly regulated and for whistleblowers to benefit from strong legal protection from retaliation.

In essence, Romania's Whistleblower Protection Act is very strong in theory, covering a broad range of disclosure types and providing protection for whistleblowers, but suffers in practice, as many public servants have little to no knowledge of it and public institutions prove reluctant to apply its provisions. It is a law that benefits from a special statute, giving it priority over general laws, which further increases its effectiveness.

The general perception of whistleblowers present in Romania is a slowly changing one. Before the appearance of the Whistleblowers' Protection Act, the general opinion was that they were traitors and informants, Now, through the efforts made in promoting this law, the situation is improving, albeit slowly. While there are more and more people who have a good opinion of whistleblowers and even go as far as actively supporting them, it will be a while longer before the common mentality will be completely changed.

2. A compilation, description and assessment of WB protection laws

The stand-alone per se whistleblower protection act in Romania is Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, also known as the Whistleblowers' Protection Act. Its stated purpose is to protect the personnel of public institutions that either forwarded a complaint or offered information regarding an act of

corruption within a public authority, a public institution, or any other kind of organization belonging to the public sector.³

Law no. 571/2004 was conceived out of the necessity to regulate the integrity system of the public sector and to have instruments in place that can protect public sector employees from retaliation when faced with the repercussions of reporting an act of corruption to the proper authorities.⁴ Unfortunately, this law does not apply to the private sector, which means the employees from private companies have no legal protection from it against retaliation if they decide to report acts of corruption within their workplace. Private sector employees are thus much less likely to disclose acts of corruption compared to the public sector employees that have the law on their side.

“Whistleblowing comes to *“lift the lid off the pot” and create an opening of the system toward the public by defeating the “law of silence”*. Most disciplinary rule sets provided that if a civil servant had something to signal at the level of breaking the principles of legality and/or of good administration then the only alternatives are the discipline committee or the hierarchical superior or in the worst case the district attorney, any other option being easily punishable as damages brought to the institution. Presently, these provisions have been removed by establishing the special status of the Whistleblower’s Protection Act as regards the Labor Code and Law no. 188/1999 regarding the Status of public servants, as stated in art. 10 of the Act. Moreover, regarding public servants, Law no. 50/2007, which amends Law no. 7/2004 regarding the public servants’ code of conduct, expressly states that its provisions cannot be interpreted as a derogation from the legal obligation of public servants to provide public information or to make complaints based on Law no. 571/2004 regarding whistleblower protection.

The law itself creates the safety instrument for situations in which a public servant or contractual employee intends to refuse the execution of an order he or she considers illegal due to possible repercussions.

Another role of the law is that of creating the premises of defending the image of the professional bodies of the public sector through the possibility of taking a stand. Expressions such as *“everyone is the same”* can only be avoided by separating the cases of *“dalmatians”* from inside the system and even determining their withdrawal or exclusion.

³ Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 1

⁴ Transparency International Romania, “Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration”, p. 17-18

The whistleblower law completes in a natural way the rules system in this domain, together with Law no. 682/2002 regarding witness protection, extending its provisions outside the judiciary system and adapting their protection specifically to the public administration.

Another effect of the law is that the obligation to act, based on the deontological and disciplinary provisions that ask the public servant to react to the abuses he or she observes, can no longer be avoided based on fear of reprisals. These are the first steps toward the disciplinary sanction of complicity and concealment.⁵

Whistleblowing, when looked at from the point of view of the legal framework, can involve the following types of activities:

- *acts of corruption, offenses assimilated to acts of corruption, offenses directly related to acts of corruption, offenses of forgery and labor or labor-related offenses;*
- *offenses against the financial interests of the European Communities;*
- *preferential or discriminatory practices or treatment in the exercise of the attributes of the units provided by law;*
- *violation of the provisions regarding incompatibilities and conflicts of interest;*
- *misuse of material or human resources;*
- *political partisanship in exercising the prerogatives of one's function, except for those elected or appointed politically;*
- *violations of the law on access to information and transparency in decision-making;*
- *violations of the law on public contracts and grants;*
- *incompetence or negligence at work;*
- *biased evaluations in the processes of personnel recruitment, selection, promotion, demotion and dismissal;*

⁵ Transparency International Romania, "Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration", p. 17-18

- *violations of administrative procedures and establishment of internal procedures in violation of the law;*
- *issuance of administrative or other type of documents serving group or client interests;*
- *faulty or fraudulent administration of public and private property for public authorities, public institutions and other units provided by law;*
- *violation of other statutory provisions requiring compliance with the principle of sound administration and the protection of public interest.*⁶

Law no. 571/2004 is for the protection of persons who claimed or disclosed violations of the law within public authorities, public institutions and other units, committed by persons occupying leadership or execution positions in the public authorities and institutions of the central public administration, the local public administration, the Parliamentary working body, the Presidential Administration working body, the Government working body, the autonomous administrative authorities, the public cultural, education, health and social care institutions, the national companies, the national and local autonomous administrative bodies, as well as the state-owned companies.⁷ This protection, as well as whistleblower status, applies to “public servants, who are persons invested, through being named in a public function from the structure of a public institution or authority, with prerogatives in achieving their competences, in a public power regime, with the purpose of fulfilling a public interest”⁸, and “contractual personnel according to the Labor Code. For this personnel category the study level has no importance. They can be the manager of a deconcentrated institution – the School Inspectorate, as well as a cashier or a cook from the social cafeteria.”⁹ It also applies to personnel who unfolds their activity based on special statutes, such as medics, professors, policemen, priests etc.¹⁰ Note that it does not cover magistrates, whom the Whistleblower’s Protection Act does not apply to.¹¹

⁶ Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 5

⁷ Idem, art. 1

⁸ Transparency International Romania, “Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration”, p. 30

⁹ Transparency International Romania, “Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration”, p. 30-31

¹⁰ Transparency International Romania, “Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration”, p. 31

¹¹ Transparency International Romania, “National Integrity System”, 2011, p. 214

In Romania there is no special entity in charge of dealing only with whistleblowers and their disclosures and complaints. Whistleblowing disclosures are made to either to one's hierarchical superior, to an internal integrity department or disciplinary committee, to the manager of the institution the whistleblower is employed by and where the wrongdoing occurred, or straight to the police, to the district attorney's office or another authority that is competent to solve such cases, and even to parliamentary commissions, professional, patronal and syndical associations, NGO's and even to the media.¹² Should the whistleblower face repercussions or legal action from his employer because of the disclosure he or she made, his subsequent legal complaint is processed within the common legal system, just like all other legal complaints.

If the whistleblower's complaint is made against one's hierarchical superior or against someone who has control, inspection and evaluation responsibilities regarding the whistleblower, *"the discipline commission or another similar organism must insure the whistleblower's protection, through hiding his or her identity."*¹³ If the case is serious enough for the whistleblower to need to enter the Witness Protection Program, he falls under the provisions of Law No. 682/2002 regarding witness protection. According to it, the whistleblower's personal information is protected if the object of their disclosure is one of the following: corruption offenses, offenses assimilated to corruption offenses directly related to corruption offenses, offenses of forgery and work related offenses, as well as offenses against the financial interests of the European Communities.¹⁴

In addition, if the person making a disclosure does so against his or her hierarchical superior, his or her identity is protected in order to avoid future retaliation and harassment in the workplace.

In the public system, disclosures can be made to the following entities: the wrongdoer's hierarchical superior, the manager of the public entity the wrongdoer is part of or in which wrongdoing is detected even if the one responsible is not identified yet, disciplinary commissions or other similar entities from within the public entity that the wrongdoer is part of, the country's judicial bodies, the legal bodies tasked with investigating - among other things - conflicts of interest and incompatibilities, as well as parliamentary commissions, more specifically the Chamber of Deputies' Research Commission for Abuse, Corruption and Petitions and the Senate's Research Commission for Abuse,

¹² Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 6

¹³ Transparency International Romania, "Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration", p. 47

¹⁴ Law No. 682/2002 regarding witness protection, art. 2, letter h)

Corruption and Petitions. In the non-governmental and private system, disclosures can be made to professional, employers' and syndical associations, to NGO's and to the media.¹⁵

Law no. 571/2004 can be interpreted in corroboration with art. 13 of Law no. 544/2001 regarding access to public information, which states that information which encourages or hides violations of the law by public institutions or authorities cannot be considered to be classified information. More than that, Law no. 50/2007, which amends Law no. 7/2004 regarding the public servants' code of conduct, states that its provisions cannot be interpreted as a derogation from the legal obligation of public servants to provide public information or to make complaints based on the Whistleblowers' Protection Act. Taking this into account, when we talk about a breach of law regarding classified information, the provisions of Law no. 571/2004 have priority.

According to Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, the remedy available to whistleblowers in Romania is the annulment of the disciplinary action taken against them by their employer, provided said disciplinary action is proven to have been motivated by their disclosure and not by another of the whistleblower's actions.¹⁶

The whistleblowers are generally kept informed about whether or not their disclosure was accepted and about the start of an investigation into the matter and its estimated duration. Further involvement consists of taking part in the legal proceedings, submitting relevant documents and even appealing against the verdict in a national court of law while the committee in charge of reviewing the case works.

Should whistleblowers be retaliated against, or at least suspect that he or she has suffered repercussions in some form, their case will be reviewed by an impartial independent entity that will decide whether this is indeed the case.

By law, whistleblowers are protected from disciplinary or administrative sanctions received as consequence of the disclosure they made. If a disclosure or a complaint is made in good faith, but proves to be unfounded, the whistleblower in question is not

¹⁵ Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 6

¹⁶ Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 9

punishable. If he or she is sanctioned, the provisions of the law apply just as in cases where the disclosure proved to have a basis in reality.¹⁷

One of the advantages of this law is that if a whistleblower is disciplined after filing a complaint and there is reason to suspect that the sanction was given in order to punish him or her for their disclosure, the burden of proving the reasoning behind the sanction is the responsibility of the employer. While both the whistleblower and his employer benefit from being presumed to have acted in good faith when they made their disclosure or given their sanction, respectively, the difference between the two situations is that the employer must prove that he was right when he sanctioned the whistleblower, while the whistleblower does not need to prove his claim of corruption, that burden falling onto the authorities he made his disclosure to.¹⁸

When it comes to whistleblowers being retaliated against for their disclosures, the law is pretty explicit. By law, if it is proven in court that a whistleblower was sanctioned in order to punish him or her because of a disclosure he or she made, the sanction is canceled, but the one that imposed said sanction does not suffer any consequences for his act.¹⁹

3. Perceptions and political will

In Romania, whistleblowers are sometimes seen as informants, a term that has a slew of negative connotations attached to it following the activities of the Secret Police's informants during the Communist regime. They are generally viewed with very little trust by the general public. This situation has greatly improved over the last decade, largely owing to the appearance of the Whistleblower's Protection Act and to the efforts done to promote it. However, we still have a long way to go in order for whistleblowing to be seen in a positive light by everybody.

In the political scene, a great deal of lip service is paid to the benefits of supporting anticorruption efforts. However, there is a distinct gap between theory and practice in this area. While most politicians are publicly in favor of supporting whistleblowing, the actual

¹⁷ Transparency International Romania, "Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration", p. 28

¹⁸ Transparency International Romania, "Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration"

¹⁹ Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law, amended and supplemented, art. 9

practice of the law leaves a lot to be desired, as politicians lack the will to protect whistleblowers, oftentimes citing lack of sufficient funds or outright ignoring the issue. The civil society, on the other hand, has worked tirelessly to promote and raise awareness about whistleblowing, including several advocacy campaigns on the subject, one of which had as a result the making and passing of the Whistleblowers' Protection Act.

The term used to designate whistleblowing in Romania is "*avertizare de integritate*", which translates into "*integrity warning*". Whistleblowers are called "*avertizori de integritate*", which translates into "*those who give integrity warnings*". The term is meant to have largely positive connotations, in an attempt to change the view some people have of whistleblowers by painting them as guardians of integrity rather than informants, as they are occasionally seen.

Despite the still largely unfriendly environment whistleblowers have to contend with, there have been numerous cases where the law concerning whistleblowing was applied correctly. One such case, for example, concerns a labor dispute.

Citizen D.A. submitted a disclosure concerning violations of the law, the Code of Conduct and of other juridical norms in the public institution – the Technical Office for Medical Devices of the Public Health Ministry – where he works as an engineer diplomat in the field of engineering and quality management. D.A. disclosed that the appointment of the manager of the office was fraudulent, as said manager, at the time of this appointing in a position of public manager, did not have the minimum specialty studies necessary, having instead a specialty in mining, which was contradictory to the position's requirements. The fraudulent appointment was committed by falsifying the announcement and electing himself by signing his own appointment in the position in his quality as intermediary manager. Moreover, the disclosure hinted at other possible acts of corruption, as well as offences against the EU's financial interests, biased or discriminatory practices or behaviors in fulfilling his role as manager, and abusive use of the patrimonial resources available by not accounting for fixed resources.

Following the disclosure, the manager proceeded to retaliate against D.A., through successive punitive sanctions, culminating in termination and application of discriminatory treatments through the use of threats, blackmail and even violation of correspondence. In light of this, D.A. applied to Transparency International Romania and was issued a whistleblower certificate, which was used in court when his case was analyzed. Following the trial, all sanctions were lifted and he was reinstated in his previous position.²⁰

²⁰ The whistleblower's website, <http://www.avertizori.ro/practici.html>

4. Strengths, weaknesses and recommendations

In 2005, Transparency International Romania released the “National Corruption Report 2005”, in which an analysis of the Whistleblowers’ Protection Act is made. As it was released soon after the law had been passed, a full analysis of its effect could not be made at the time, so a brief analysis of its provisions was made instead.²¹ The 2008 and 2009 versions of the same report revealed that the potential beneficiaries of Law no. 571/2004 are not aware of it, mostly due to the lack of harmonization between the public institutions’ and authorities’ internal order regulations and the provisions of the law.²²

Transparency International Romania’s “Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration”, released in 2008, has confirmed the unfamiliarity of the potential beneficiaries with Law no. 571/2004, which is mainly explained by the lack of harmonization between the public institutions’ and authorities’ internal order regulations and its provisions, since this harmonization represents the main channel for raising awareness among the public sector employees concerning whistleblowers’ rights and protection measures. The law has not been translated uniformly from theory to practice, and its provisions cannot be found in the provisions of the internal rules of the public institutions in question. Also, the public institutions that don’t update their rule sets to match the provisions of Law no. 571/2004 are not sanctioned for this, which explains why they aren’t in any rush to do it. In strong connection with this shortcoming, we notice de quasi-inexistence of whistleblowing or of the intent to use the provisions of Law 571/2004, along with a deformed understanding of the legal norms by the public sector personnel, as protecting the lack of solidarity towards the institution where the whistleblower works and to his/her colleagues.²³

Another review of the implementation of legislation on whistleblowers was made in the National Integrity System 2011 research and study. The main conclusion was,

²¹ Transparency International Romania, “National Corruption Report 2005”, 2005, p. 5-6

²² Transparency International Romania, “National Corruption Report 2008”, 2008, p. 67 and Transparency International Romania, “National Corruption Report 2009”, 2009, p. 9

²³ Transparency International Romania, “Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration”, p. 99 - 103

essentially, that while the law is very good in theory, it has loopholes when it comes to implementation.

Thus, within the current legislation which regulates whistleblowing, we can identify the following main shortcomings:

- a) *The lack of internal whistle blowing policies within the public institutions and authorities, which they are obligated by law to have. While the law states that these must exist, public institutions and authorities have proven reluctant to put it in practice.*
- b) *The lack of legal provisions to cover whistleblowing in the private sector.*
- c) *The public is faced with a lack of information regarding the number of whistleblowing cases reported and that of the sanctions or benefits, if any, received by public institutions and authorities as a result of whistleblowing*

In order to compensate for these deficiencies, we recommend the following actions:

- 1. *The creation of specific telephonic hotlines dedicated to whistle blowers.*
- 2. *The training of both public and private institutions' personnel regarding the benefits and implications of whistle blowing.*
- 3. *The monitoring of the whistleblowing cases.*
- 4. *A single and comprising legal framework for the protection of whistleblowers in the private sector. In order to do this, an evaluation of the possibilities of extending the legal mechanisms and the whistleblower protection norms in the private sector must be made. For this, it is necessary to have a detailed study in order to identify the best ethical corporatist practices, including an evaluation of the most vulnerable sectors regarding the risk of corruption. However, this does not mean that the law regarding whistleblower protection in the public sector should simply be extended to say that it also applies to the private sector, as that would be unfeasible.*
- 5. *The initiation of specific actions towards the informing and promoting of the provisions of the law among employees, focusing on the following aspects: definitions, the reporting procedure, the responsibilities of the actors involved in the process of filing a complaint, as well as what whistleblowers' protection consists of and what the institutional guarantees are.*

5. References and sources

1. The whistleblower's website – www.avertizori.ro
2. "The Alternative to Silence: Whistleblower Protection in 10 States" - <http://www.avertizori.ro/MATERIALE/Alternativa.pdf>
3. "Corruption affects us all" - <http://www.avertizori.ro/MATERIALE/Leaflet.pdf>
4. Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law;
5. Transparency International Romania, "Whistleblowing: Implementing provisions regarding whistleblower protection. Monitoring report at the level of the local public administration"
6. Transparency International Romania, "National Integrity System", 2011
7. Transparency International Romania, "National Corruption Report 2005", 2005
8. Transparency International Romania, "National Corruption Report 2008", 2008
9. Transparency International Romania, "National Corruption Report 2008", 2008
10. Romania's Penal Code;
11. Law no. 7/2004 on the Code of Conduct for Civil Servants;
12. Law no. 50/2007 amending and supplementing Law no. 7/2004 on the Code of Conduct for Civil Servants;
13. Law no. 78/2000 on preventing, discovering and sanctioning corruption;
14. Law no. 161/2003 on measures to ensure transparency in the exercise of public dignities, public functions and the business environment, and on the prevention and punishment of corruption;
15. Law no. 477/2004 on the Code of Conduct for the contractual staff of public authorities and institutions;
16. Law no. 682/2002 on witness protection.

6. Charts

Complete title of law or regulation: Law no. 571/2004 on the protection of the personnel of public authorities, public institutions and other units who report violations of the law

	Yes	No	Partial	Notes
Broad definition of whistleblowing			X	
Broad definition of whistleblower			X	
Broad definition of retribution protection			X	
Internal reporting mechanism			X	
External reporting mechanism			X	
Whistleblower participation			X	
Rewards system		X		
Protection of confidentiality	X			
Anonymous reports accepted		X		
No sanctions for misguided reporting	X			
Whistleblower complaints authority			X	
Genuine day in court	X			
Full range of remedies	X			
Penalties for retaliation		X		
Involvement of multiple actors	X			