



**TRANSPARENCY
INTERNATIONAL**

HUNGARY

Whistleblower Protection Assessment

Country Report on Hungary

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1. Introduction and methodology

The protection of whistleblowers in Hungary has hardly been studied until this point. Currently, there are some provisions scattered throughout the legal system touching on protection of whistleblowers. A limited secondary literature is available and a few current empirical studies also touch upon the issue. However, no systematic collection of such information has taken place so far. The present report compiles information from various sources, collected by different methodology, which could serve as basis both for future studies and legislative work.

The definition of whistleblowing applied in this report is "the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action".¹ This report covers both public and private sectors' practice and rules.

In the report a wide variety of legal provisions found in general acts such as the Labour Code, Civil Code or Criminal Code. Additionally, special areas such as labour safety law or Official Instructions of the Police are included. The practice of the Parliamentary Commissioner for Data Protection and Freedom of Information, and of the courts provide very limited material for analysis and even fewer articles are produced on this issue. The few surveys identified in this report however each contained only one or two questions relevant to this current study.

The practices of the judiciary were examined by researching two databases and a legal journal called Court Decisions. The journal publishes summaries of court cases of interest, selected by senior judges. The selection of cases goes back decades and is widely used by legal professionals. It is worthwhile to note that it has considerable influence on the practice of judges even if there is no precedent law in Hungary. The final source was the online database of court decisions, which encompasses all cases in which the Supreme Court or the Regional Appellate Courts took decisions since 1 July 2007.

Ideally, the research would have covered the codes of conduct of the Ministries of Justice and Law Enforcement, Health, Finance, Development and Economy, and Defence. Unfortunately none of them has a code of conduct for their employees (only the Ministry of Defence has one for soldiers). A plan of creating a general code of conduct for the entire government has been gaining support in the last decade, but this plan has yet to be realised. From the private sector, the sample was the websites of the five largest companies (by turnover in 2008) and of five medium companies (between 50 and 200 employees estimated) randomly selected from the list of members of the Joint Venture Association. Attempts to obtain phone interviews of the large companies were unsuccessful (see Appendix).²

¹ J.P. Near and M.P. Miceli, Organizational dissidence: The case of whistleblowing, *Journal of Business Ethics*, 4: 4 (1985).

² <http://www.jointventure.hu/en/index.html>

The analysis of the sources is supported by interviews with various experts disposing a thorough knowledge and rich experience on whistleblowing gained in different public and private bodies (see Appendix).

The collection of media reports on whistleblowing was based on the database of www.k-monitor.hu, which is updated on daily basis by its editors, who monitor a wide selection of online media, and label articles.

The report is divided into three main chapters. The first chapter gives an overview of the legal provisions in force, the practice of whistleblowing and the cultural background of the law and practice, which contribute to understanding how they function. The second chapter divides the whistleblowing legislation and practice into thirteen assessment categories. This enables an easier comparison of similarly analyzed legal systems. The third chapter summarises the key results of the analysis and identifies recommendations in this field.

2. Overview of Whistle-blowing protection rules and protection in practice

The four parts of this chapter – legal provisions, practice, organisational culture and cultural context – create a full picture of whistleblowing in Hungary.³

2.1. Legal provisions

The right to petition is enshrined by the Hungarian constitution. This could be the basis of a comprehensive whistleblower protection law, but it has not been adopted yet.⁴ In 2009 the Ministry of Justice and Law Enforcement prepared a draft law, which is still under discussion. The Government has not adopted its text and consequently, did not introduce it in the Parliament until now (September 2009).⁵ It is a similar story for an anti-corruption act. The draft Anti-corruption Strategy embraces the most in this field, however it has not been introduced to or adopted by the Parliament either.⁶

There are no special provisions on whistleblowing in the Labour Code, though there are some very general rules, which may foster reporting and provide some protection to whistleblowers.

³ Since this report was finalised the Government introduced a whistleblower protection bill in the Parliament, which is due to be adopted by the end of 2009. TI Hungary will prepare a further analysis once the new act is adopted. See at: http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=38&p_izon=11026

⁴ Article 64 of the constitution provides for that „In the Republic of Hungary everyone has the right to present, individually or together with others, written petitions or complaints to the relevant public authority”. See at <http://www.mkab.hu/en/enpage5.htm>

⁵ http://irm.gov.hu/i/irm.gov.hu/files/downloads/Fooldal/Szakmai_munka/Korrupcio_elleni_kuzdelem/Tervezett_jog_alkotasi_lepesek_antikorrupcios_torvenyjavaslat_2009_aprilis.doc (19.08.2009)

⁶ http://irm.gov.hu/i/irm.gov.hu/files/downloads/Fooldal/Szakmai_munka/Korrupcio_Elleni_Strategia/korrupcio_elleni_strategia_v6_korr.nelkul.doc (19.08.2009)

The law prescribes with regard to reporting that “in the course of exercising rights and fulfilling obligations, employers, works councils, trade unions and employees shall act in the manner required by good faith and fairness, and they shall be obliged to cooperate with one another”. The employee shall also inform the employer concerning all facts and conditions, and any changes therein, which are of importance from the point of view of exercising rights and fulfilling obligations.⁷ The law also provides for “exercise of rights shall be construed improper if such is intended for or leads to the injury of the rightful interests of others, restrictions on the assertion of their interests, harassment, or the suppression of their opinion”.⁸

Furthermore, according to the Labour Code: “the employee shall not be obliged to follow instructions if such would violate a legal regulation or a regulation pertaining to employment. If carrying out an instruction could result in damage and the employee is aware of such possibility, it shall be pointed out to the person issuing the instruction. In such a case however, compliance may not be refused” and “employees shall refuse compliance with an instruction if it would result in direct and grave risk to the life, physical integrity or health of others”. Although there are no explicit provisions on the way of reporting such illegalities, still, these sections of the law may instruct employees how to act when one is aware of wrongdoing.

The Labour Code is *lex generalis* to the Civil Servants Act. “The Public Official is obliged to perform his duties in the public interest and in accordance with the law decisions of the governing body, in a professional, impartial and just manner, in line with the rules of administration of a high standard”.⁹ The Act also contains similar rules to the Labour Code on following instructions and refusing to comply with illegal instructions. There is a major difference in this issue: the employee “shall refuse compliance with an instruction if it would result in direct and grave risk to the life, physical integrity or health of others”, whereas the public official “may refuse” compliance in these cases as well as if the instruction is contrary to the law.¹⁰

Public Officials are also bound by their superiors’ instructions, but shall raise awareness of the superior and may ask for written instruction if it is contrary to the law or its performance may cause harm and the public official might be sanctioned or would be detrimental to the legitimate interests of the individuals concerned. The superior shall not refuse to give instructions in writing and the public official shall not be disadvantaged for asking written instructions.¹¹

Witness protection is regulated by the Witness Protection Act and by the Criminal Procedure Act. Protection is provided to individuals during and after criminal procedures in cases of serious crimes, such as those related to organised crime, international crime or concerning terrorism, blackmailing, money laundering, drugs or arms trade, prostitution, paedophilia or crimes against life or limb. There is a wide range of measures which can be applied so as to protect the life, limb

⁷ Section 3 of Act XXII of 1992 on the Labour Code, see at: <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex4.pdf> (19.08.2009)

⁸ This provision of the Labour Code is also interpreted by the Labour Law Judicial College of the Supreme Court in its Statement N° 95.

⁹ Article 37 of Act XXIII of 1992 on the legal status of public officials

¹⁰ Article 38 para (3) of Act XXIII of 1992 on the legal status of public officials

¹¹ Article 38 para (4) of Act XXIII of 1992 on the legal status of public officials

and personal freedom of co-operating persons, such as personal protection, change of residence, ban of providing personal data from registers, change of name, change of identity and participation in international cooperation. Though there are cases where these measures may protect whistleblowers, the law focuses mainly on most serious crimes which rarely coincide with less severe wrongdoings which typically would be reported by whistleblowers.

In addition to the obligations imposed by international instruments such as United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption in Hungary, some whistleblowers protection provisions are found sporadically, but not systematically in the Hungarian legal system.

The Criminal Code contains a provision on "Persecution of a Conveyor of an Announcement of Public Concern" which stipulates "the person who takes a disadvantageous measure against the announcer because of an announcement of public concern, commits a misdemeanour, and shall be punishable with imprisonment of up to one year, labour in the public interest, or fine".¹² For all Purposes this is a dormant provision because since 2004 there was only one case (in 2008) in which this provision was used.¹³ The basis of the criminal provision can be found in the Act XXIX of 2004, which amended more than seventy acts, and also includes legal provisions on right to petition originated from the late seventies.¹⁴

The Equal Treatment Act provides protection against negative discrimination based on "any other status, characteristic feature or attribute (hereinafter collectively: characteristics)", however this interpretation may not be accepted in practice, as this characteristic is based on the decision of the person and cannot be considered as a constant attribute.¹⁵

Pertaining to *national security*, "if the members of the national security services notice that the services operate unlawfully, they may report their observation in writing to the Minister. The Minister shall conduct an inquiry based on the report, and shall inform the Committee [of the Parliament] and the person submitting the report about the ordering of the inquiry and the findings thereof".¹⁶ There is a public interest reporting mechanism for *environmental* issues, which report must be investigated environmental authorities.¹⁷ *Policemen* are required to report to their superior, but have the right to file their applications, or complaints to the minister if following the administrative rules. There are explicit rules protecting policemen against retaliation in cases of filing applications or complaints.¹⁸ The Labour Safety Act has very detailed

¹² Section 257 of Act IV of 1978 on the Criminal Code, see at:

http://viso.jrc.ec.europa.eu/contaminated_lands/legislation/HungaryCriminalCode.doc (19.08.2009)

¹³ Information provided by the Statistical Department of the Ministry of Justice and Law Enforcement

¹⁴ Act I of 1977 on public interest reporting, proposals and complaints

¹⁵ Article 8 of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, see at:

<http://www.egyenlobanasmod.hu/data/SZMM094B.pdf> (19.08.2008)

¹⁶ Section 27 para 4 of Act CXXV of 1995 on the National Security Services

¹⁷ Article 35 of the Government Order 347/2006 (XII. 23.) Korm. on the selection of organs responsible for tasks related to environment protection, nature protection and water issues

¹⁸ Article 117 of the Regulation No. 62/2007 of the Hungarian Ministry of Justice and Law Enforcement (IRM) on Official Instructions of the Police

rules on reporting health and safety risks, on the follow-up of the report and on protection of the whistleblowers.¹⁹

The Labour Code prescribes the protection of business secrets of the employee²⁰; the Civil Servants Act prescribes protection of state and service secrets²¹. The State Secrets Act provides for the protection of state secrets. This is reinforced by the Criminal Code, which penalises all forms of unauthorised disclosure of state and service secrets regardless of confidentiality obligations, wilfulness or negligence. There are numerous sectorial provisions on insurance secrets, banking secrets and other professional secrets.

In the last ten years there have been very few whistleblower cases in Hungary. There have been three cases in which the court examined the notion of *public interest reporting* and found that one of the parties reference to these provision was unfounded.²² In a civil defamation case the court discussed the relationship of *public interest reporting* and freedom of expression.²³ In another case *public interest reporting* was used as an excuse against disciplinary measures, but the court refused the arguments of the employee.²⁴ There are only two genuine whistleblower court cases in which whistleblowers met reprisals, and the court decided on labour law claims. In the first case, three plaintiffs, former employees of a waste water management company along with sixteen colleagues initiated a court procedure against their former employer and demanded a court declaration that their extraordinary dismissal was contrary to the law, claiming salaries due for the period of unlawful dismissal, a payment instead of reinstatement, severance pay, etc. The former employees turned to the mayor of the city, complaining about their low salaries. At the same time they the mayor that as instructed by their superior they had to dump the waste material and waste water into the river as the waste management containers had been full for seven years. They also gave an interview to a commercial television channel on the same issue. The defendant claimed that the employees tarnished the good reputation of the company, and their superior, and violated business secrets. However he did not claimed that the allegations were unfounded. The court found among others that even if the opinions of the employees were sharp, it cannot be regarded as a false public interest reporting, regardless of potential information finding that the employees concerned did not fulfil their duties according to the instruction of the superior and to the professional standards. The court invalidated the dismissals and a criminal procedure was initiated against the superior for damaging the environment.²⁵

In the second case, an employer terminated the professional relationship with an individual who had prepared an estimation and expert opinion of the distance heating costs, which were estimated in a way unfavourable to the citizens and additionally that the debts of some users were also calculated into the costs. The plaintiff sent his estimation and expert opinion to the mayor and to two members of the local council, to raise their attention to this issue. The employer

¹⁹ Article 54, para 7 point e), Article 59 para 2, Article 62 and Article 68 para 1 of Act XCIII of 1993 on Labour Safety

²⁰ Article 103

²¹ Article 37

²² EBH 1999. 4.; Metropolitan Court 20.K.33.766/2005/5.; Supreme Court Kfv.II.39.321/2006/8

²³ BH 1999. 155.

²⁴ BH 1999. 88.

²⁵ BH 2003. 344

terminated the employment relationship of the plaintiff by extraordinary dismissal, alleging that the plaintiff intended to damage the legitimate economic interests of the company and disclosed information to third persons without authorisation. The court found that the interests of the company to uphold this estimation were not legitimate. Furthermore, this was also proved by the fact that the method of estimation was changed after this report. It was a public interest reporting to persons (members of the local council and the mayor) whose duty is to deal with cases of public interest. The Supreme Court held that the extraordinary dismissal was unlawful and ordered a new procedure regarding compensation.²⁶

2.2. Whistleblowing in practice

It is challenging to assess the practice of whistleblowing in Hungary. There is no research on the practice of whistleblowing. The representative omnibus survey on corruption does not contain questions on whistleblowing. Furthermore there is no research on the public attitude or media analysis in this field. The only research available is prepared by PricewaterhouseCoopers, which mentions that 17% of economic crimes were discovered through whistleblowing. This is the second most important form of fraud detection (if ignoring accidental discovery). This percentage shows a rise from 13% in 2005. The report also adds that “from our 2007 survey, the number of companies that have introduced whistleblowing programmes has increased by 10 percentage points to 31% when compared to 2005, which seems to have started bearing fruit. In fact, in terms of the detection of economic crime, whistleblowing in Hungary has been something of a success story, and it now exceeds the 2007 global (8%) and CEE (10%) figures for fraud detection.”²⁷

There is a Telephone Witness Programme, set up in 2001, and operated by the Crime Prevention Department of the National Police Headquarters, which took the British Crimestoppers as an example.²⁸ The hotline receives reports on any type of crime, the individuals do not have to identify themselves and their phone numbers are not recorded. The hotline receive approximately 10,000 calls a year, but only 10-15% is relevant for criminal investigation or crime prevention. Though an order of the national police chief prescribes that reports from anonymous sources on corruption shall be handled with special care so as to check its veracity. Unfortunately no statistics are created on corruption reports, they are handled together with crimes against property cases.²⁹

In 2007 the National Development Agency, responsible for managing EU funds received within the framework of National Development Plan set up a website (www.anti-lop.hu) for reporting

²⁶ BH 2002. 31.;

²⁷ Economic crime: people, culture & controls, The 4th biennial Global Economic Crime Survey, Hungarian country report, see at http://www.pwc.com/en_HU/hu/publications/assets/crime_survey_eng_final.pdf (30 August 2009).

77 leading companies within Hungary were interviewed on economic crime and the study also touched upon whistleblowing programs.

²⁸ <http://www.police.hu/megelozes/telefonanu> (30 August 2009)

²⁹ 36/2008. (OT 19.) ORFK Order unified handling of public interest petitions, complaints and reports and on complaints against the police

abuses of EU funds provided to development projects.³⁰ Reports can be submitted anonymously with the ability to track procedures initiated by reports, through the website. In the first two months 206 abuses were reported concerning projects of 508,8 million HUF value paid to applicants with 95 million HUF being recovered. Abuses in these cases did not necessarily mean crimes because it also covered administrative errors. Additionally, 508,8 million is only 0,2 per cent of the total distributed for development projects in 2007. Since early 2008 no statistics are published on the functioning of the website.³¹

There are no statistics collected by any public body or research institution on reporting or on retaliations against whistleblowers, researches on the practice in this field are also missing. The state funds saved thanks to whistleblowing are not assessed either, besides the first months of the performance of the www.anti-lop.hu website.

2.3. Organisational Culture

The experts interviewed did not know any case when the management of a public body or a company appreciated the whistleblowing. Annual reports of the companies do not mention the role of whistleblowers either. The interviewees believed that these findings are not surprising in the Hungarian historical-cultural context (see below).

Multinational companies in Hungary and companies present in the stock exchange may have whistleblower provisions in their codes of conduct, though they are the exception. It is highly unlikely that besides these two groups of companies there are stand-alone whistleblower provisions or codes of conduct containing these provisions.

Public officials are required to pass ‘basic’ and ‘administrative’ exams. In 2009 a new competitive exam system was introduced. These new exams are prerequisites for senior public service positions starting 1 July 2009 and for all public service positions starting 1 December 2009. These exams have questions about corruption issues, though knowledge on general whistleblowing provisions cannot be examined due to the lack of such rules. In the private sector, major companies sometimes have anti-fraud trainings, which touch upon whistleblowing questions, but this is not considered to be the most important problem, according to one expert.

According to one of the experts interviewed, if the owner of the company is the head of the company, there is no need for whistleblowing system as the owner takes part in the everyday business. Those companies which are present in the stock exchange or which have foreign parent undertaking have a vested interest in introducing whistleblower reporting system and provide protection to good faith whistle blowers.

³⁰ Anti-lop is a word play, it means if translated literally anti-theft, but antilop means the animal antelope.

³¹ <http://www.origo.hu/itthon/20080115-508-millio-forint-unios-palyazati-penzt-erint-a-szabalytalansag.html> (30 August 2009)

The Act on Public Finance and its executive regulations prescribe the establishment of internal audit department at nearly every public body. However the internal auditors' scope of responsibility does not always include a role in whistleblowing systems even if there is such system. The same insufficiency applies to internal audit offices of many companies. There is no information on whether such personnel are sufficiently resourced, but it is common both in public and private sector that the internal auditor is responsible to and dependent on the head of the agency/company, which is problematic if the whistleblower reports on high level wrongdoing.

2.4. Cultural Context

In 2002 the Ministry of Interior created a survey on public officials' ethics, in which the public officials filled in a questionnaire. 309 questionnaire contained valid answers. The survey was anonymous and asked only about the type of the employing public body, the grade of the public official, his/her gender and age.³² One Question asked was:

In your opinion, which idiom is true for the public administration if the public official experiences or suspects unethical behaviour, or a more serious deed of one of his/her colleagues or superiors?

- (1. point) Less said, the better.	175;	56,7 %
- (2. point) Who is silent is an accomplice of the guilty ones.	93;	30,1 %
- (3. point) I am not allowed to tell anyone, so I tell everyone.	26;	8,4 %
- no answer	15;	4,8 %

These figures correspond with the opinions of the experts interviewed, with one suggesting that people are more likely to bend their head and stay away from problems in Hungary. At the same time the interviewee emphasised that the anonymous reporting is very useful, because people tend to report more in this form. However, at the same time it has its own risks. Typically the individual will report what she/he believes to be important and in many cases not all the relevant information will be available. As a consequence of anonymous reporting, the individual cannot be further questioned. Nevertheless there is difference between anonymous hotlines and e-mails, as through e-mail still there is a possibility to contact the whistleblower and preserving his/her anonymity. E-mail also helps to give feedback to the whistleblower. Otherwise one would not necessarily see the result of blowing the whistle, which does not support further cooperation.

One of the main reasons for the silence about whistleblowers is deeply rooted in the history of Hungary. The country was governed by authoritarian regimes or dictatorships between 1919 and 1989 (with the exception of three years after the World War II, but still under Soviet occupation). In this period it was very common to report to the political police, which could result in very severe consequences for the reported persons and to their families, thus reporting to authorities on other people, known to the reporting individual (such as colleagues, neighbours, etc) is considered immoral and not supported by the public. However it does not mean that the reporting

³² www.kszk.gov.hu/data/cms29522/Etika_tov.kepz.progr.mell.doc (30 August 2009), there is no more information available on the sample.

culture has not survived the transition. In most cases when someone reports on another person it is used as in retaliation against personal enemies i.e. for suspected tax evasion to the tax authorities. In the opinion of one of the experts interviewed, for these reasons no whistleblower will ever be a national hero in Hungary as opposed to whistleblowers in the United States after the Enron case. Different segments and groups within Hungarian society have similar views regarding this issue because everybody has a relative who was reported to the Horthy-regime, or later to the arrow-cross secret police in the 1930s and 1940s or to the communist secret police from the 1950s on.

It is a remarkable sign of the public attitude that the Parliamentary Commissioner for Data Protection and Freedom of Information has taken a very rigid stance on *internal misconduct reporting systems*. The commissioner has emphasised that “in Hungarian practice, however, the use of misconduct reporting systems involves the violation of the rights of individuals subject to data processing in the majority of cases. In some cases Hungarian employers – presumably setting the goal to be achieved aside – create reporting systems which are practically nothing but informant networks in which employees can freely press charges against each other even with respect to offences of little gravity”.³³

In the media the issue of whistleblowing has been discussed in two forms, there were reports of corruption scandals, in which whistleblowers had a role, but the focus was almost always on the act of corruption. The other type of articles were about the government plans on a new whistleblowers protection act.

In May 2008 disciplinary procedures were initiated against two labour inspectors after giving an interview to a commercial news channel.³⁴ The inspectors informed the television on a corruption case in which twenty companies were on a “white list”. Following the instruction of the head of the authority, the labour inspectors could not fine these companies, even if they committed illegal acts. The investigation also found that “zero certificates” were also issued for these companies, which certified that the company was not sanctioned for any violation of labour regulations, which documents are needed for public procurement biddings. In November 2008 the head of the authority and the head of the internal audit department of the authority were arrested and in March 2009 became suspects of forgery of official documents.³⁵

In June 2008 the military prosecutor indicted for incitement a police officer, who is also the head of a police labour union. A month later another leader of the union became suspect of incitement.³⁶ The indicted police officers called the attention of the labour union members on their website to wrongdoings within the police. They were unable to achieve substantial changes, as they intended through court procedures. The military prosecutor considered these publications as incitement. The head of the labour union later used her reputation earned in these cases and

³³ Annual Report of DP&FOI Commissioner 2007, pp. 61-62, see in English at: http://abiweb.obh.hu/dpc/annual_reports/ar_dpc_2007.pdf (30 August 2009)

³⁴ http://www.hirtv.hu/belfold/?article_hid=214625 (30 August 2009)

³⁵ <http://nol.hu/belfold/lap-20090324-20090324-48> (30 August 2009)

³⁶ Section 357 para 1 of Criminal Code stipulates „The person who incites discontent among soldiers with the superior, an order or in general the order of service or discipline, commits a misdemeanour and shall be punishable with imprisonment of up to one year”.

became the fourth candidate on the list of Jobbik, the extreme right populist party for the European Parliament elections, which sent three MEPs to the European Parliament.

In June 2008 a series of parking control system scandals started. Nine controllers put an end to the practice of car owners paying some bribes to the controllers, which had to be shared by their superiors, so as to park for free in areas where otherwise high fees should be paid. The uncovered system was quite complex, encompassing 33 areas in Budapest, all managed by one company.³⁷ The whistleblower who disclosed a list of 1000 car owners with registration plates and phone numbers received serious threats and was dismissed from the parking company.³⁸ A month later wrongdoings were discovered at another parking company in Budapest, though it was not as well organised as the previous one.³⁹ A chief controller of the latter company reported after his dismissal, that the controllers often falsify the photos, which prove that someone parked without valid parking ticket on the street. He also stated that the controllers render the ticket machines useless to create more fines, and that the controllers take bribes, though not in an organised way.

In August 2008 a bus driver of the Budapest public transport company gave an interview, in which he complained about the poor technical conditions of the buses and the infrastructure supporting it. The driver was subsequently dismissed. However, a few days later the company reversed this decision, but initiated a disciplinary procedure. After this case they changed their policy so that no employee of the company, except the spokesperson may give interviews.

In August 2008 a mill industry professional blew the whistle that a dozen major mill industry companies formed a cartel for four years, costing the public 60 billion HUF. She asked for “witness protection” from the competition authority, but it has not provided it adequately. The whistleblower received a high number of serious threats. A labour law procedure is currently pending between her and her former employer a mill industry company.⁴⁰

3. Extent of whistle-blowing protection rules and their application in practice

3.1. Scope of personnel coverage

How wide is the scope of personnel who are protected by the WB legislation?

The whistleblower protection rules in force are sporadic and cover whistleblowers only in specific fields, such as the police, and employees of national security agencies. The scope of the Civil Servants Act and of the Labour Code, as well as of the Witness Protection Act provide

³⁷ http://www.blikk.hu/blikk_aktualis/20080620/parkolas_zsebre_akar_napi_60-80_ezret_is/ (30 August 2009)

³⁸ http://velvet.hu/blogok/helyszinelo/2008/06/25/halalosan_megfenyegettek_a_kitalalo_parkoloort/ (30 August 2009)

³⁹ http://www.blikk.hu/blikk_aktualis/20080705/botrany_a_centrum_parkolonai_is/ (30 August 2009)

⁴⁰ http://index.hu/gazdasag/magyar/2009/07/01/igy_vettek_ki_a_zsebunkbol_60_milliardot/ (30 August 2009)

much wider protections. Although they are not designed to protect whistleblowers, they may only be useful for them.

The draft law on whistleblower protection foresees protection in any type of employment or employment-like relationship both in public and private sectors. The draft law does not cover persons who have other type of legal relationship with natural or legal persons committing wrongdoings.

3.2. Subject matter (definition of wrong-doing)

How widely defined are the subject matters covered by WB legislation?

The current whistleblowing rules are tailored to specific areas and activities, such as the environment, worker safety, and police and where the violations of the law of the specific area are defined as wrongdoing. The Criminal Code provides general a definition as taking “a disadvantageous measure against the announcer [whistleblower] because of an announcement of public concern, commits a misdemeanour”.

The draft law on whistleblower protection would cover wrongdoings in any procedure where public funds or exercise of public authority are used.

3.3. Internal disclosure channels

To what extent is an adequate internal disclosure mechanism available?

Internal disclosure channels within public bodies are mainly found in the possibility of reporting to one’s superior. If the superior is involved in the wrongdoing, then it is possible to report to one level higher, or to the head of the public body. The handling of such reports are totally dependent on the superior, if she/he is willing to support or manage an investigation then the report may cause action, otherwise the whistleblower does not have many other options – according to an interviewee. Internal audit offices are rarely charged with this duty. No interviewee was aware of whistleblower hotlines or e-mail addresses in public bodies. One interviewee mentioned the most common way of reporting is a letter to the superior, either signed or anonymous.

In the private sector an employee who is responsible to, and thus dependent on the management of the company handles the hotline or the e-mails for whistleblowers. The employee receiving reports usually belongs to the internal audit or to the legal department of the company.

3.4. External disclosure channels

To what extent is there an adequate external disclosure mechanism to independent regulators?

No interviewee was aware of public bodies using external disclosure channels, though the Public Finance Act allows for using the services of external auditor companies. In Hungary it is also uncommon that companies commission external bodies for whistleblowing service.

The interviewees noted that both in the public and the private sectors it would be contrary to the organisational culture to report to external oversight bodies.

3.5. Additional disclosure channels

To what extent does the external disclosure mechanism include a disclosure to the media, MP or civil society organisations?

There are only a couple of cases a year that whistleblowers report wrongdoings to the media or to NGOs.

3.6. Confidentiality

Does the WB legislation include provisions ensuring confidentiality? If so, how stringent and effectively applied are confidentiality rules?

The Data Protection Act provide for the informational self-determination of the individuals. This means no personal data shall be handled without their consent.⁴¹ Consent according to the act “shall mean any freely given, specific and informed indication of the wish of the data subject by which he signifies his unmistakable agreement to the processing, either wholly or partially, of personal data relating to him”.⁴² If another public body needs for valid legal purposes, for its procedure based on the reporting and the law provides for handling such data, then personal data of the whistleblower can be transferred to this body. Additionally, if the report was provided in bad faith, the personal data can be handled in procedures against the whistleblower.

There are several statements of the Data Protection Commissioner which emphasise the right of confidentiality of individuals reporting wrongdoings as well as rights of individuals on which the whistleblower reports.⁴³ On the one hand, the breach of confidentiality of the whistleblower can substantiate civil law claims. If somebody “imposes significant injury to the interests” of the whistleblower by abusing his/her personal data that constitutes a crime according to the Criminal Code.⁴⁴ Alternatively, the position of the Data Protection Commissioner on whistleblowing systems in the private sector, with regard to the rights of suspects of wrongdoings is very strict, so that the future legislation has to handle data protection issues very carefully.

3.7. Time-scale

What are the limits on a time scale for whistle-blowing?

⁴¹ Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest, see at: http://abiweb.obh.hu/dpc/index.php?menu=gyoker/relevant/national/1992_LXIII

⁴² Article 2. point 6 of the Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest

⁴³ Recommendation 833/K/2000; Statement 192/A/2005; Statement 271/K/2007; Statement 295/K/2007; Statement 652/K/2007

⁴⁴ Misuse of Personal Data Section 177/A in Act IV of 1978 on Criminal Code, see at: http://abiweb.obh.hu/dpc/index.php?menu=gyoker/relevant/national/1978_IV

There are no time limits on reporting either in the provisions in force or in the draft law on whistleblower protection. The draft law, if adopted, will not apply retroactively. However, there are statutes of limitation both in civil law and in criminal law, which limit the possibility of prosecuting disclosed wrongdoings.

3.8. Protection against reprisal/retaliation

What is the scope of reprisals that the WB is protected against?

The Labour Code protects employees in the public and private sectors against all types of labour-related reprisals. The Civil Code creates the possibility to file claims before the court for pecuniary and non-pecuniary damages, as well as for restitution in integrum. The Criminal Code as ultima ratio sanctions a wide range of deeds such as constraint, harassment, defamation, slander, etc.

3.9. Right to refuse

To what extent does the WB legislation cover the right to refuse participation in illegal activities?

Both the Labour Code and the Civil Servants Act have provisions on refusal of compliance with an instruction, if it would result in direct and grave risk to the life, physical integrity or health of others (see above).

3.10. Legal liability

To what extent does the law impose legal liability for false or malicious reporting?

The Civil Code regulates the rules of claiming pecuniary and non-pecuniary damages for infringing one's personality rights and the Criminal Code has provisions on defamation and slander. The extent of such legal liabilities vary as public figures should have higher thresholds in such cases in line with the standards of the European Court of Human Rights.

3.11. Whistleblower participation

To what extent is the WB able to participate in follow-up process to the disclosure?

Whistleblowers participate in two ways. If the whistleblower does not report anonymously, she/he has the right to be informed on the results of the reported case. At the same time the public authorities and the courts may summon him/her as a witness of the reported case.

Companies that have whistleblower protection system usually start with asking and convincing the whistleblower, if accessible, to give more details needed for the investigation, according to one of the interviewees.

3.12. Independent review

How comprehensive is the independent review system?

There is no independent review system besides the courts which may deal with the case in a court procedure according to the substantial rules of the Labour Code, Civil Code or Criminal Code and procedural rules of the Civil Procedure Act or Criminal Procedure Act, dependent of the type of review.

3.13. Offered remedies

How wide is the scope of offered remedies available to WB?

The remedies based on the Labour Code if the dismissal of the whistleblower was unlawful are “if the employee does not request or if upon the employer's request the court exonerates reinstatement of the employee in his original position, the court shall order, upon weighing all applicable circumstances - in particular the unlawful action and its consequences -, the employer to pay no less than two, and no more than twelve months' average earnings to the employee”.⁴⁵

The Civil Code provides for the following besides claiming pecuniary damages: “A person whose inherent rights have been violated may have the following options under civil law, depending on the circumstances of the case:

- a)* demand a court declaration of the occurrence of the infringement,
- b)* demand to have the infringement discontinued and the perpetrator restrained from further infringement; *c)* demand that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution;
- d)* demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature;
- e)* file charges for punitive damages in accordance with the liability regulations under civil law.”⁴⁶

4. Key results and recommendations

4.1 Legislative recommendations

The whistleblowing provisions scattered in the legal system are very diverse, but in the absence of an overarching whistleblower protection law even in their fields may not provide either sufficient protection to whistleblowers or substantial support of preventing and investigating wrongdoings. However, many fields of government activities are not covered by any provision on reporting within their institutional framework or provide protection to whistleblowers. The discussion of the draft whistleblower protection act should be finished and a bill should be introduced to the Parliament.

⁴⁵ Article 100 para 4 of Act XXII of 1992 on the Labour Code

⁴⁶ Article 84 para 1 of Act IV of 1959 on Civil Code

Many of the already existing sectorial reporting and whistleblower protection provisions are incomplete, and should be amended in line with the best international legal standards.

4.2 Rule-making recommendations

Code of conducts could help change the organisational culture, and in the long run, the attitude of the public towards reporting and the role of whistleblowers. As previously noted, none of the ministries have code of conducts. The two codes of conducts in force in the public sector (for policemen and for soldiers) do not cover all the issues that would be required from a comprehensive code. A code of conduct should be adopted for the entire public administration. It is also supported by the recommendation of the GRECO Second Evaluation Round Compliance Report on Hungary.⁴⁷

All state owned companies should adopt code of conducts. This is even more pressing than in the case of private companies because they manage public assets and use public funds. Among the privately owned companies adoption of code of conducts should be promoted above a certain size, i.e. when the owner does not have direct overview on the daily business of the company.

4.3 Research and awareness-raising recommendations

Very little is known about the public attitude regarding reporting and on protection of whistleblowers. There is little known regarding the same issues among public officials. These questions can be easily surveyed and researched, and based on the results; a programme should be initiated to raise the acceptance of whistleblowing in the most corruption prone areas.

The practices of the courts in whistleblower cases are not collected in a systematic way. Additionally, analysis in labour law and in civil law is lacking. A better knowledge of the jurisprudence regarding dismissal of whistleblowers and defamation claims against whistleblowers would help establishing a good system of protection.

The personal background of whistleblowers is not researched either in Hungary, though it could help tailoring adequate incentives and protection to these people, which could raise the number reporting.

⁴⁷ „GRECO recommended to introduce as soon as possible the model Code of Conduct for Civil Servants for the development of consistent standards for ethical behaviour throughout public administration, to widely disseminate it among public officials and the general public, and to provide the officials concerned with appropriate training on a permanent basis” and „GRECO recommended to establish clear guidelines and training for civil servants concerning the reporting of suspicions of corruption”, Second Evaluation Round Compliance Report on Hungary, Adopted by GRECO at its 37th Plenary Meeting (Strasbourg, 31 March-4 April 2008)

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Civil Code	Act IV of 1959 on the Civil Code ⁵²
Civil Servants Act	Act XXIII of 1992 on the Legal Status of Public Officials
Civil Procedure Act	Act III of 1952 on Civil Procedure ⁵³
Complaints Act	Act I of 1977 on Public Interest Reporting, Proposals and Complaints
Criminal Code	Act IV of 1978 on the Criminal Code
Criminal Procedure Act	Act XIX of 1998 on Criminal Procedure
Data Protection Act	Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest ⁵⁴
Equal Treatment Act	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities ⁵⁵
Labour Code	Act XXII of 1992 on the Labour Code ⁵⁶
Labour Safety Act	Act XCIII of 1993 on Labour Safety
National Security Act	Act CXXV of 1995 on the National Security Services

⁴⁸ http://abiweb.obh.hu/dpc/annual_reports/ar_dpc_2007.pdf (30 August 2009)

⁴⁹ http://www.pwc.com/en_HU/hu/publications/assets/crime_survey_eng_final.pdf (30 August 2009)

⁵⁰ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)4_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)4_Hungary_EN.pdf) (30 August 2009)

⁵¹ www.kszk.gov.hu/data/cms29522/Etika_tov.kepz.progr.mell.doc (30 August 2009)

⁵² <http://www.civil.info.hu/uploaded/documents/seged/NK/ActIVof1959.doc> (30 August 2009)

⁵³ http://viso.jrc.ec.europa.eu/contaminated_lands/legislation/HungaryCriminalCode.doc (30 August 2009)

⁵⁴ http://abiweb.obh.hu/dpc/index.php?menu=gyoker/relevant/national/1992_LXIII (30 August 2009)

⁵⁵ <http://egyenlobanasmod.hu/data/SZMM094B.pdf> (30 August 2009)

⁵⁶ <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex4.pdf> (30 August 2009)

Public Finance Act	Act XXXVIII of 1992 on Public Finance
State Secrets Act	Act LXV of 1995 on State and Service Secrets
Witness Protection Act	Act LXXXV of 2001 on the Protection Programme for Participants of Criminal Procedures and Persons Co-operating with the Criminal Justice

(The English translations of these acts may be outdated due to frequent amendments.)

Regulation No. 62/2007 of the Hungarian Ministry of Justice and Law Enforcement (IRM) on Official Instructions of the Police

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Statement N° 95 of the Labour Law Judicial College of the Supreme Court

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Supreme Court Kfv.II.39.321/2006/8;

EBH 1999. 4.;

BH 1999. 88.;

BH 1999. 155.;

BH 2002. 31.;

BH2003. 344;

Recommendation and statements of the Parliamentary Commissioner of Data Protection and Freedom of Information

Recommendation 833/K/2000;

Statement 192/A/2005;

Statement 271/K/2007;

Statement 295/K/2007;

Statement 652/K/2007

Appendix

List of institutions and companies

Ministry of Defence
Ministry of Development and Economy
Ministry of Finance
Ministry of Health
Ministry of Justice and Law Enforcement

MOL Hungarian Oil and Gas Company
Audi Hungaria Motor Ltd.
E.ON Földgáz Trade Zrt.
Panrusgas Gas Trading Plc.
Hungarian Power Companies Ltd.

Strabag BRVZ
CALDERYS
EastEuroCo Executive Search Group
IFUA Horváth and Partners Management Consultants
Böhler Trade Ltd.

List of Interviewees

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